



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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(7)/60/Ahd-I/2016-17 / 4164-4168
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-042-2016-17
दिनांक 22.12.2016 जारी करने की तारीख Date of Issue _____

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

ग Asstt. Commissioner, Div-II केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
10/AC/Ref/2008 दिनांक: 6/6/2008, से सृजित

Arising out of Order-in-Original No. 10/AC/Ref/2008 दिनांक: 6/6/2008 issued by Asstt.
Commissioner, Div-II Central Excise, Ahmedabad-I

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

**M/s. Amba Gums and Feeds Products
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) 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 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।



(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 मामले 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.

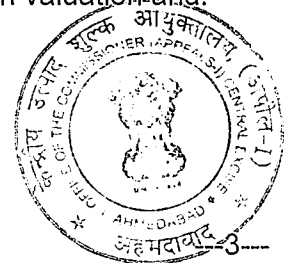
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Appellant 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

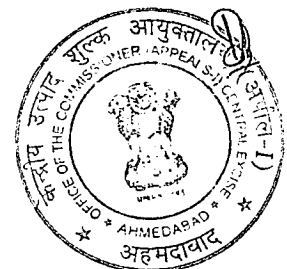
M/s. Amba Gums and Feeds Products, 88/3, GIDC Estate, Phase-I, Vatva, Ahmedabad- 382445 (hereinafter referred to as the *appellant*) had filed this appeal on 04.08.2008 against OIO No. 10/AC/REF/2008 dated 06.06.2008, passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I Commissionerate (hereinafter referred to as the *adjudicating authority*).

2. Briefly stated, the facts are that an offence case was booked against the appellant having two separate units. Investigations revealed that the appellant had mis-classified their product *Guar Gum powder* [13023230] as Guar Dal [1106] ; that they had wrongly availed the SSI benefit under Notification No. 8/2003-CE, dated 1.3.2003. The appellant, accepted and paid the duty liability of Rs.12,90,322/- vide TR 6 challan dated 30.3.2006. After completion of investigations a show cause notice dated 13.2.2007 was issued demanding duty of Rs. 12,90,322/- along with interest and further proposing penalty under section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. Personal penalty was also proposed on the partner of the appellant under Rule 26, *ibid*.

3. The appellant, thereafter, filed a refund claim for Rs. 12,90,322 on 14.3.2007 relying on the decision of CESTAT, WZB, Mumbai, in the case of Kolety Gum Industries [2005(183)ELT 400] and Kraps Chem Private Ltd. [2005(179)ELT 589], wherein it was held that Guar Dal Powder/ Flour is classified under Chapter Heading 1101 of Central Excise Tariff Act, 1985. A show cause notice dated 12.4.2007 was issued to the appellant proposing rejection of refund. Thereafter, the adjudicating authority vide the impugned OIO No. 10/AC/REF/2008 dated 06.06.2008, held that since the matter relating to dutiability of the product/ levy of duty was pending adjudication before a higher quasi-judicial, he rejected the refund of Rs. 12,90,322/- holding it to be pre-mature.

4. Aggrieved, the appellant has filed this appeal, mainly on the following grounds:

- dutiability of the product guar gum powder has already been decided by the Tribunal in the case of Kolety Gum Industries and Kraps Chem Private Ltd, *supra*;
- the notice issued by the Joint Commissioner dated 13.2.2007, pertains to imposition of penalty and interest and has nothing to do with dutiability of the product;
- that mere issuance of show cause notice dated 13.2.2007, does not overrule the decision of the Hon'ble Tribunal;
- payment of duty without protest does not come in the way of filing the refund claim if the amount is paid on account of inadvertence;
- that they would like to rely on the case of Kamlakshi Finance Corporation Limited [1991(55) ELT 433], Advance Lamp Components [2001(129) ELT 78], Samtel India Ltd [2002(146) ELT 631], Shree Precoated Steel [2006(203) ELT 506] and Topland Engines Private Limited [2006(199) ELT 209].



5. This appeal was kept in call book since the department had filed an appeal before the Hon'ble Supreme Court in CA No. 1194-1195/2005, against the order of CESTAT in the case of M/s. Kraps Chem Private Ltd.. The Hon'ble Supreme Court vide its order dated 1.5.2015 in the said Civil Appeal, remanded the matter to the Tribunal with the direction that the issue be decided by a Larger Bench. The Larger Bench of Tribunal, decided the issue vide Order No. A/11271-11276/2015-WZB/AHD dated 28.8.2015 [2015(325)ELT339(Tri.LB)] in the case of M/s. Krap Chem Pvt.Ltd. and M/s. Ravi Gum Industries, Rajkot, wherein it held that the process undertaken by the assessee in the said case would amount to manufacture and therefore, would be classifiable under heading No. 1301 of the First Schedule to the Central Excise Tariff Act, 1985. As the issue was finally decided by the Larger Bench of the Tribunal, the appeal filed by the appellant was retrieved from the call book.

6. Personal hearing in the matter was held on 20.12.2016. Shri P.G.Mehta, Advocate, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. Shri G.C.Prajapati, Superintendent, Division-II, Central Excise, Ahmedabad-I Commissionerate, appeared on behalf of the department and explained the case.

7. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. I find that primary issue to be decided is *whether the appellant is eligible for refund of Rs. 12,90,322/-*.

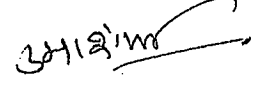
8. Whether the appellant is eligible for refund or otherwise, hinges primarily on the decision in the offence case, for which a notice dated 13.2.2007 has already been issued [as is mentioned in para 2 *supra*]. It is learnt from the O&A Section of Ahmedabad-I Commissionerate that the said show cause notice which was transferred to call book has now been retrieved and is in final stage of decision. It would therefore, be prudent to remand the matter back to the original adjudicating authority to decide the refund consequent to the decision taken in respect of the show cause notice dated 13.2.2007, since pendency of decision in respect of the notice dated 13.2.2007, was the primary ground taken in the impugned OIO for rejection of refund.

9. In view of the foregoing, the appeal is allowed by way of remand with a direction that the adjudicating authority will decide the refund claim consequent to the decision taken in respect of the show cause notice dated 13.2.2007. While remanding the matter, I rely on the case of M/s. Honda Seil Power Products Ltd [2013(287) ELT 353]. It is also made clear that I have not expressed any opinion on the merits of the refund claim.



14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स - I)

Attested



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

BY R.P.A.D.

To,

M/s. Amba Gums and Feeds Products,
88/3, GIDC Estate, Phase-I, Vatva,
Ahmedabad-382 445

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad-I.
3. The Deputy/Assistant Commissioner, Central Excise, Division-II, Ahmedabad--I.
4. The Assistant Commissioner, System-Ahmedabad
- ~~5. Guard File.~~
6. P.A..

