



• 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(84)/116/Ahd-I/2015-16
Stay Appl.No. NA/2015-16

3612/3616

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-036-2016-17
दिनांक Date : 25.11.2016 जारी करने की तारीख Date of Issue 9/12/16

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Addl. COMMR., Div-IV, केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 05/Cx-I
Ahmd/ADC/PMR/2016
दिनांक: 18-02-2016, से सृजित

Arising out of Order-in-Original No. 05/Cx-I Ahmd/ADC/PMR/2016 दिनांक 18-02-2016 issued by
Addl. COMMR., Div-IV, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Leitsung Industries Pvt. Ltd.,

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.

(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।



(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.

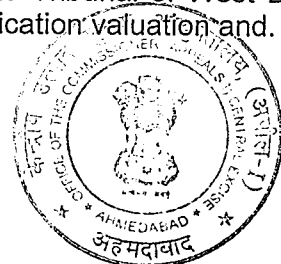
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 .

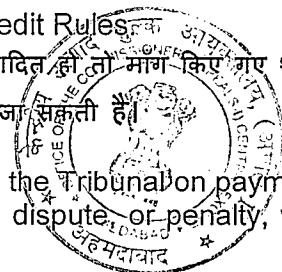
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Leistung Engineering Private Limited, 3/103, NIDC, Near Bhammariya Kuva, Lambha, Ahmedabad (for short - "*appellant*") has filed this appeal against OIO No. 05/CX-I/Ahmd/ADC/PMR/2016 dated 18.2.2016, passed by the Additional Commissioner, Central Excise, Ahmedabad-I Commissionerate (for short - "*adjudicating authority*").

2. Briefly stated, the facts are that a case was booked by Central Excise Preventive, Ahmedabad-I, against the appellant alleging that they were manufacturing parts of water filtration machinery and clearing the same in the guise of water filtration or purification equipment by classifying it under 8421.21, instead of 8421.99 and thereby wrongly availing the benefit notification No. 6/2006-CE dated 1.3.2006 as amended vide notification No. 12/2012 dated 17.3.2012. Two show cause notice dated 22.10.2013 and 4.4.2014, were issued, covering the period from April, 2010 to January 2014. These notices were adjudicated vide OIO dated 28.10.2014, wherein the Commissioner, Central Excise, Ahmedabad-I, confirmed the demand along with interest and imposed penalty on the appellant and the Director of the appellant. Subsequently, a notice dated 27.2.2015, covering the period from February 2014 to September 2014, was issued against the appellant, which was adjudicated vide OIO No. 24/CX-I/Ahmd/JC/MK/2015 dated 6.11.2015, wherein the demand was confirmed by the Joint Commissioner, Central Excise, Ahmedabad-I.

3. This appeal is however, against the impugned OIO dated 18.2.2016, covering the period from October 2014 to March 2015, wherein the adjudicating authority has confirmed the demand along with interest and imposed penalty on the appellant in respect of October 2014 and November 2014. For the remaining period from December 2014 to March-2015, since the appellant started paying duty under protest, the adjudicating authority appropriated the amount already paid and vacated the protest, lodged by the appellant.

4. Feeling aggrieved, the appellant has filed this appeal on the following grounds:

- that 'water purification system' or 'water purification plant' is different from water filtration equipment; that filter housing is water filtration equipment;
- that water filtration or purification system is different from a water filtration or purification equipment; that the exemption is for water filtration or purification equipment and not for the whole water purification system. that filter housing is an equipment and can by itself, purify water; that a water filtration or purification equipment can be used for producing a whole water purification system;
- that a water purification plant or a water purification system consists of various parts including filter housing, which even otherwise is a standalone water purification equipment; that such equipment could not have been classified as part of filtering or purifying machinery apparatus;
- that classification under heading 842121 is for machinery and apparatus for filtering or purifying water;



- that classification of filter housing as a part of water purification plant is ex-facie erroneous;
- there are no goods like whole water purification system or a complete water purification system; that heading 8421 does not refer to any whole water purification system or complete water purification system; heading 842121 is the most appropriate heading for classification of *housing* of various types manufactured by the appellant;
- ordering recovery of interest under section 11AA of the Central Excise Act, 1944, is without authority in law;
- that imposition of penalty, is wholly illegal and deserves to be set aside.

