



• 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(84)/32/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

1279-83

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-069-2016-17
दिनांक 28.02.2017 जारी करने की तारीख Date of Issue 17/03/2017

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित

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

ग Joint Commissioner, Div-V केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
16/CX-I Ahmd/JC/MK/2016 दिनांक: 1 i/03/2016, से सृजित

Arising out of Order-in-Original No. 16/CX-I Ahmd/JC/MK/2016 दिनांक: 16/03/2016 issued by
Joint Commissioner, Div-V Central Excise, Ahmedabad-I

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

M/s.Nu-Tech Controls
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।

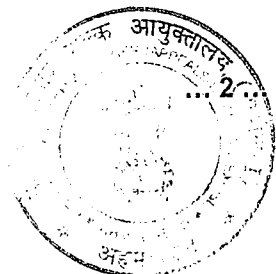
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 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.

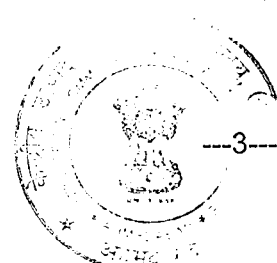
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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।

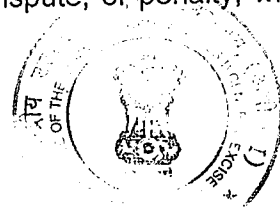
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Nu Tech Controls, Plot No. 156, Tribhuvan Industrial Estate, Behind Kathwada GIDC, Kathwada, Ahmedabad- 382 430 [for short - 'appellant'] has filed this appeal against OIO No. 16/Cx-I Ahmd/JC/MK/2016 dated 1.3.2016, issued on 16.3.2016, passed by the Joint Commissioner, Central Excise, Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

2. Briefly stated, a show cause notice dated 05.01.2015, was issued to the appellant, *inter alia*, proposing denial of exemption notification No. 15/2010-CE dated 27.2.2010, amended vide notification No. 26/2012-CE dated 8.5.2012; demanding Central excise duty along with interest in respect of goods cleared without payment of duty by availing the benefit of the notification, *ibid*; proposing confiscation of the disputed goods and further proposing imposition of penalty under Rule 25 of the Central Excise Rules, 2002. The appellant had cleared valves, falling under chapter heading 8481 of Central Excise Tariff Act, 1985, under the aforementioned notification.

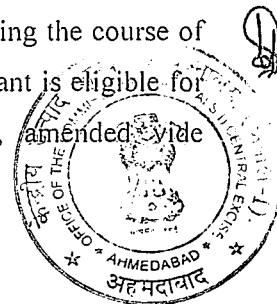
3. This notice, was adjudicated vide the impugned OIO dated 1.3.2016, wherein the adjudicating authority denied the benefit of the notification, *ibid*, confirmed the duty demand along with interest, and further imposed penalty on the appellant.

4. Feeling aggrieved, the appellant, has filed this appeal against the impugned OIO, wherein he has raised the following averment:

- (a) that the adjudicating authority has passed this order without appreciating the facts;
- (b) that the adjudicating authority has not considered the certificate issued by the Under Secretary to the Government of India, granting exemption;
- (c) that there is no malafide intention to wrongly claim the benefit of the notification;
- (d) that copy of the OM dated 17.1.2003, enclosed with the appeal papers, was not considered by the adjudicating authority;
- (e) that the judgement relied upon by the adjudicating authority is not applicable in the present case;
- (f) that no penalty is imposable.

5. Personal hearing in the matter was held on 16.2.2017, wherein Shri N.J.Oza, Advocate, appeared on behalf of the appellant and reiterated the submissions advanced in the grounds of appeal. In his additional submissions he relied upon the following case laws viz All India Tennis Association [2017(345) ELT 556], Kanoria Sugar and General Manufacturing Company [2017(345) ELT 564], Vardhman Fertilizers and Seeds [2017 (345) ELT 560].

6. I have gone through the facts of the case, the appellant's grounds of appeal, additional submissions dated 1.2.2017 and the oral submissions made during the course of personal hearing. The primary issue to be decided is - whether the appellant is eligible for benefit of exemption notification No. 15/2010-CE dated 27.2.2010, amended vide notification No. 26/2012-CE dated 8.5.2012.

