



• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क \*  
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटैकनिक के पास, आमबाबाडि,  
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/47/Ahd-I/2015-16  
Stay Appl.No. NAV/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP,008,2016-17  
दिनांक Date : 27/05/2016 जारी करने की तारीख Date of Issue 02/06/16

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग DEPUTY Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
06/Deputy Commissioner/2015-Ref दिनांक: 16.06.2015, से सृजित

Arising out of Order-in-Original No. 06/Deputy Commissioner/2015-Ref दिनांक: 16.06.2015  
issued by DEPUTY Commissioner, Central Excise, Div-IV, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s Dhariyal Chemicals.  
Ahmedabad

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।

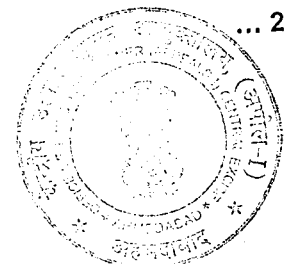
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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 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.

(b) 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.

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



... 2 ...

(ख) 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।

(b) 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.

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

(c) 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।

(d) 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.

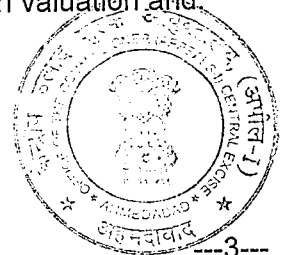
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and



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।

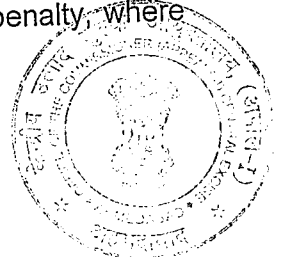
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

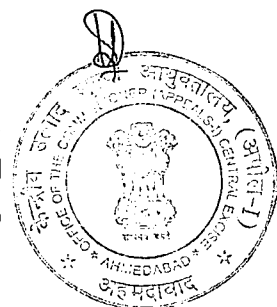
M/s. Dhariyal Chemicals, 4, Prabhudas Estate, Near Sabar Tiles, Danilimda, Ahmedabad - 382 028 (hereinafter referred to as the appellant) has filed refund claim amounting ₹4,07,880/- before the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-I (hereinafter referred to as the adjudicating authority) being the duty paid on goods cleared to OIL INDIA Ltd under International Competitive Bidding for which Central Excise Duty is exempted vide Notification No. 12/2012-CE( Sr. No. 336). The appellant was clearing the goods on payment of duty and getting the refund of Terminal Excise Duty from DGFT. The appellant has supplied their final products to Oil India Ltd; under International Competitive bidding and paid the duty amounting to ₹4,07,880/-.

2. The adjudicating authority vides OIO No.06 /Deputy Commissioner/2015. Ref. dated 06.06.2015 has rejected the refund claim for ₹4,07,880/- being the duty paid on goods cleared to OIL INDIA LTD, against the Project Authority Certificate issued under Notification No. 12/2012-Central Excise (Sr. No.336) dated 17/03/2012 filed beyond one year from the relevant date as time barred under section 11B of the Central Excise Act, 1944.

3. The present appeal has been filed on 13.08.2015 on the following grounds.

- The impugned order is grossly erroneous, inasmuch as the same does not take into consideration the settled law on issue.
- The fact that the supplies made by the appellant to Oil are "Deemed Exports" and thereby eligible for the benefits under the FTP, including an exemption from TED. The only reason for rejection of the refund claim of the appellant is the alleged period stipulated under Section 11B of the Act.
- The appellant vehemently that the time limit prescribed under Section 11B of the Act, which is sought to be relied upon in the impugned order, for rejecting the claim of the appellant is not applicable to the present set of facts.
- The requirement of claiming the TED refund has arisen only pursuant to the policy Circular No. 16 issued by the DGFT on 15-03-2013 and not otherwise. Therefore, assuming that the any limitation ought to apply to the present set of facts, it should be as per the provisions of FTP and under no circumstances can the provisions of explanation B of Section 11B of the Act be made applicable to the Appellant. The impugned order inasmuch as it solely relies on the said explanation B of Section 11B of the Act, is wholly erroneous and unlawful.

