



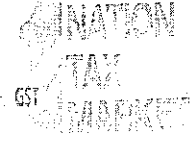
सत्यमेव जयते

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 :

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DIN-20220164SW0000666BB9

स्पीड पोस्ट

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- क फाइल संख्या : File No : GAPPL/COM/CEXP/140/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad.
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-57/2021-22**
दिनांक Date : **05.01.2022** जारी करने की तारीख Date of Issue : **06.01.2022**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **10/DC/D/2020-21/AKJ dated 24.11.2020**, passed by the Deputy Commissioner, Central GST & C. Ex., Div-IV, Ahmedabad North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Sabar Pipes & Fitting LLP (Now known as IMF Polymers), Village: Nani Devti, Sanand Bavla Road, Sanand, Ahmedabad.

Respondent- Deputy Commissioner, Central GST & Central Excise, Div-IV, 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) केंद्रीय 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 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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक 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 अनुसूचि-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।

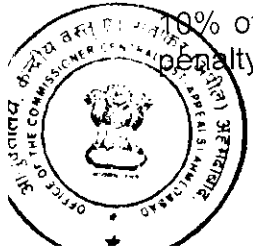
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



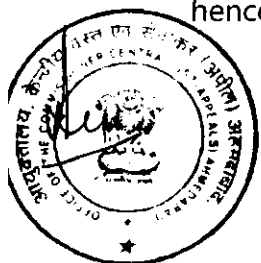
ORDER IN APPEAL

The present appeal has been filed by M/s. Sabar Pipes & Fitting LLP (now IMF Polymers), Village: Nani Devti, Sanand Bavla Road, Sanand, Ahmedabad (in short '**the appellant**') against the OIO No:10/DC/D/2020-21/AKJ dated 24.11.2020 (in short '**impugned order**') passed by the Deputy Commissioner, Central GST, Division-IV, Ahmedabad North (in short '**the adjudicating authority** ').

2. The facts of the case, in brief, are that during the course of audit, on the records of the appellant, conducted for the period from October, 2015 to June, 2017, the officers of CERA (Audit), Ahmedabad, on detailed scrutiny of ER-3 returns of January, 2017 to March, 2017, noticed that the appellant had been clearing goods to their related persons (Depots/Warehouses named Sabar Enterprises) and paid duty on 114% of the actual value of the goods, under Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Random, scrutiny of sales Invoices No. EX-450 dated 24.03.2017, showed that they sold their final product to Sabar Enterprises at a price of Rs.171.98/- per unit and the related party in turn sold the said goods to their buyers at the price of Rs.196.63/- per unit. The duty was required to be discharge on the price of Rs.196.63/- but they discharged duty on Rs.171.98/-, which resulted in short payment of duty, on the differential value of Rs.24.65/- per unit (196.63 - 171.98). Similar, short payment of duty on the value of Rs.18.82/- per unit was also noticed in Invoice No. EX-454 dated 27.03.2017. Thus, from the data submitted by the appellant on 03.12.2018, short payment of duty to the tune of Rs.1,12,894/- was worked out, towards the clearances of final products made during October, 2015 to June, 2017.

3. A Show Cause Notice No.V.39/03-12/D/2018-19 dated 19.2.2020 was, therefore, issued proposing demand of Central Excise duty of Rs.1,12,894/-u/s 11A (4) along with interest and proposing penalty u/s 11AC. The said notice was adjudicated vide the impugned order, confirming the demand along with interest and imposing penalty of Rs.1,12,894/-.

4. Aggrieved by the impugned order, the appellant preferred appeal, on the grounds that the entire demand has been worked out merely on the basis of the two invoices. They claim there is no short payment of duty as they had paid duty under Rule 9 by adding 13% to 14% to the value and paid duty on the 114% of the actual value of goods. Thus, the duty paid by the buyers of M/s. Sabar Enterprises was on the value in which the average gross profit of 13.85% was added to the basic value of goods cleared by M/s. Sabar Pipes & Fittings. Such excess payment of duty was not considered by the adjudicating authority as no finding was given in the impugned order. They placed reliance on the decisions of Hon'ble Tribunal passed in the case of Goetze India Ltd. [2008 (089) RLT 0464] and Vinir Engi Pvt. Ltd [2004 (168) ELT 34] to contend that any excess payment made should be adjusted against the short payment. After adjustment there is no duty liability, hence demand cannot be raised and no penalty can be imposed. They also contended that the demand is time barred, as SCN issued on 19.02.2020, was for the period involving 2016-17 to June 2017, hence extended period cannot be invoked.



5. Personal hearing in the matter was held on 26.10.2021, through virtual mode. Shri Naimesh K. Oza, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. The appellant subsequently filed additional written submission on 28.10.2021, wherein copies of random invoices were submitted along with the calculation sheet showing excess and short payment of duty paid during the disputed period.

6. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as in the written submissions made at the time of personal hearing and evidences available on records. The issues to be decided under the present appeal is, whether there is any short payment of duty on the goods cleared by the appellant under Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, during the period Oct, 2015 to June, 2017.

7. From the facts of the case and the available records, it is observed that the appellant has cleared goods to their related person M/s. Sabar Enterprises, by paying duty on 113% of the actual value. These goods in turn were cleared by M/s. Sabar Enterprises to unrelated buyer, at further higher price. The adjudicating authority in the impugned order has held that in terms of Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the assessable value will be the normal transaction value at which these goods were sold by the related person to unrelated buyer. He, therefore, held that there is no scope for exclusion of duty element from the assessable value or gross sales price of related person. The appellant on the other hand are contesting that there is no short payment of duty as they have paid duty on 114% of the actual value (by including gross profit of 13.85% in the basic price) while clearing goods to related person, therefore, such excess payment of duty made should be adjusted against the short payment of duty, if any, noticed in the clearances made by related person to unrelated person.