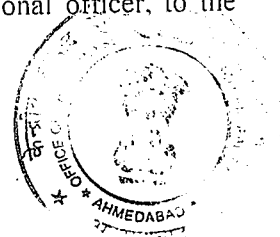


7. Briefly, the facts are that the appellant supplied *Valves* to M/s. Megha Engineering and Infrastructure Limited, Village Nagalpuram, Anantapur District, Andhra Pradesh, for use in the setting up of 50MW Solar Thermal Power Generation Project. The goods were removed without payment of duty by the appellant availing benefit of exemption notification No. 15/2010-CE dated 27.2.2010 amended vide notification No. 26/2012-CE dated 8.5.2012. However, on examining the certificate issued by the Director, Ministry of New and Renewable Energy, New Delhi, it was noticed that the goods were supplied for use in a 'solar thermal power generation project' and not 'solar power generation projection'. As this appeared to be a contravention of the notification, the show cause notice was issued and the duty demand, was consequently confirmed.

8. India is endowed with vast solar energy potential. To meet the increasing energy requirements of our population, and keeping in mind the challenges posed to climate change due to greenhouse gas emissions, caused by the existing energy generation methods, solar power has emerged as a major alternative for generating electricity. From an energy security perspective, solar is the most secure of all sources, since it is abundantly available. Briefly, two major technologies have been developed to harness solar energy and both these technologies, exploit the sun as an energy source, but differ in terms of their manageability and their adaptation, to demand. The two technologies are:

- Photovoltaic solar technology, which directly converts sunlight into electricity using panels made of semiconductor cells. The photovoltaic effect (or photoelectric effect) converts light into electricity. The principle: an electric current occurs when electrons are displaced. For this to happen, photons (light particles) excite the outermost electrons of the atoms of certain semiconductor elements. In practice, light hitting a photovoltaic cell is converted into electricity by a semiconductor, generally silicon. A photovoltaic panel is made up of several cells producing direct current, which is then converted into alternating current by an inverter.
- Solar thermal technology, concentrates sun's power to obtain thermal energy and electricity is generated by using heat engine or using steam turbines. The thermal energy is used to generate steam which in turn operates conventional turbines that produces electricity. Solar thermal technology uses the sun's energy, rather than fossil fuels, to generate low-cost, environmentally friendly thermal energy.

9. Now, on going through the notifications, I find that the basic notification 15/2010-CE dated 27.2.2010, exempts all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for initial setting up of a solar power generation project or facility, from the whole of the duty of excise leviable thereon which is specified in the First Schedule to the Central Excise Tariff Act, 1985, subject to certain conditions. The amendment to the said notification dated 8.5.2012, provides the rank of officer of the Government of India, empowered to recommend grant of exemption and further states that the CEO of the project shall furnish an undertaking to the jurisdictional officer, to the



effect that the goods have been used in the said project and that in the event of non compliance, the project developer shall pay the duty.

10. Now as I have already mentioned supra, even the Ministry of New and Renewable Energy, Government of India [<http://mnre.gov.in/schemes/grid-connected/solar/>] lists both solar thermal and solar photo voltaic as technology routes for conversion of solar radiation into heat and electricity. In-fact both solar thermal and solar photo voltaic technology are species of same genre. Going by the logic of the adjudicating authority, the exemption cannot be granted to either solar photo voltaic nor solar thermal – the two major technologies to harness solar energy, since neither the word photo voltaic nor the word thermal finds a mention in the notification. Such an interpretation, would render the exemption to renewable energy, in such energy deficient times, irrelevant. Clearly, I am not convinced that this would be the spirit of notification issued by the Government of India. From what I understand, the notification *ibid*, grants exemption for setting up of a solar power generation project or facility, be it by way of Photovoltaic solar technology or Solar thermal technology, etc.. The exemption notification is not technology specific as it does not mention a specific technology for harnessing solar energy. By denying the benefit of the notification, the adjudicating authority appears to have added words to the notification. Hence, I do not agree with the reasoning expounded by the adjudicating authority in denying the benefit of the notification. The appellant is eligible for availing the benefit of the notification, *ibid*.

11. My aforesaid view is also based on two judgements of the Hon'ble Supreme Court, wherein the court has dwelt on interpretation of statutes, viz.

[a] Parmeshwaran Subramani [2009 (242) E.L.T. 162 (S.C.)]

14. It is settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions.

15. In a plethora of cases, it has been stated that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony [See : *Union of India & Anr. v. Deokinandan Aggarwal*].



[b] Dharamendra Textile Processors [2008 (231) E.L.T. 3 (S.C.)]

13. It is a well-settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements.

11. Since the entire basis of denying the benefit of the notifications appears to be flawed, I set aside the impugned original order dated 1.3.2016 and allow the appeal of the appellant, with consequential benefits, if any.

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 : 28.02.2017

Attested

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

By R.P.A.D.

To,

M/s. Nu Tech Controls,
Plot No. 156,
Tribhuvan Industrial Estate, Behind Kathwada GIDC
Kathwada, Ahmedabad- 382 430

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 V, Ahmedabad-I.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad-I.
5. Guard File.
6. P.A.

