

• आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातवाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटैकनिक के पास, अम्बाबाडी,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/77/Ahd-I/2015-16 & V2(32)/78/AHD-I/2015-16
Stay Appl.No. NA/2016-17

1118 to 1122

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-014 & 015-2016-17
दिनांक Date : 29.07.2016 जारी करने की तारीख Date of Issue 31/8/2016

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Abhai Kumar Srivastav, Commissioner (Appeal-1)

ग Deputy Commissioner, केन्द्रीय उत्पाद शुल्क, A'bad-I द्वारा जारी मूल आदेश सं MP/09/DC/
2015-16 दिनांक: 21.09.2015 से सृजित

Arising out of Order-in-Original No. MP/09/DC/2015-16 Dated : 21.09.2015 issued by
Deputy Commissioner, Central Excise, Ahmedabad-I

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Bodal Chemicals Ltd. and Shri I.K.Purohit, Manager of M/s. Bodal Chemicals Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थता 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.

(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.

- (ख) 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 ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



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।

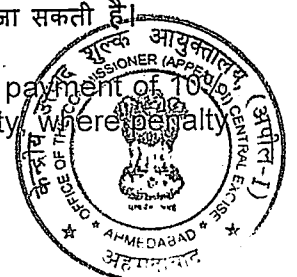
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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

Appeal has been filed by [i] M/s Bodal Chemicals Ltd., Unit-IV, 252-254, Phase-II, GIDC, Vatwa Industrial Estate, Ahmedabad and [ii] Shri Inderkishan Gopikishen Purohit, Manager (hereinafter referred to as the appellant-I and appellant-II, respectively) against the Order-in-Original No. MP/09/DC/2015-16 dated 21.9.2015. As the issue involved in both these appeals are similar, they are taken up together.

2. The facts of the case, in brief, is that during the course of search conducted at the premises of the appellant-I on 3.6.2014, certain raw materials and unpacked SO Dyes & finished goods were found in excess while in respect of certain raw materials and packing materials, shortages were noticed when the physical stock was compared to the stock register. The goods found in excess was seized. Alleging, that the appellant had contravened various provisions of the Central Excise Act and rules made there-under, a notice dated 1.12.2014, was issued proposing, inter-alia, confiscation of the goods found in excess and demanding duty along with interest in respect of goods found short. The notice also proposed penalty under rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, '44 on appellant-I and under rule 26 of the Central Excise Rules, 2002, on appellant-II.

3. The aforementioned notice was adjudicated vide OIO dated 21.9.2015, wherein the adjudicating authority ordered confiscation of the goods, allowed redemption on payment of fine, confirmed the duty demand along with interest & imposed penalties on appellants-I and II.

4. Aggrieved, both the appellants have filed the present appeal on the grounds that:

- the appellant-I, not being a manufacturer of the raw materials alleged to be short, the demand of duty on the raw materials is, without authority of law;
- the onus was on the department to put on record that the alleged shortages were due to removal of the raw materials;
- they wish to rely on the case law of RA Casting P Ltd [2015 9318) ELT 433] wherein it has been held that penalty is not imposable merely because of shortage of finished goods and raw materials without any tangible evidence of clandestine removal;
- there is no justification for imposing such a huge redemption fine;
- in respect of penalty on appellant -II, it was argued that no evidence direct or even indirect has been adduced to show that the appellant had some knowledge of contravention of law; that the impugned order does not disclose as to what active role was played by the appellant-II in the alleged offence.

5. Personal hearing was held on 13.7.2016 and Shri N.K.Tiwari, Consultant, appeared on behalf of both the appellants. He reiterated the submissions made in the appeal memorandum. He also provided copies of orders passed by the Hon'ble Tribunal in the case of Ambica Polytubes [2013(290) ELT 317], Mahavir Polyplast (P) Ltd [2013 (287)ELT 139 (Tri-Del)], Galaxy Textiles [2011(263) ELT 604 (Tri-Abad)], Marigold Paints P Ltd [2014 (308) ELT 421 (Tri-Abad)], R.A.Casting P Ltd [2015(318) ELT 433 (Tri-Del.)] and OIA No. AHM-EXCUS-1-APP-33 and 44-2015-16 dated 26.11.2015 & 22.12.2015, in the case of the appellants themselves.

6. I have carefully gone through the facts of the case on record and the submissions made in the appeal memorandum and the oral averments made during the course of personal hearing.



