



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस()
Office of the Commissioner,
 केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
 26305065-079 : टेलिफैक्स 26305136 - 079 :
 Email- commrappl1-cexamd@nic.in

DIN-20210764SW000000A5A2

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/221/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad / 1523701828
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-10/2021-22**
 दिनांक Date : **21.06.2021** जारी करने की तारीख Date of Issue : **01.07.2021**
- आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **02/AC/Ref/2020-21/BK** dated **14.09.2020**, passed by Assistant/Deputy Commissioner, Central GST & Central Excise, Div-V, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- - M/s Atlantis Products Pvt. Ltd.

Respondent- Assistant Commissioner, Central GST & Central Excise, Div-V, Ahmedabad-North

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

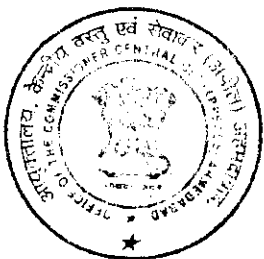
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

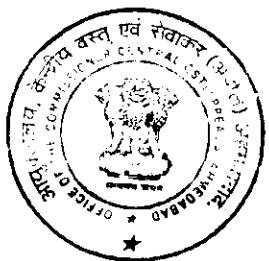
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

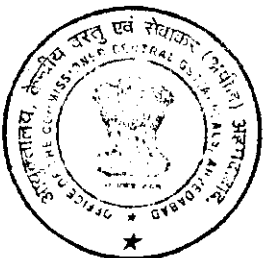
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



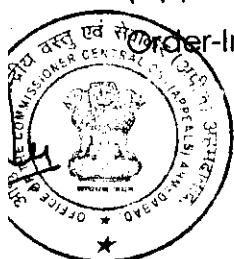
ORDER-IN-APPEAL

M/s Atlantis Products Pvt Ltd., 1205-1210, GIDC, Dholka, Dist. Ahmedabad (Gujarat) [hereinafter referred to as "appellant"] has filed the present appeal against the Order-In-Original No. 02/AC/Ref/2020-21/BK dated 14.09.2020 (henceforth, the "impugned order") passed by the Assistant Commissioner, Central GST & Central Excise, Division-V, Ahmedabad North (henceforth referred as "adjudicating authority").

2 Facts of the case, in brief, are that the appellant had allegedly filed 13 refund claims before the Deputy/Assistant Commissioner of Central Excise, Division-III and Division-IV of erstwhile Ahmedabad II Central Excise Commissionerate between 25.11.2013 and 16.01.2017 seeking refund of an amount of Rs.11,23,991/- on account of service availed for export of goods manufactured by them. The appellant have claimed that they had filed refund claims for the period in question on regular intervals but refund was not granted by the department. Later, they got stuck in implementation of GST and in 2018 it had made application before jurisdictional officer for granting refund. However, since no communication in respect of the said 13 refund claims was received by the appellant till 2019 from the Department, they took up the matter with Assistant Commissioner, Central GST & Central Excise, Division-V, Ahmedabad North (who is the present jurisdictional authority after CGST bifurcation) to sanction/dispose their claim, vide letter dated 30.09.2019. The Deputy/Assistant Commissioner of Central Excise, Division-III and Division-IV of erstwhile Ahmedabad II Commissionerate has reported to the Assistant Commissioner, Central GST & Central Excise, Division-V, Ahmedabad North that no such claims were received by their office during the material periods. On the basis of the said report, the Assistant Commissioner, Central GST & Central Excise, Division-V, Ahmedabad North has rejected appellant's request to sanction/dispose the refund claim, vide letter F. No. V.65/18-19/Ref/1/2019-20 dated 13.12.2019 supra.

3. Being aggrieved with the letter F. No. V.65/18-19/Ref/1/2019-20 dated 13.12.2019, the appellant filed an appeal before the Commissioner (Appeal), Central Excise, Ahmedabad and the same was decided vide

Order-In-Appeal No. AHM-EXCUSE-002-APP-003-20-21 dated 21.04.2020

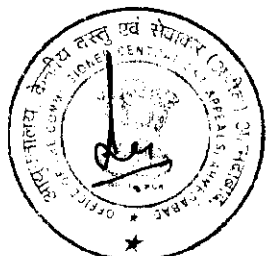


wherein he remanded the matter back to the adjudicating authority with a direction to verify the genuineness of the 13 refund claims filed by the appellant with the erstwhile Division-III and Division-IV of Ahmedabad-II Commissionerate with the documents/records maintained by the department and procedure thereof adopted by the Divisional Office while receiving the refund claims in general.

4. The adjudicating authority, following the directions of Commissioner (Appeals), Ahmedabad's Order dated 21.04.2020, decided the refund claims of the appellant under impugned order dated 14.09.2020 wherein rejected all the refund claims on the basis of the report received from the Deputy/Assistant Commissioner of Central Excise, Division-III and Division-IV of erstwhile Ahmedabad II Commissionerate and also on the ground that the appellant could not furnish any evidence about the genuineness of the receipts stamps in the 11 cases that are without any initial of receiving clerk and unable to produce any supporting documents proving that the claims under reference do not suffer from the limitation of time and hence time barred as on 19.06.2019.

5. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- They were regularly filed the refund application against export of goods from 2010-11 onwards, however, the refund claims filed from 2013-14 to 2015-16 were not granted to them by the Department;
- After filing of refund claim for the period from 2013-14, they were stuck up in the implementation of GST works which came w.e.f July 2017; that in 2018, they made reference to grant the refund in question, but the Department has not sanctioned due to non-availability of Data/refund application made by them;
- The appellant has made genuine refund claim which were not available with the department and accordingly, the department has rejected their claims;
- That the appellant has no role or control in the documents which are available with Government office;
- They have furnished copies of relevant applications filed before the concerned authority with the present jurisdictional authority for reference and sanction of refund.



6. Personal Hearing in the matter was held on 28.04.2021. Shri Ankit Parikh and Shri Manish Kumar, both Chartered Accountants, appeared for the hearing and re-iterated the submissions made in Appeal Memorandum.

7. I have carefully gone through the facts of the case and submissions made by the appellant in Appeal Memorandum. The limited point to be decided in the instant case is whether 13 refund claims filed by the appellant during period 2013-14 to December 2016 before the Deputy/Assistant Commissioner of Central Excise, Division-III and Division-IV of erstwhile Ahmedabad II Commissionerate are genuine or not and whether the adjudicating authority has correctly rejected the said claims due to non-availability of records with the Department.

8. It is observed that the matter was remanded back to the adjudicating authority under OIA dated 21.04.2020 with the following specific observations by the Commissioner Appeal:

10. Under the above discussed facts and circumstances, the adjudicating authority should verify the genuineness of the 13 refund claims filed by the appellant with the erstwhile Division-III and Division-IV of Ahmedabad-II Commissionerate with the documents/records maintained by the Department and procedure thereof adopted by the Divisional Office while receiving the refund claims in general. Enquiry with the concerned Divisions as well as with the appellant may also be conducted in this regard, if necessary. If the claims filed by the appellant are found in genuine, necessary action may be taken for its disposal.

9.1. Acting on the directions of Commissioner (Appeals) as above, the adjudicating authority rejected all the refund claims on the basis of the report received from the Deputy/Assistant Commissioner of Central Excise, Division-III and Division-IV of erstwhile Ahmedabad II Commissionerate that no such claims were received by their office during the material periods. It was also rejected on the ground limitation as the applications were time barred as the appellant could not furnish any evidence about the genuineness of the receipts stamps in the 11 cases that are without any initial of receiving clerk and unable to produce any supporting documents proving that the claims under reference do not suffer from the limitation of time.

9.2. Further, on perusal of appeal memorandum and the documents submitted by the appellant, it is observed that the same documents and

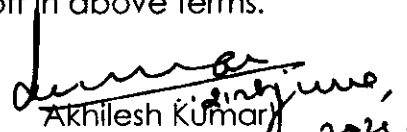
which were already considered earlier by the adjudicating authority,



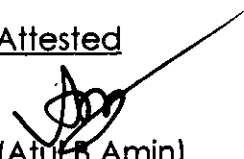
have been provided again by the appellant. There is no mention/counter in the grounds of appeal as to which observation of the impugned order is challenged. It is observed that simply by providing same documents and contention again and again without countering the same with documentary evidence, the filing of appeal cannot serve the purpose in real sense. On the contrary, such vague submissions add duplication of work to the authority who deals it. On the other end, I observe that the adjudicating authority has completely followed the directions of the OIA dated 21.04.2020 of Commissioner, Appeal and made suitable observations in para nos. 11 to 13 of the impugned order. I find said observations are sustainable, more particularly when no any counter argument with documentary evidence against the same has been made by the appellant. I find that the appellant have not submitted any documents so as to prove that the subject refund claims were filed before the refund sanctioning authority within time limit prescribed.

10. In view of the discussion above, I do not find merit in the grounds raised by the appellant. Accordingly, I reject the appeal filed by the appellant and uphold the impugned order.

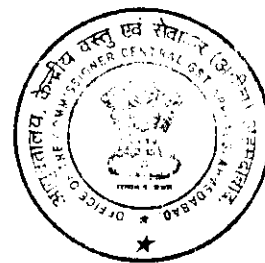
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.


Akhilesh Kumar
Commissioner (Appeals)
/06/2021

Attested


(Atul B Amin)
Superintendent (Appeals),
CGST, Ahmedabad.

To,
M/s Atlantis Products Pvt Ltd.,
1205-1210, GIDC, Dholka,
Dist. Ahmedabad (Gujarat)



Copy To:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad-North
3. The Assistant Commissioner, CGST, Division-V, Ahmedabad-North.
4. The Assistant Commissioner, System-Ahmedabad North
- ✓ 5. Guard File.
6. P.A.