5. Personal hearing was held on 22.11.2016. Shri Amal Dave, Advocate, appeared on behalf of the appellant and reiterated the submission advanced in their grounds of appeal. He also submitted a copy of the OIO No. AHM-EXCUS-001-COM-003-14-15 dated 28.10.2014, passed by the Commissioner, Central Excise, Ahmedabad-I [referred in para 2, *supra*] and a copy of OIA No. AHM-EXCUS-001-APP-022-2016-17 dated 28.11.2016.

6. I have already decided this issue pertaining to the appellant vide OIA dated 28.10.2016, *supra*, wherein the primary issue was whether products manufactured and cleared by the appellant are water filtration or purifier equipments or whether they are only parts of the water filtration or purifier equipments.

7. The adjudicating authority in the present dispute has classified the filter housings under chapter sub heading no. 84219900 and has denied the benefit of the exemption notification, *ibid*, on the findings, that:

- the issue is already decided by the Commissioner vide his OIO dated 28.10.2014 and the Joint Commissioner, vide her OIO dated 6.11.2015 and that there is no stay against these orders;
- he concurs with the findings in the aforementioned orders passed by the Commissioner and Joint Commissioner;
- the Mumbai bench of the Hon'ble Tribunal has in a stay application filed by M/s. Pure and Cure Technology [2010(252) ELT 306] held that parts are to be classified under sub-heading 842199, which does not figure in the exemption notification;
- as per the certificate of M/s. B G Bhatt and Company, a Chartered Engineer, 'housings' are nothing but an element of sub-assembly or assembly; that they can be called components of water purification system and have a very restricted use when used as a stand-alone item or equipment;
- the very construction of tariff heading 842121, indicates that it covers apparatus/machinery for filtering or purifying water, while parts are classified under 84219900; that goods viz filter housing of various types are not water purification equipment, but parts of water purification equipment.

8. As the contention of the appellant is almost entirely the same as was pleaded before me earlier, I reproduce the relevant paragraphs of my findings, recorded in the OIA dated 28.10.2016:

"10. Equipment is not defined /discussed by the adjudicating authority. The simple definition of equipment is:



- *supplies or tools needed for a special purpose*
- *the act of equipping someone or something*

As per the Merriam Webster Dictionary, equipment means

1a : the set of articles or physical resources serving to equip a person or thing: as (1) : the implements used in an operation or activity : apparatus <sports equipment> (2) : all the fixed assets other than land and buildings of a business enterprise (3) : the rolling stock of a railway

b : a piece of such equipment

2a : the equipping of a person or thin

b : the state of being equipped

3: mental or emotional traits or resources : endowment

The functioning of filter housings, as described by the Chartered Engineer, relied upon by Revenue, does not fit into the definition of equipment as reproduced above. In-fact, it clearly fits into the definition of part, as defined in the impugned OIO.

10. The Hon'ble Tribunal in the case of M/s. Poonam Spark Private Limited [2004(164) ELT 282], while discussing a case involving the question of manufacture of a similar good dwelled upon how a water purification and filtration system comes into existence. The relevant paras are quoted below for ease of reference:

7. We have considered the submissions of both the sides. It is settled law that duty of excise is leviable on the goods manufactured. It has been held by the Constitution Bench of the Supreme Court in Union of India v. Delhi Cloth & General Mills, 1977 (1) E.L.T. (J199) (S.C.), that "Manufacture implies a change, but every change is not manufacture something more is necessary and there must be transformation; a new and different article must emerge having distinctive name, character or use." We observe from the Memorandum of Appeal that M/s. Perfect Drug Ltd. supply to the Appellants the following :

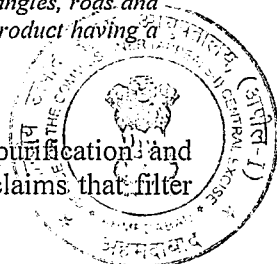
- (i) Filter Housing Cartridge*
- (ii) U.V. Units*
- (iii) Timer*
- (iv) Mounting Plate and Screws*
- (v) Tubings and Fittings*