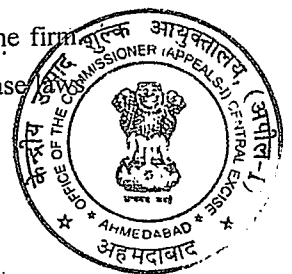
7. The facts as enumerated above is that during the course of the search conducted at the premises of the appellant, certain shortages of raw materials/finished goods and excesses in respect of raw materials and finished goods were found, leading to these proceedings. The issues to be decided are whether the confiscation of goods found in excess, demand of duty and interest on shortages and imposition of penalty on both the appellants is, correct.

8. First issue that I would like to take up is the shortages noticed for which the demand stands confirmed. It is noticed that the entire amount stands paid which has been appropriated. It is also evident in para 6 of the OIO dated 21.9.2015 that the appellant-II agreed with the shortages and that appellant-I had discharged the duty on the shortages. Further, the adjudicating authority has clearly recorded reasons for the contraventions of various provisions of the Central Excise Rules, 2002. While the appellant has raised a plea that the department has not fulfilled its onus to put on record that the alleged shortages were due to removal, it is a fact, also admitted by the appellant, that there were indeed shortages. As is recorded by the original authority, it was incumbent on the appellant to maintain proper records and to the extent there were shortages [based on the records maintained by the appellant himself], the findings that the raw materials/packing materials, found short have been removed – appears convincing. In this era of self assessment, the appellant-I, has failed to give a plausible reason to explain the shortages, evident on record.

9. The appellant's plea, however, that duty cannot be demanded on the shortage of raw materials and packing materials, more so in view of the fact that they did not have the requisite plant and machinery, to manufacture these raw materials – appears to be logical. The appellant in his submissions has stated that though these issues were raised before the original adjudicating authority, the same were not addressed. In fact, Central Excise duty can only be demanded on manufacture and it is for this very reason that sub-rule 5 of Rule 3 of the CENVAT Credit Rules, 2004, caters to removal of raw materials, wherein the person removing inputs as such is supposed to pay an amount equivalent to the credit availed in respect of such inputs. This plea of the appellant, it seems, has not been addressed by the adjudicating authority.

10. Now coming to the second issue relating to confiscation of goods found in excess, the appellant has contended that the major goods found not recorded/in excess was *Acid Black 194*, valued at Rs. 8.40 lacs, for which the explanation by appellant-II during the course of statement was that it was meant for export to Hungary; that the intimation for export had already been given; that through oversight it remained unrecorded in RG 1 register. The contentions raised by the appellant-I before the original adjudicating authority has been addressed in the original order. No new grounds are mentioned in the grounds of appeal. To now come up with an argument that the goods found in excess were intended to be exported for which an intimation was also given but was not entered into the register through oversight, can at best be termed as an afterthought. In view of the foregoing, I uphold the confiscation and the imposition of the redemption fine in respect of goods found in excess.

11. As the quantum of demand needs to be re-worked in respect of raw materials/packing materials found short and finding needs to be given the matter as mentioned in para 9 above, the case is being remanded to the original adjudicating authority, who is further directed to pass clear orders and thereafter re-determine the duty and quantum of penalty to be imposed on the firm and the manager of the firm. Further, while deciding on the penalty issue, the adjudicating authority should also consider the case



relied upon by the appellants viz RA Casting P Ltd [2015 (318) ELT 433], Ambica Polymers [2013(290) ELT 317 (Tri-Del.)].

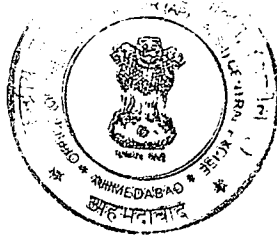
12. In view of the above findings, I partly set aside the impugned original order dated 21.09.2015 and remand the case to the original adjudicating authority in the light of para 11 above. Both the appeals stand disposed of accordingly.

Date: 29.07.2016

Abhai 29.07.16
(Abhai Kumar Srivastav)
Commissioner (Appeal-I)
Central Excise
Ahmedabad

Attested

Vinod
(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise,
Ahmedabad.



BY R.P.A.D.

M/s Bodal Chemicals Ltd.,
Unit-IV, 252-254, Phase-II,
GIEC, Vatwa Industrial Estate,
Ahmedabad

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I
3. The Additional Commissioner(Systems), Central Excise, Ahmedabad-I.
4. The Dy. Commissioner, Central Excise, Division-III, Ahmedabad-I.
5. Guard file.
6. P.A. file