



• आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटिकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(29)/7/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-063-2016-17
दिनांक 22.02.2017 जारी करने की तारीख Date of Issue 27.02.2017

श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asst. Commissioner, Div-II केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
12/AC//REF/2015-16 दिनांक: 21/03/2016, से सृजित

Arising out of Order-in-Original No. 12/AC//REF/2015-16 दिनांक: 21/03/2016 issued by Asst.
Commissioner, Div-II Central Excise, Ahmedabad-I

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

M/s Bodal Chemicals Ltd.,
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति 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 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।

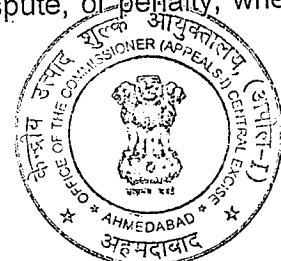
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Bodal Chemicals (Unit-III), Plot No. 2102, Phase-III, GIDC, Vatva, Ahmedabad-382 445 (*for short- "appellant"*) has filed this appeal against Order-in-Original No. 12/AC/ST/Ref/2015-16 dated 21.3.2016, passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I Commissionerate (*for short - "adjudicating authority"*).

2. Briefly stated, the facts are that the appellant filed a refund claim of Rs. 31,073/- seeking refund of the amount lying in the PLA balance under the head Education Cess [for short - EC] and Secondary and Higher Secondary Education Cess [for short - SHEC] on account of the exemption from the whole of EC and SHEC vide notification Nos. 14/2015 and 15/2015 both dated 1.3.2015. Consequent to a personal hearing, vide the impugned OIO dated 21.3.2016, the adjudicating authority rejected the refund.

3. Being aggrieved, the appellant has filed this appeal, *inter alia*, stating that:

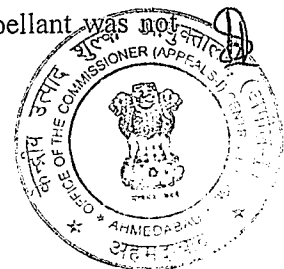
- (a) it was obligatory on the part of the adjudicating authority to issue a notice;
- (b) that there is no stipulation that even after transfer from Basic Excise Duty account to cess account the amount remained as Basic Excise duty;
- (c) the case law of M/s. Kaiser Industries [2013(298) ELT 636], relied upon by the adjudicating authority is not relevant since it deals with exemption notification No. 56/2002;
- (d) that even after transfer to cess account the amount remained in the basic excise duty account.

4. Personal hearing was held on 24.1.2017. Shri N.K.Tiwari, Consultant of the appellant, appeared before me and reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case on record and the submission made and the averments raised by the appellants during the course of personal hearing. The short question to be decided is whether the appellant is eligible for refund or otherwise.

6. The adjudicating authority has explained the facts leading to the refund claim. The appellant had deposited Rs. 20 lacs under the head Basic Excise Duty vide challan no. 90309 on 7.3.2014. Subsequently, on the same day he transferred Rs. 50,000/- to EC and Rs. 25,000/- towards SHEC out of this Rs. 20 lacs. With the issue of the aforementioned two notifications, exempting the EC and SHEC wholly, the appellant filed the refund claim of Rs. 31,073/- [Rs. 20,734/- + Rs. 10,339/-] which remained unutilized on 28.2.2015, in their PLA towards EC and SHEC, respectively.

7. The refund claim filed was rejected on the grounds that no amount was ever deposited in the accounting heads of EC and SHEC and therefore, the appellant was not entitled to refund.

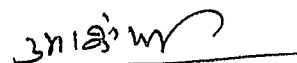


8. Before dwelling on to the main issue, EC as a levy was introduced in the Budget of 2004. Chapter VI, Sections 91 to 95 of the Finance Act (No. 2), 2004, deal with EC. Section 91 states that there shall be levied and collected, in accordance with the provisions, as surcharge, for purposes of the Union, a cess to be called the EC, to fulfill the commitment of the Government to provide and finance universalised quality basic education. Vide circular dated 6.12.2004 and 22.7.2004, separate accounting codes were provided for EC. Similarly, SHEC as a levy was introduced in the budget of 2007. Chapter VI, Sections 136 to 141 of the Finance Act 2007, deal with SHEC. Section 136 states that there shall be levied and collected, in accordance with the provisions as surcharge, for purposes of the Union, a cess to be called the SHEC, to fulfill the commitment of the Government to provide and finance secondary and higher education. Vide circular dated 30.3.2007 and 4.10.2007, separate accounting codes were also provided for SHEC.

9. It is correct, that there are different accounting codes for basic excise duty, EC and SHEC. It is also a fact that out of the deposit of Rs. 20 lacs, the appellant transferred Rs. 75,000/- to EC and SHEC. In the meantime, the appellant debited the duty towards EC and SHEC, from the amount so transferred to EC and SHEC. This payments were never disputed. Now when the appellant has filed refund in respect of the cash deposit, lying in balance towards EC and SHEC, the refund is denied on the grounds that the amount pertains to basic excise duty and not EC and SHEC. Accounting heads, as is well known, are basically for the department's internal management of funds towards various purposes. To reject the refund citing technical grounds, that it was deposited in a wrong account, seem to be unfair. Had the appellant transferred the said amount back to basic excise duty, the department probably would never have raised any objection. I am of a strong view that the rejection of refund is not legally tenable, more so because it is relating to deposit under PLA [i.e. cash deposit]. I therefore, set aside the impugned OIO dated 21.6.2016 and allow the appeal with consequential benefits.

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

10. The appeal filed by the appellants stand disposed of in above terms.




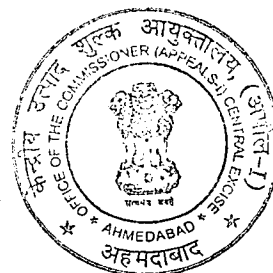
(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 22/12/2017

Attested


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



By RPAD.

To
M/s. Bodal Chemicals (Unit-III),
Plot No. 2102, Phase-III,
GIDC, Vatva,
Ahmedabad-382 445

Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I
3. The Joint Commissioner (System), Central Excise, Ahmedabad-I
4. The Deputy/ Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I.
- ✓ 5. Guard file.
6. P.A