The Appellants then make the following types of water Purification and Filtration System (WPFS) :

- (a) WPFS with Dual Cartridges,*
- (b) WPFS with Single Cartridge,*
- (c) WPFS with Single Cartridge and Electronic Control Unit*

It is also mentioned in the Memorandum of Appeal that filter housing and cartridge are imported by M/s. Perfect Drug Ltd. through M/s. Cuno Asia Pvt. Ltd., Singapore and U.V. based Filtration and Purification unit from Rathi Brothers/IWT Pooona. The choice of cartridge depends upon the basis of filtration, the operating conditions and the customer's ability to afford the particular type of cartridge, etc. The Appellants undertake the job of assembling all the items received from M/s. Perfect Drug Ltd. on a base plate and thus brings into existence a new and commercially different commodity known as Water Purification and Filtration System. Thus the activity undertaken amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act. It has been held by the Supreme Court in Empire Industries v. Union of India, 1985 (20) E.L.T. 179 (S.C.) that it is not the nature of the process or activity which determines the issue but the end result of that process or activity i.e. whether or not a new and different commercial product comes into existence thereby. The decision in the case of Rubicon Steels is not applicable as in that matter the Appellants, therein, were attaching angles, rods and locks on outer door and were not bringing into existence any new product having a new name, character or use.

The aforementioned items go into making of a water purification and filtration system. It is not understood how the appellant claims that filter



housing, by itself is water filtration or purification equipment. The claim does not appear to be correct. If the filter housing were by itself a water filtration or purification equipment, than surely the other parts as mentioned above would not be required to form a water filtration or purification system – when the end function of both the system and housing filter is supposed to be the same i.e. purification of water.

11. Filter housings are routinely imported into India. On going through Zaumba website, which provides the details of imports, it is learnt that the said goods were imported under HS code 84219900. The filter housings have in-fact been classified under this chapter sub-heading as part instead of water filtration equipment. The data in respect of recent imports is reproduced below for ease of reference.

Date	HS Code	Description	Origin Country	Port of Discharge	Unit	Quantity
24-Oct-2016	84219900	FILTER HOUSING, PART NO 6010667 (PARTS FOR PUMP) (ONLY FOR CAPTIVE USE)	China	Nhava Sheva Sea	PCS	18,963
24-Oct-2016	84219900	FILTER HOUSING, PART NO 6010667 (PARTS FOR PUMP) (ONLY FOR CAPTIVE USE)	China	Nhava Sheva Sea	PCS	5,741

[source <https://www.zauba.com/import-filter-housing-hs-code.html>]

12. In view of the foregoing, the classification of filter housing under chapter sub-heading 84219900 as part is therefore, upheld. Consequently, it goes without saying that the appellant is not eligible for the benefit of the exemption notification, supra.”

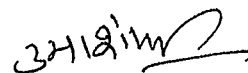
9. In view of the foregoing, the impugned order classifying the disputed goods under chapter sub-heading 84219900 as a part of water filtration equipment, along with confirmation of demand/duty, is upheld.

10. The appellant has further questioned [i] the imposition of penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC(1)(a) of the Central Excise Act, 1944; and [ii] demand of interest under section 11AA of the Central Excise Act, 1944. So far as imposition of penalty is concerned, it is clearly stated in the order that it is for the clearances in respect of the period covering October 2014 and November 2014. I agree with the imposition of penalty, since the appellant inspite of the order of Commissioner dated 28.10.2014, continued to wrongly avail the benefit of the exemption. Further, on the question of demand of interest, though not mentioned expressly, it is obviously for the period October 2014 to November 2014 when the appellant effected clearance by wrongly availing the benefit of the exemption. I do not find any infirmity with the order of payment of interest and imposition of penalty, in respect of this period.

11. In view of the foregoing, the OIO is upheld and the appeal is rejected.



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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/11/2016

Attested



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

BY RPAD.

To,

M/s. Leistung Engineering Private Limited,
3/103, NIDC,
Near Bhammariya Kuva,
Lambha, Ahmedabad

Copy to:-

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

