

- 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(32)/30/Ahd-I/2016-17 / 4214-4218  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-043-2016-17  
दिनांक 22.12.2016 जारी करने की तारीख Date of Issue 04/01/2017

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित

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

ग Deputy Commissioner, Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
MP/43/DC/2015-16 दिनांक: 30-03-2015, से सृजित

Arising out of Order-in-Original No. MP/43/DC/2015-16 दिनांक: 30-03-2015 issued by Deputy  
Commissioner, Div-III Central Excise, Ahmedabad-I

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

M/s. Chokshi Organics Pvt Ltd.,  
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, 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.

(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 दिनोंक 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.

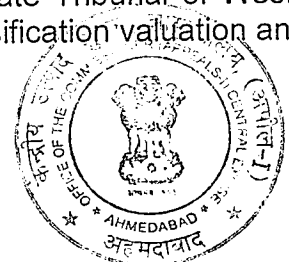
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.

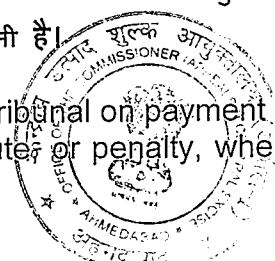
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Choksi Organics Private Limited [a 100% EOU], 320/1, Phase-II, GIDC, Vatwa, Ahmedabad 382 445 (for short – 'appellant') has filed this appeal against OIO No. MP/43/DC/2015-16 dated 30.03.2016, passed by the Deputy Commissioner, Central Excise, Division, III, Ahmedabad-I Commissionerate.

2. Briefly stated, the facts are that based on a CERA objection, a show cause notice dated 14.08.2015, was issued to the appellant, alleging that they had cleared waste/scrap in DTA and discharged duty in terms of Sr. No. 3 of notification No. 23/2003-CE dated 31.3.2003, despite procuring inputs from DTA against advance license. The notice therefore, demanded differential duty in terms of Sr. No. 2 of the notification, *ibid*, along with interest and further proposed penalty, on the appellant. The notice also proposed confiscation of the disputed goods. The adjudicating authority vide his impugned OIO dated 30.3.2016, confirmed the demand along with interest and also imposed penalty on the appellant. Since the goods were not available, no redemption fine was imposed.

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

- the adjudicating authority has erred in holding that goods procured under advance authorization is to be treated at par with import in terms of para 8.3 of FTP – because the said para only deals with benefits for deemed exports;
- there is no suppression of any fact with an intent to evade payment of duty;
- that notification No. 23/2003 is applicable to goods which are produced or manufactured by 100% EOU; that in the present case the scrap was of PP jumbo bags which were cleared on payment of duty as waste and scrap;
- as per para 4(c) of notification No. 52/2003, clearance of used packing materials unsuitable for repeated use shall be without payment of duty; appellants are not required to pay any duty as it is not the case of the department that the said bags were capable of reuse;
- that even if customs duty is payable by the appellants, only 50% of BCD was payable while computing the differential duty; that the entire amount of BCD has been considered/demanded;
- Circular no. 721 dated 6.6.2003, no-where stipulates that the circular is applicable for DTA unit only and therefore the findings of the adjudicating authority in this regard are without any basis;
- the issue being of interpretation of admissibility of CENVAT credit, no penalty is imposable.

4. Personal hearing was granted on 20.12.2016. Shri N.K.Tiwari, Consultant, appeared on behalf of the appellant and reiterated the grounds of appeal.

5. I have gone through the facts of the case, the appellant's grounds of appeal and submissions made during the course of personal hearing. The primary issue to be decided in this appeal is whether the appellant is liable to pay differential duty in respect of clearance of waste and scrap generated on the goods procured from DTA under advance authorization. The differential duty is on account of the fact that the appellant discharged duty under Sr. No. 3 of notification No. 23/2003-CE dated 31.3.2003, instead of Sr. No. 2 of the said notification.

6. The findings of the adjudicating authority in his impugned OIO where differential duty stands confirmed, is as under:

- the good procured under advance authorization from DTA by an 100% EOU is to be treated at par with import, in terms of para 8.3 of FTP; that payment of duty on clearance of waste and scrap should have been as if the goods are imported;
- the notice has rightly invoked the extended period; that though the appellant mentioned the clearance of waste and scrap in the returns, it was never informed that the raw materials in respect of this scrap was generated out of supplies received against advance license
- that Board's circular no. 721/37/2003-Cx dated 6.6.2003 is applicable on in case of DTA units;
- that the appellant short paid the duty of Rs. 32,814/- for the period from August 2010 to April 2015, which is to be recovered invoking the extended period.