7.1 In order to examine the matter in correct perspective, Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is reproduced below;

RULE 9.*[Where whole or part of the excisable goods are sold by the assessee to or through a person who is related in the manner specified in any of the sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of such goods shall be the normal transaction value] at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail :*

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.

The term normal transaction value in the said rules has been defined as transaction value, at which, the greatest aggregate quantity of goods are sold. As the clearances made by appellant are to related party, therefore, provisions of Rule 9 of



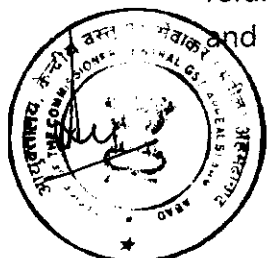
Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, shall be applicable which stipulates that if the goods are sold through related person, then the value of the goods shall be the normal transaction value at which these goods are sold to unrelated buyer.

7.2 I have perused the random invoices submitted by the appellant before me. On examining of sample EX-Invoice No. 110/17-18 dated 26.05.2017, I find that the appellant had shown actual value of goods as Rs.1002/-per piece but they paid Central Excise duty @12.5% by considering value as Rs.1141/- per piece while clearing goods to the related person. The related person in turn sold the same goods to un-related buyer at the price Rs.1328/- per piece i.e. at a higher price, which is inclusive of the Central Excise duty. However, the contention of the department is that the appellant was required to discharge duty on the price sold by the related person to the unrelated person. I find that department while arriving at the assessable value of the goods sold by related person to the unrelated buyer, has not considered the fact that this value is inclusive of the Central Excise duty element as the same is not shown separately in their invoice, unlike the VAT amount. Therefore, while arriving at the difference in the assessable value, the sale price should be treated as cum-duty price. Consequently, the difference in the assessable value arrived by the department for demanding the short payment of duty, shall reduce to that extent.

7.3 I also do not find merit in the appellant's contention that they have paid excess duty as the duty was paid on the enhanced value (i.e. 113% of actual value). The difference in the assessable value was arrived by the department by considering this enhanced value, shown in the invoices, and not on the actual value of goods. Further, I find that the appellant to arrive at the actual assessable value of M/s. Sabar Enterprises have deducted the freight amount & VAT from the net amount of invoice raised to the unrelated buyer, to claim that the duty paid by them was excess as the assessable value of M/s. Sabar Enterprises was less than that of the invoice value of goods sold by the appellants. Such argument is not tenable because I find that deduction of freight from the assessable value is not admissible in terms Rule 9 of the said rules, as the value of goods shall be the normal transaction value at which these goods are sold by a related person at the time of removal to the unrelated buyer. Since the price of goods was inclusive of freight charges, the same would have to be added as a component of excise duty.

7.4 Further, the appellants have submitted a list of invoices issued from April-2017 to March,2017, showing comparison between the invoices issued by the appellants with that of the invoices raised by related person to independent buyers, claiming that in some cases they have made excess duty payment. Since this aspect was not placed before the adjudicating authority, I, therefore, find that the same needs to be examined to decide the quantum of short payment of duty hence the matter needs to be remanded to the adjudicating authority.

7.5 Further, I find that the decisions relied by the appellant, are distinguishable on facts. As in the case of Goetze India Ltd. [2008 (089) RLT 0464], they appropriated the refund towards the demand which was pending before the Commissioner (Appeals) and in the case of Vinir Engineering Pvt. Ltd [2004 (168) ELT 34], adjustment of excess



payment of duty made on one clearance, with short payment of duty made on another clearance was allowed. Where as in the case on hand, there is no excess payment of duty as the calculation arrived by the appellant is not proper, so matter of adjustment does not arise.

7.6 On the issue of time bar, I find that the demand was raised based on detection noticed during scrutiny of documents by audit. In the era of self assessment the assessment will be made on the basis of information furnished in the return and no invoices or bills were required to be submitted along with return and the verification of invoices or bills if any was to be done by the audit only as has also been done by audit in the present case. Therefore, I find that the demand is not time barred, and the extended period has been rightly invoked, as the entire data was sought from the appellants to arrive at such short payment.

8. In view of the above discussion and findings, I therefore, order re-determination of value in terms of Rule 9 of the Central Excise Valuation (Determination of the Price of Excisable Goods) Rules, 2000 i.e. on the basis of sale price of the M/s. Sabar Enterprises to independent buyer, by treating the sale price as cum-duty price. The matter is, therefore, remanded to the adjudicating authority, for re-determination of the assessable value after allowing the benefit of cum-duty price on the sale.

9. In view of the above discussions and findings, the impugned O-I-O is set-aside and the appeal filed by the appellant is allowed by way of remand, as discussed above.

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

Akhil
(अखिलेश कुमार) 15 January, 2022
आयुक्त(अपील्स)

Date: 1.2022

Attested

Rekha A. Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Sabar Pipes & Fitting LLP (now IMF Polymers),
Village: Nani Devti, Sanand Bavla Road,
Sanand, Ahmedabad



Appellant

The Deputy Commissioner
CGST, Division-IV
Ahmedabad North
Ahmedabad

— Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.
5. P.A. File

