



• 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)/27/Ahd-I/2016-17 Stay Appl.No. NA/2016-17 14575-4579

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-049-2016-17
दिनांक 20.01.2017 जारी करने की तारीख Date of Issue 23/1/17

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

ग Addl. Commissioner, Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
7/Cx-I Ahmd/ADC/PMR/2016 दिनांक: 2/26/2016, से सृजित

Arising out of Order-in-Original No. 7/Cx-I Ahmd/ADC/PMR/2016 दिनांक: 2/26/2016 issued by
Addl. Commissioner, Div-III Central Excise, Ahmedabad-I

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

Shri BheekSingh Solanki,
(D/O of M/s Jagson Color Chem 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, 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।



... 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 हों।

(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 पढ़ी 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 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

Shri Bheekhsingh Solanki, Director of M/s. Jagson Colorchem Limited, 5601-04, Phase-II, GIDC, Vatwa, Ahmedabad, (for short - 'appellant') has filed this appeal against OIO No. 07/CX-1 Ahmd/ADC/PMR2016 dated 26.2.2016, passed by the Additional Commissioner, Central Excise, Ahmedabad-I Commissionerate (for short - 'adjudicating authority').

2. The facts limited to the present appeal is that a case was booked against M/s. Jagson Industries, Plot No. 264/1, Phase-II, GIDC, Vatwa, Ahmedabad. A show cause notice dated 17.9.2009 was issued, *inter alia*, to M/s. Jagson Industries, demanding Central Excise duty on clandestine removal along with interest. The notice also proposed penalty on M/s. Jagson Industries, the appellant and Shri G R Seladiya.

3. This show cause notice was adjudicated vide OIO No. 8/JC/2010 dated 9.3.2010, wherein the entire demand was confirmed along with interest. Penalty equivalent to demand was imposed on M/s. Jagson Industries while penalty of Rs. 2.00 lac was imposed on the appellant and of Rs. 1.00 lac was imposed on Shri G R Seladiya. On this order being challenged before the Commissioner(A), the OIO was upheld vide OIA No. 308-310/2010 dated 31.8.2010. Thereafter, an appeal was filed before the Hon'ble CESTAT, who vide its Final Order no. A/1912/1914/WAB/AHD/2011 dated 12.8.2011/4.11.2011, remanded the matter to the adjudicating authority for reconsideration.

4. Based on the Hon'ble Tribunal's direction, the show cause notice was decided vide OIO No. 3/ADC/2013 dated 11.2.2013, wherein the adjudicating authority partly confirmed the demand of Rs. 2,28,919/- along with interest. Penalty equivalent to duty confirmed was imposed on M/s. Jagson Industries. The adjudicating authority further imposed penalty of Rs. 50,000/- on the appellant. No penalty was however, imposed on Shri G R Seladiya. Again M/s. Jagson Industries along with the appellant, feeling aggrieved, approached the Commissioner(A) who vide his OIA No. 28-29/2013 dated 18.6.2013, remanded the matter with certain directions. It is against this direction that the original adjudicating authority has issued the impugned OIO dated 26.2.2016, wherein he has partly confirmed the demand along with interest. Penalty has also been imposed on M/s. Jagson Industries. However, the adjudicating authority enhanced the penalty on the appellant from Rs. 50,000/- to Rs. 2,20,000/-.

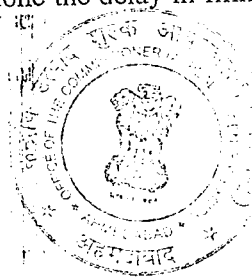
4. It is against this imposition of penalty, that the appellant has filed the present appeal, wherein he has raised the following grounds:

- the appellant was not involved in acquiring, possession, transferring, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner dealing with any excisable goods which he knew or had reason to believe were liable for confiscation;
- that they would like to rely on the case of Steel Tubes India Limited[2007(217) ELT 506 (LB);
- that though in the previous round of litigation, the penalty imposed on the appellant was Rs. 50,000/- which was not appealed by the department, in this round it has been enhanced, which is not correct; that they would like to rely on the case of Padiya Sales Corporation [1992(62) ELT 760]
- that no penalty is automatically imposable because of the appellant being a Director of a company; that they would like to rely on the case of Gujarat Borosil Limited [Final Order NO. A/1624-1626/WZB/AHD/07 dated 14.2.2007];
- that they would like to rely on the case of A K Tantia [2003(158) ELT 638] and ITL Limited [2001(138) ELT 883].

5. Personal hearing in the matter was held on 04.01.2017. Shri D.K.Trivedi, Advocate, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He also explained the citations mentioned in his grounds of appeal, which were in the favour of the appellant.

6. 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 issue to be decided is whether the appellant is liable for penalty under Rule 26 of the Central Excise Rules, 2002?