7. Before dwelling on to the issue, I would like to reproduce relevant extracts of two notifications:

**notification No. 22/2003-Central Excise dated 31.3.2003:**

8. Without prejudice to any other provision contained in this notification, the said officer may, subject to such conditions and limitation as he may deem fit to impose under the circumstances of the case for the proper safeguard of the revenue interest and also subject to such permission of the Development Commissioner or the Board of Approval or the Inter Ministerial Standing Committee as the case may be, where it is exclusively required under Export and Import Policy, allow the user industry to clear any of goods for being taken outside the premises of such user industry to any other place in India, as the case may be, in accordance with the Export and Import Policy -

- (i) such clearance of capital goods .....
- (ii) such clearance of used packing material such as cardboard boxes, polyethylene bags of a kind unsuitable for repeated use maybe allowed without payment of any excise duty;

This notification grants exemption from duties of excise in respect of goods brought into an EOU for manufacturing/production, etc..

**notification No. 52/2003-Customs dated 31.3.2003**

4. Without prejudice to any other provision contained in this notification, the said officer may, subject to such conditions and limitations as he may deem fit to impose under the circumstances of the case for the proper safeguard of revenue interest and also subject to such permission of the Development Commissioner, wherever it is specially required under the Export and Import Policy, allow the unit to clear any of the said goods for being taken outside the unit, to any other place in India in accordance with the Export and Import Policy:

Provided that -

- (a) such clearance of capital goods,.....

*Explanation.* - .....

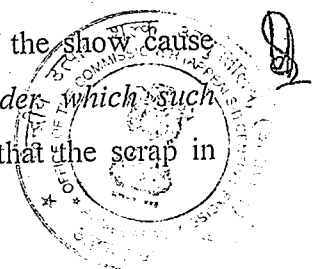
- (b) such clearance of goods (including empty cones, bobbins, containers, suitable for repeated use) other than those specified in clause (a) may be allowed on payment of duty on the value at the time of import and at rates in force on the date of payment of such duty;

This notification grants exemption from duties of customs when imported into India fby an EOU for manufacture of articles for export.

8. The relevant extracts of Board's circular no. 721/37/2003-Cx dated 6.6.2003, is reproduced below, for ease of reference:

3. Accordingly, it is clarified that no duty shall be payable and no reversal of credit is also warranted on waste package/containers used for packing inputs, on which credit has been taken, when cleared from the factory of the manufacturer availing Modvat/Cenvat credit. Consequently, Circular No. 470/36/99-CX, dated 19-7-99 may be treated as withdrawn. Pending cases if any, may be decided accordingly.

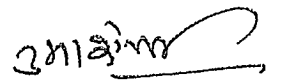
9. As far as facts go, the description in tables under para 6 of the show cause notice dated 14.8.2015, state as follows: "Invoice No. and date under which such waste/scrap are cleared (scrap of PP jumbo bag)". Hence, it is clear that the scrap in



respect of which differential duty is demanded, is of PP jumbo bag. This scrap is not generated out of any production or manufacture, carried out by the appellant [an 100% EOU]. Hence, the applicability of notification No. 23/2003-C.E., dated 31-3-2003, under which the present demand for differential duty is made, is ruled out. Further, a combined reading of notification no. 22/2003-Central Excise and 52/2003-Customs, supra, clearly shows that any clearance of packing materials is exempted from both excise duty and customs duty despite the fact that the goods have been imported/procured without payment of duty. I agree with the appellant's contention that they are not liable to pay duty in respect of scrap of PP jumbo bags, more so in view of the fact that the department has nowhere contended that the same was capable of repeated use.

10. In view of the foregoing it is held that the appellant is not liable to pay differential duty in respect of clearance of waste and scrap generated on the goods procured from DTA under advance authorization. Hence, the appeal is allowed and the impugned OIO dated 30.3.2016, is set aside.

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




(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 22/12/2016

Attested

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

BY RPAD.

To,  
M/s. Choksi Organics Private Limited [100% EOU],  
320/1, Phase-II,  
GIDC, Vatwa,  
Ahmedabad 382 445

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/Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I
- ✓ 5. Guard file.
6. P.A