4. Personal hearing in the matter was held on 17.03.2016 wherein Mr. Yogesh Dhariyal, Proprietor, appeared on behalf of the appellant and reiterated the submissions made in their memorandum of appeal and also



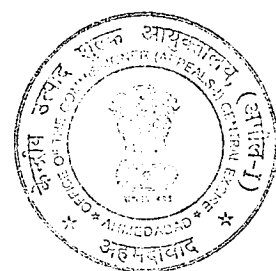
submitted additional written submission No. DC/TED-PH/2015-16/0317/01 dated 17.03.2016.

5 I have gone through all the records placed before me including the detailed submissions made by the appellants and discussions and findings put on record by the adjudicating authority in the impugned OIO. I find that as per purchase order no.7112419/DFS/L1 dated 14.06.2012, the appellant has supplied the excisable goods i.e. Carboxy Methyl Cellulose as mentioned below.

Invoice No. & Date	Quantity of goods	value	Central Excise Duty involved	Good received by Oil India Ltd,
330/14/09/2012	15,000/- kgs.	8,25,000/-	1,01,970/-	16.08.2013
334/17/09/2012	15,000/- kgs.	8,25,000/-	1,01,970/-	19.08.2013
406/31/10/2012	15,000/- kgs.	8,25,000/-	1,01,970/-	19.08.2013
460/06/12/2012	15,000/- kgs	8,25,000/-	1,01,970/-	19.08.2013
Total	60,000/- kgs	33,00,000	4,07,880/-	

The goods were required in connection with petroleum- operations undertaken under petroleum exploration licenses or mining leases under International Competitive Bidding were supplied in accordance with the provisions of paragraph 8.2(f) and 8.4.4(iii) of the Policy, 2009-14 and that the import content of the order is Nil and where it is clearly mentioned that Excise Duty : exempted under Deemed Export. However the appellant, as a matter of practice, was paying duty on exempted products and getting refund from DGFT. However, since the impugned goods had a general exemption, it is not understood, why duty was paid in 1st instance. I would also like to add that a policy Circular No. 16(RE-2012/2009-14) came to be issued by the Ministry of Commerce and Industry, Directorate General of Foreign Trade from where the appellant was claiming refund earlier, inter alia stating as follows:-

1. *It has come to the notice of this Directorate that some RAs of DGFT and the Offices of Development Commissioners of SEZ are providing refund of TED even in those cases where supplies of goods, under deemed exports, is ab-initio exempted.*
2. *There are three categories of supplies where supply of goods, under deemed exports, are ab- initio exempted from payment of excise duties. These are as follows:*
  - (i) *Supply of goods under Invalidation letter issued against Advance Authorisation [Para 8.3© of FTP];*
  - (ii) *Supply of goods under ICB [Para 8.3(c) of FTP]; and*
  - (iii) *Supply of goods to EOUs [Para 6.11(c) (ii) of FTP]*
3. *Prudent financial management and adherence to discipline of budget would be compromised if refund is provided, in cases, where exemption is mandated. In fact, in such cases the relevant taxes should not have been collected to begin with. And if, there has been an error/oversight committed, then the agency collecting the tax would refund it, rather than seeking*

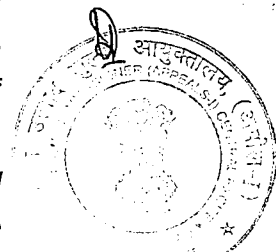


*reimbursement from another agency. Accordingly, it is clarified that in respect of supplies, as stated at Para 2 above, no refund of TED should be provided by RAs of DGFT/Office of Development Commissioners, because such supplies are ab-initio exempted from payment of excise duty.*