7. However, before moving on to the dispute, I find that the appeal has been filed on 9.5.2016 after a delay of 08 days. As per Section 35 of the Central Excise Act, 1944, an aggrieved person is supposed to file the appeal before the Commissioner(Appeals) within 60 days from the date of communication of the impugned order. I find that the appellant has filed a condonation of delay application. Proviso to Section 35(1) of the Central Excise Act, 1944, grants power to the Commissioner(A), to condone the delay if the appeal is filed within a further period of 30 days beyond the stipulated period of 60 days, provided sufficient cause is shown for the delay. On going through the COD application, I find that the appellant has shown sufficient cause for the delay and since the appeal has been filed within 30 days beyond the stipulated time, I condone the delay in filing of the aforementioned appeal.



8. I find that the appellant has primarily raised two grounds [a] that no penalty could have been imposed under Rule 26 of the Central Excise Rules, 2002 and [b] that penalty could not have been enhanced to what was imposed in the earlier OIO dated 11.02.2012.

9. As the dispute, is in respect of imposition of penalty under Rule 26 of the Central Excise Rules, 2002, the same is reproduced below, for ease of reference:

RULE 26. Penalty for certain offences. —

[(1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or *[two thousand rupees], whichever is greater.

[(2) Any person, who issues -

- (i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or
- (ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made there under like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.]

The penalty though not mentioned specifically has been imposed under Rule 26(1) of the Central Excise Rules, 2002. The allegations as listed in the show cause notice dated 17.9.2009 against the appellant was that during the course of statements, he had admitted that they were aware that the goods purchased by them was illicitly removed; that the goods had been received without invoice and without payment of central excise duty. The adjudicating authority in his findings, in para 26 of the impugned order dated 26.2.2016_ has concurred with the allegations and further held that he was the link man between the group unit/sister units and was fully aware about the transaction carried out by the manufacturers which resulted in the goods being removed, illicitly. The appellant has not refuted anything except for stating that he was not in any way concerned with the transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner dealing with, excisable goods which he knew were liable to confiscation under the Act or these rules. The appellant's contention is not tenable. As he was aware that the goods were liable for confiscation and since the adjudicating authority has held the goods liable for confiscation, the case law Steel Tubes India Limited, *ibid*, relied upon by the appellant, is not applicable with the fact of the present dispute. In view of the foregoing, I uphold the imposition of penalty under Rule 26 of the Central Excise Rules, 2002 on the appellant.

10. Now going to the second ground that penalty could not have been enhanced to what was imposed vide OIO dated 11.12.2013. The appellant has also relied on the case of Padiya Sales Corporation, *ibid*, to substantiate this contention. I have gone through the said judgement and concur with the contention. The Hon'ble Tribunal, examined a similar question in Varalakshmi Exports [2014(314) ELT 257] wherein it was held as follows:

10. Now, on the imposition of penalty of Rs. 5 lakhs each on Appellant Nos. 2 and 3 and Rs. 10 lakhs on Appellant No. 4, we agree with the submission of the learned AR for the Revenue that the Hon'ble Karnataka High Court in the appellants own case against the adjudication order under Foreign Trade (Development and Regulation) Act, 1992 held that penalty is imposable on the firm and partners. It is seen that in earlier adjudication order, the adjudicating authority imposed penalty of Rs. 1,00,000/- on Appellant No. 4 and Rs. 25,000/- each on Appellant Nos. 2 and 3 under Section 112(a)(ii) of the said Act and no appeal was filed by the Revenue for enhancement of the penalty and therefore, in de novo adjudication order, enhancement of penalty is not sustainable. So, the amount of penalty imposed on the Appellant Nos. 2, 3 and 4 is liable to be reduced to Rs. 1,00,000/- (Rupees one lakh only) on Appellant No. 4 and Rs. 25,000/- (Rupees twenty-five thousand only) each on Appellant Nos. 2 and 3.

Though it is a case pertaining to Customs, the logic and rationale applies. Therefore, in adherence to the aforementioned order of the Hon'ble Tribunal, I reduce the penalty imposed on the appellant from Rs. 2,20,000/- to Rs. 50,000/-.

11. The appeal is accordingly partly allowed by way of reduction of penalty imposed on the appellant, as is mentioned in para supra.

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

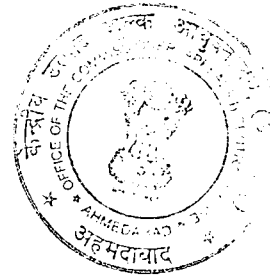
(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 20.01.2017

Attested

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



By RPAD.

To,

Shri Bheekhsingh Solanki,
Director of M/s. Jagson Colorchem Limited,
5601-04, Phase-II, GIDC,
Vatwa, Ahmedabad.

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-III, Ahmedabad-I.
4. The Assistant Commissioner, System-Ahmedabad -I.
- ✓ 5. Guard File.
6. P.A. File.

