



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



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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DIN-20220864SW000000C814

**स्पीड पोस्ट**

2977 - 2981

- क फाइल संख्या : File No : GAPPL/COM/CEXP/629/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-21/2022-23**  
दिनांक Date : **11.08.2022** जारी करने की तारीख Date of Issue : **12.08.2022**
- आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original Nos. **07/AC/Dem/2021-22/NBS** dated **07.07.2021**, passed by the Assistant Commissioner, Central GST & Central Excise, Div-V, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** M/s. Yazaki India Pvt. Ltd., Block-A (97 & 98), Shree Rajlakshmi Logistics Park, NH-8A, Villagar- Bhayla, Taluka-Bavla, Ahmedabad-382220.

**Respondent-** The Assistant Commissioner, Central GST & Central Excise, Div-V, Ahmedabad-Norh.

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, 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 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 मामलों 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 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 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 .

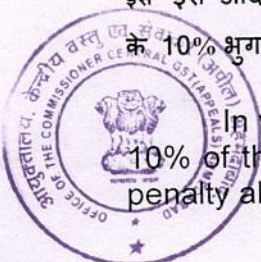
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

1. This order arises out of an appeal filed by M/s. Yazaki India Pvt. Ltd., Block-A (97 & 98), Shree Rajlakshmi Logistic Park, NH-8A, Village-Bhayla, Taluka-Bavla, Ahmedabad-382220 (hereinafter referred to as 'appellant') against Order in Original No. 07/AC/Dem/2021-22/NBS dated 07.07.2021 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division-V, CGST & Central Excise, Commissionerate:Ahmedabad-North (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant are engaged in the manufacture of Wiring Harness falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No. AACT5570FEM012 for the same.

2.1 During the course of scrutiny of the ER-1 return for the month of December, 2015, it was observed that the appellant had reflected a payment of duty to the tune of Rs. 35,34,728/- under the head of 'Other Payments'. On inquiry it was noticed that the said payment was made against the supplementary invoices raised due to price difference of the excisable goods already cleared by them. Accordingly, a Show Cause Notice bearing F.No. V/15-03/Yazaki-India/2017-18 dated 21.12.2017 was issued by the jurisdictional Assistant Commissioner demanding interest of Rs. 1,15,380/- in respect of the delayed payment of Central Excise duty to the tune of Rs. 35,34,728/-.

2.2 Since the appellant appeared to have continued with the practice of clearing excisable goods under regular central excise invoices and the additional consideration was received subsequently by way of issuing supplementary invoices, information was obtained about the supplementary invoices issued for the price difference for the excisable goods and duty paid thereof for further period upto June 2017. On the basis of the details obtained from the appellant, interest was worked out to Rs. 10,37,089/- in respect of the delayed payment of Central Excise duty to the tune of Rs. 16,27,84,468/-. **Accordingly, a Show Cause Notice was issued to the appellant vide F.No. V/15-23/Yazaki/2019-20 dated 16.01.2020 demanding Interest amounting to Rs. 10,37,089/- from the appellant under the provisions of Section 11AA of the Central Excise**



**Act, 1944 read with Rule 8 of the Central Excise Rules, 2002, in respect of the delayed payment of Central Excise duty to the tune of Rs. 16,27,84,468/- made by them. Penalty was also proposed against the appellant under Rule 25 of the Central Excise Rules, 2002.**

3. The show cause notice issued to the appellant, as mentioned in Para-2.2 above, has been adjudicated by the adjudicating authority vide the impugned order wherein he had ordered to recover the interest amounting to Rs. 10,37,089/- under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Rules, 2002 as proposed in the SCN. He also imposed penalty of Rs. 10,000/- under Rule 25 of the Central Excise Rules, 2002.

4. Being aggrieved with the impugned order, the appellant has preferred this appeal on the grounds which are detailed in following paragraphs.

4.1 The impugned order has been passed without granting an opportunity to the appellant to be heard in person in gross violation of natural justice.

