



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



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद 380015.  
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**स्पीड पोस्ट**

- क फाइल संख्या : File No : File No : GAPPL/COM/CEXP/150/2020-Appeal / 1270 T 6 1274
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-003/2021-22**  
दिनांक Date : **26.04.2021** जारी करने की तारीख Date of Issue : **05.05.2021**  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **02/DC/D/AKJ/2020-21** dated **20.05.2020**, passed by  
Deputy Commissioner, Central GST & Central Excise, Div-III, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** - M/s V R Sulphur Pvt. Ltd.

**Respondent-** Deputy Commissioner, Central GST & Central Excise, Div-III, 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 का 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, 4<sup>th</sup> 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 प्रक्रिया 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 मामले 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 ईए-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 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 पढ़ी 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 1 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.

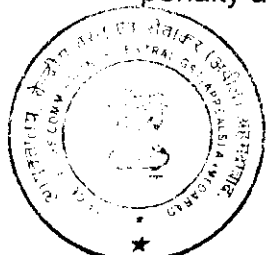
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

This appeal has been filed by M/s. V R Sulphur Pvt Ltd., Plot No. 10-11, Mahalaxmi Industrial Estate, Iyava, Ahmedabad-382 170 having new address at Survey No. 247/1, Paiky 3 & 4, Near Uma Ind. Estate, B/h. Bhagyoday Hotel, Sanand- Viramgam Road Vill: Vasnaa-(Iyava) Tal: Sanand, Ahmedabad (henceforth referred as "*appellant*") against the Order-In-Original No. 02/DC/D/AKJ/20-21 dated 20/05/2020 (henceforth referred as "*impugned order*") passed by the Deputy Commissioner, Central GST, Division-III, Ahmedabad-North (henceforth, "*adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant is engaged in manufacturing of Sulphur Powder, Sulphur 90% wdg falling under Chapter 25 & 31 of the First Schedule to the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAECV9686NEM001 and also holding Service Tax Registration No. AAECV9686NSD001. During the course of audit conducted on the records of the appellant for the period April-2016 to June-2017, it was observed on verification of the Final records/ER-3 return of the appellant that they had availed benefit of Notification No. 12/2012 CE dtd. 17/03/2012 ( Serial No. 128) for clearance of Sulphur 90% wdg and paid Central Excise duty @ 1% adv. It also appeared that Sr. No. 128 of the said Notification No. 12/2012CE dtd. 17/03/2012 prescribed a pre condition in order to avail the concessional rate of 1% adv for the product cleared under Chapter 31059090 that no cenvat credit is availed. However, the appellant had availed the cenvat credit and therefore, the benefit of concessional rate of notification is not available. Therefore, the clearance made during the period July-2015 to September-2016 valued at Rs.11,81,573/- on which the appellant had short paid the duty amounting to Rs.1,35,881/-. Accordingly, a Show Cause Notice dated 17.09.2019 was issued to the appellant demanding duty amounting to Rs.1,35,881/- for the period from July-2015 to September-2016 invoking extended period of limitation alongwith Interest and Penalty. The said SCN was decided by the adjudicating authority vide impugned order dated 20/05/2020 wherein dis allowed the benefit of concessional rate of duty under Sr. No. 128 of the said Notification No. 12/2012CE dtd. 17/03/2012 and confirmed the deamnd alongwith interest and also imposed penalty on the appellant.

3. Being aggrieved by the impugned order dated 20.05.2020, the appellant have filed the instant appeals on the grounds that:

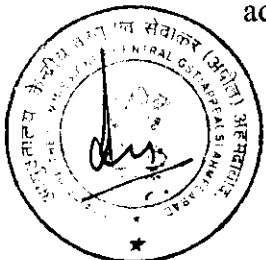


- the imposed order is not proper and legal and passed in gross violation of natural justice;
- due to change of premises, the hearing intimation was not served to the appellant and hence, the appellant could neither filed any reply to notice nor attended the hearings and hence imposed order is ex-party;
- the appellant had debited an amount of Rs. 48,126/- and Edu Cess of Rs. 2,097/- in the July-15 to Sept-2015 quarter and informed concerned Range office, therefore it is considered as not taking cenvat credit and relied upon a judgemnt reported in 2000(120) ELT 792 and OIA No. 119/2011 (STC)/K. Anpazhakan/ Commr(A)/ Ahd dated 25.05.2011;
- that the appellant had filed regular returns to the department wherein disclosed the clearance of 1% and 12.5% and also shown cenvat credit taken and utilized and hence extentended period can not be invoiked and demand is time barred;
- that the appellant vide their letter dated 29.06.2016 addressed to the Superintendent of C.Ex, AR-III, Division-III, Gokulam Arcade, Sanand, Ahmedabad intimated about the clearance of 1% and 12.5% and also shown cenvat credit taken and utilized;

4. Personal hearing in the matter fixed on 18.03.2021 through virtual mode. Nobody appeared in the hearing. The appellant vide their letter dated 18.03.2021 informed that the case may be decided on the basis of grounds of appeal as well as additional submission made vide email dated 17.03.2021.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum as well as those made in the additional submission. I find that the issue to be decided in the matter is as to whether in the facts and circumstances of the case, the appellant has correctly availed the benefit of concessional rate of duty under Sr. No. 128 of the Notification No. 12/2012-CE dated 17/03/2012 or otherwise?

6. It is observed from case records, appeal memorandum and written submission that the appellant has shifted their factory premises to new address and hence, the notice for personal hearing during adjudicating were not received by them. Therefore, the appellant were unable to submit reply to SCN and also unable to defend their case and attend personal hearing. Hence, it is apparent from records that the adjudicating authority, without ascertaining the actual receipt of letter of personal



hearing, had proceeded to decide the matter ex-parte and denied the benefit of concessional rate of duty under Sr. No. 128 of the Notification No. 12/2012-CE dated 17/03/2012 and confirmed the demand and imposed penalty. Hence, the impugned order has been passe in violation of principles of natural justice.

7. I find that the demand of duty under the impugned order were confirmed ex-parte. It is further observed that the appellant were granted opportunities of personal hearing on 18.02.2020, 27.02.2020, 11.03.2020 and 17.03.2020. However, they did not appear. They have contended that they have shifted their factory premises to new address and hence, the notice for personal hearing were not received by them. Since the appellant have contested denial of natural justice to present their case personally, I am of the considered opinion that they should be given an opportunity to present their case before the adjudicating authority by observing principles of natural justice. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Once, show cause notice is issued, the notice should be given sufficient opportunity to rebut their case being first and foremost requirement of natural justice. The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

*" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper*



*spirit and mere pretence of compliance with it would not satisfy the requirement of law."*

8. In view of above observations, without going into merit of the case, I remand the case back to the adjudicating authority to decide it afresh ensuring principle of natural justice. The appeal accordingly is allowed by way of remand.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

*Akhilesh Kumar*  
26 April, 2021  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Ahmedabad  
/04/2021



Attested

*(Signature)*  
(Atul B Amin)  
Superintendent (Appeals)  
CGST, Ahmedabad

By R.P.A.D

To

M/s. V R Sulphur Pvt Ltd.,  
Survey No. 247/1, Paiky 3 & 4,  
Nr. Uma Ind. Estate, B/h. Bhagyoday Hotel,  
Sanand- Viramgam Road Vill: Vasnaa-(Iyava)  
Ta: Sanand, Ahmedabad

Copy to:

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