As noted earlier that there was a general exemption vide Notification 12/2012 supra and it was not required at all to pay Central Excise duty and the above DGFT Circular also notes that "*Prudent financial management and adherence to discipline of budget would be compromised if refund is provided, in cases, where exemption is mandated*" and I also note that the duty has been paid not as an error but deliberately to gain undue advantage of refund, which is detected by DGFT and put to an end through the above circular by the DGFT. It should also be noted that granting refund by the DGFT was not a general practice because the DGFT circular noted that "***some RAs of DGFT and the Offices of Development Commissioners of SEZ are providing refund of TED.....***" Therefore, such payments by ***some*** DGFT formations were not regular and proper. It would be travesty of law if such refund (denied by DGFT) is allowed by another govt. department. My above comment is in view of the plea taken by the appellant in his appeal memorandum.

6. The appellant has filed their refund claim with the adjudicating authority on 15.10.2014 for ₹4,07,880/-. I find that the claim of refund shall be filled by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, In the instant case, the appellant has filled the refund claim on 15.10.2014 in respect of goods supplied under International competitive Bidding for which Central Excise Duty is exempted vide Notification No. 12/2012-C.Ex.(Sr.No.336) dated 17.03.2012. I find that the claim was filed with the Central Excise Department, Division – IV is of the period September- 2012 to December-2012 while the date of submission of the claim in the Division Office is 15.10.2014. As the same is not filed within one year from the relevant date i.e. the date of payment of duty, the claim is liable for rejection. Accordingly, the same claim is hit by limitation of time bar under the provision of 11B. There are catena of judgments of Hon'ble Apex court as well as High courts in this regard. Hon'ble Apex Court in case of MILES INDIA LIMITED reported in 1996 (84) E.L.T. 401 (S.C.) has very clearly held that "*Appellate Tribunal as well as Customs Authorities bound by statutory period of limitation*". This principle has been again reiterated in case of KIRLOSKAR PNEUMATIC COMPANY reported in 1996 (84) E.L.T. 401 (S.C.)

*"High Court under writ jurisdiction cannot direct the Customs authorities to ignore the time limit prescribed under Section 27 of the Customs Act even though High Court itself may not be bound by the time limit of the said Section". This aspect has further been clarified by Hon'ble High Court of P&H in case of HINDUSTAN MACHINE TOOLS LTD reported in 2015 (328) E.L.T. 27 (P & H) Writ jurisdiction - Condonation of delay beyond the maximum period prescribed by law - High Court in exercise of its extraordinary jurisdiction, under Article*



226/227 of Constitution of India, cannot direct the authorities under the statute to ignore or act contrary to express provision of law - Equally it would also not be appropriate to exercise extraordinary jurisdiction under Article 226/227 ibid by High Court to condone the delay beyond the maximum period prescribed by law and direct the appellate authority to hear the appeal on merits." Therefore, the said claim filed by the appellant required to be rejected as time barred. Accordingly, I uphold the order passed by the adjudicating authority.

7. In view of the above, I pass the following order:

ORDER

I disposed off the appeal in above terms.

*Uma Shanker*

(UMA SHANKER)  
COMMISSIONER (APPEAL-I),  
CENTRAL EXCISE,  
AHMEDABAD.

Date: 27/05/2016

ATTESTED

*(N.I.SOLANKI)*  
(N.I.SOLANKI)  
Superintendent (Appeal-I)  
Central Excise, Ahmedabad

By Regd. Post A.D.

To,  
M/s. Dhariyal Chemicals,  
4, Prabhudas Estate,  
Near Sabar Tiles,  
Danilimda, Ahmedabad - 382 028

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-I,
3. The Deputy/Asstt. Commr. Of Central Excise, Div-IV, Ahmedabad-I
4. The Superintendent (System), Central Excise, H.Q., Ahmedabad-I for uploading the order on web site.
5. PA to Commissioner (Appeals-I)
6. Guard File.