4.2 The demand is time-barred in terms of Section 11A of the Central Excise Act, 1944:-

- The issuance of supplementary invoice was properly disclosed in monthly ER-1 return and accordingly, the assessing officer was well aware of the relevant facts. From this, it is clear that there is no 'suppression of facts' and it was obligatory on the part of department to issue SCN within limitation period from the relevant date i.e. filing of ER-1 return. Hence, the extended period of limitation cannot be invoked in this case and accordingly, SCN issued in the year 2020 for the period from January, 2016 to June, 2017 is time barred.
- In Show Cause Notice, there is no allegation on any kind of suppression by the appellant placed by the department.
- On the same issue, SCN dated 21.12.2017 was issued. Accordingly, the department was well aware of the facts and department should have issue the SCN for subsequent period under Section 11(7A) by issuing statement of demand, but however department has failed to issue such statement within period of limitation (two years). Hence, the shelter of Section 11(7A) taken by the adjudicating authority in Para-15 of the impugned order is incorrect.



- Hon'ble Apex Court in the case of Nizam Sugar Factory Vs. Collector. [2006 (197) ELT 465 (SC)] held that "all relevant facts in the knowledge of the department when the first show cause notice was issued. While issuing similar subsequent show cause notice same/similar facts could not be taken as suppression of facts on the part of the assessee as the facts were already in the knowledge of the authorities". They also relied upon similar judgment of Hon'ble Supreme Court in case of Hyderabad Polymers (P) Ltd. Versus Commissioner of C. Ex., Hyderabad [2004 (166) ELT 151 (SC)].
- Reliance is also placed on the Hon'ble Apex Court judgment in the case of Dye Chemical Vs. CCE [75 ELT 177 (SC)] wherein it was held that "a statement will not be misstatement only because full facts were not disclosed. "Willful" means with intent to evade duty". In the instant case, the appellant had been discharged Central Excise duty on issuance of supplementary invoices and reported transaction in monthly ER-1 return of the respective months. Hence, there is no reason or question of evasion of duty on their part.
- The appellant also relied upon the Circular No. 1053/02/2017-CX issued by CBIC, New Delhi clarifying about certain ingredients required for invocation of extended period of limitation. Accordingly, the SCN issued in the present case is time barred by virtue of limitation in terms of Section 11A of the Central Excise Act, 1944.

4.3 Penalty under Rule 25 of the Central Excise Rules, 2002 is not imposable:-

- There is no evidence to show the existence of willful misstatement/suppression of facts or contravention of any provision of the Act or Rules with the intent to evade payment of duty.
- From the plain reading of the Rule 25 of Central Excise Rules, 2002, it is evident that for the purpose of penalty not only the default as mentioned in Rule 25 of Central Excise Rules, 2002, but also the elements of willful fraud, suppression of facts, misrepresentation etc. as mentioned in Section 11AC of the Central Excise Act, 1944, must be present so as to attract penalty under this rule.
- In the present case, there has been no contravention whatsoever in the removal of any excisable goods since the goods were removed on payment of appropriate duty. Consequently, the question of imposition of penalty under Rule 25(1)(a) of the rules does not arise.



- Further, there is no allegation in the SCN regarding non-accounting of excisable goods. Therefore, Rule 25(1)(b) the rules is not applicable.
- Clause (c) of Rule 25 is not invocable in the present case since the same is applicable only to a manufacturer conducting any activity without having any registration.
- Clause (d) of Rule 25 deals with contravention of any of the provisions of these rules with an intent to evade payment of duty. In the present case, there has been no contravention whatsoever of any provisions or rules with an intent to evade payment of duty. Therefore, clause (d) of Rule 25 is also not applicable.

5. The appellant was granted opportunity for personal hearing on 25.07.2022 through video conferencing. Shri Yogesh Jadeja, Manager-Finance, and Shri Aniruddh Bhanang, Authorised Signatory, appeared for personal hearing on behalf of the appellant. They re-iterated the submissions made in Appeal Memorandum.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are as under:

- (i) Whether the impugned order for recovery of interest of Rs. 10,37,089/- under Section 11AA of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Rules, 2002, is correct and legal or otherwise?
- (ii) Whether the penalty of Rs. 10,000/- imposed on the appellant under Rule 25 of the Central Excise Rules, 2002 is legally correct or otherwise?

7. As regards the contention of the appellant regarding denial of natural justice in as much as "the impugned order has been passed without granting an opportunity to them", it is observed from Para 7 of the impugned order that the appellant was granted opportunities for personal hearing on 04.03.2021, 31.03.2021 and 16.06.2021, which the appellant did not avail. The appellant has contended that the letters of personal hearing were received by them on 06.03.2021, 01.04.2021 and 21.06.2021 respectively. It is apparent from the case records that the impugned order has been passed ex-parte. Further, the adjudicating authority in Para 7 of the



impugned order has recorded that the appellant has vide reply dated. 29.06.2021 submitted that the demand is barred by limitation as the show cause notice was issued after a period of 2 years. No findings have been recorded by the adjudicating authority in the impugned order regarding said submission of the appellant. Hence, I am in agreement with the contention of the appellant that the impugned order has been passed in violation of principles of natural justice.

7.1 The appellant has also placed reliance upon the following judgments wherein it is held no order affecting civil or financial liability of a person can be passed without giving him an opportunity of being heard.

- (i) Indra Ramchan Bharvani Vs. U.O.I [1992 (59) ELT 201 (SC)]
- (ii) J.T. (India) Exports Vs. U.O.I [2002 (144) ELT 288 (Del-LB)]
- (iii) Bellary Steels & Alloys Ltd. Vs. CCE [2005 (180) ELT 343 (T)]
- (iv) U.O.I. Vs. Arbee & Co. [1987 (31) ELT 636 (Bom)]
- (v) Bharuka Ind. Ltd. Vs. CCE [1990 (45) ELT 460 (T-LB)]

7.2 I find that in terms of Section 33A of the Central Excise Act, 1944, an adjudicating authority has to grant maximum three adjournments (i.e. four dates of personal hearing). Relevant text of Section 33A of the Act is reproduced below:

**"Section 33A. Adjudication procedure. -**

*(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.*

*(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing :*

**Provided** that no such adjournment shall be granted more than three times to a party during the proceeding."

7.3 Considering the facts of the case, the adjudicating authority has granted three opportunities to the appellant before passing the impugned order. However, considering the pandemic situation, he should have been more accommodative especially when the appellant had submitted a reply dated 29.06.2021, which, though taken cognizance of, but was not examined on merits. As the case of the appellant was not considered on merits by the adjudicating authority, I find it proper to remand the case back to the adjudicating authority for fresh consideration, who shall afford an opportunity of personal hearing to the appellant, considering their submissions, and pass fresh orders on merits and in accordance with law.



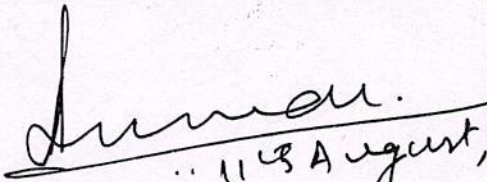


The appellant is also directed to raise their contentions before the adjudicating authority alongwith supporting evidences.

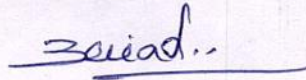
8. In view of the above discussion, without expressing any opinion on the merits of the case, keeping all the issues open, I remand the matter back to the adjudicating authority to reconsider the issue afresh and pass a speaking order after following the principles of natural justice.

9. In view of the above, I set aside the impugned order and remand back to the adjudicating authority to decide it afresh, following the principles of natural justice and appeal is allowed to that extent.

10. The appeal filed by the appellant stands disposed off in above terms.

  
11 August, 2022..  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Date: 11/AUG/2022

Attested

  
(M.P.Sisodiya)

Superintendent (Appeals)  
Central Excise, Ahmedabad



By Regd. Post A. D

To,  
M/s. Yazaki India Pvt. Ltd.,  
Block-A (97 & 98),  
Shree Rajlakshmi Logistic Park,  
NH-8A, Village-Bhayla,  
Taluka-Bavla, Ahmedabad-382220

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, Central GST and Central Excise, Commissionerate:Ahmedabad-North.
3. The Assistant Commissioner, Division-V, Central GST & C. Excise, Commissionerate:Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate:Ahmedabad-North.
5. Guard file
6. PA File