

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(39)/80/Ahd-I/2016-17 / 2553-58  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-02&03-2017-18  
दिनांक 26.05.2017 जारी करने की तारीख Date of Issue 15/06/2017

श्री उमा शंकर आयुक्त (अपील-1) 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  
AC/07/Div.-II/2016-17 दिनांक: 08/8/2016, से सृजित

Arising out of Order-in-Original No. AC/07/Div.-II/2016-17 दिनांक: 08/8/2016 issued by Asstt.  
Commissioner, Div-II Central Excise, Ahmedabad-I

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

M/s. Shakti Woven Sacks Pvt.Ltd. & Shri Ganpatbhai K.Patel Director of M/s. Shakti  
Woven Sacks 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 a 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।

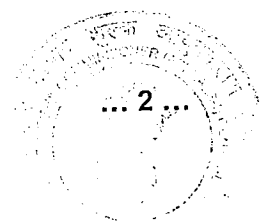
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

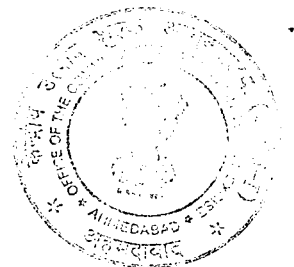
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



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 not withstanding 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 मांग 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

Two appeals have been filed by [a] M/s. Shakti Woven Sacks Private Limited, Plot No. A/1/3705, Phase IV, GIDC, Vatwa Industrial Estate, Vatwa, Ahmedabad 382 445 [for short "appellant-1"] and [b] Shri Ganpatbhai K Patel, Director of appellant-1 [for short "appellant-2"] against OIO No. AC/07/Div II/2016-17 dated 29.7.2016 passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

2. The facts briefly are that Central Excise Preventive section, booked a case against appellant-1. Investigations revealed that the appellant-1 had availed CENVAT credit on inputs based on invoices without actually receiving the inputs in the factory. The invoices were raised/issued by M/s. Superpack (A division of Bajaj Steel Industries Limited), Ahmedabad [for short "the supplier"]. A show cause notice dated 25.8.2015 was issued to the appellant-1, proposing recovery of CENVAT credit wrongly availed along with interest and further proposing penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC(1)(c) of the Central Excise Act, 1944. The notice further proposed penalty on three co-noticees, including appellant-2.

3. Vide the impugned OIO dated 29.7.2016, the show cause notice was adjudicated, wherein the adjudicating authority ordered recovery of the CENVAT credit wrongly availed and utilized along with interest. He also imposed penalty on the appellant-1 and appellant-2. Penalties were further imposed on two other co-noticees. It is against this order that the present appeal is filed by appellant-1 and appellant-2.

4. The grounds raised by the appellants are:

Appellant-1

- (a) that they had received the goods in their factory under the cover of proper invoices and availed CENVAT credit on those goods; that they had accounted for the goods in their records which is evident from the RG 23 A Part I register, which was submitted to the officers during the investigation;
- (b) that Shri Surendrakumar Sharma, General Manager of the supplier and Shri Bhupendra Shah, Sales Executive in their statement have not specifically stated that they have issued only invoices to appellant-1 without supplying the inputs; that their statements are general in nature and not specific;
- (c) that non production of the invoices is not an evidence that they had not received the goods; that nowhere in the show cause notice, is it alleged that the captioned goods are not recorded in the said register;
- (d) that they had received the inputs under the cover of the captioned invoices; that the receipt of inputs were entered in the concerned register and utilized in the manufacture of finished goods which were cleared on payment of duty;
- (e) that appellant-2 in his statement dated 12.4.2013 has already stated that they had asked M/s. Superpack to replace the inputs which was not responded to; that they had held back the payment to the supplier which is reflecting in the Balance Sheet;
- (f) that mentioning the wrong truck number in the affidavit casts doubt over the whole affidavit;
- (g) that if the goods mentioned in the invoices were not received then the department should prove as to where the goods were delivered;

- (h) that the adjudicating authority has not considered the case laws relied upon viz Shakti Roll Cold Strips Private Limited [2008(229) ELT 661] and [2014(304) ELT 108], Charminar Bottling Company Limited [2005(192) ELT 1057], Shalimar Rubber Industries [2002(148) ELT 248] and P V Verghese [2008(2323) ELT 420];
- (i) that the department has not produced any evidence from the receiver's end; that the department has also not produced any evidence that they had procured the raw materials from other source or that they had clandestinely cleared their finished goods;
- (j) that there is no suppression of facts; that they would like to rely on the case of Rajasthan Spinning and Weaving Mills [2009(38) ELT 3(SC)] and M/s. Dynamic Industries [2014(307) ELT 15];
- (k) that the issue is based on assumption and presumption and pure of interpretation;

Appellant-2

- (i) that there was no intention to evade duty by wrong availment of CENVAT credit;
- (ii) that the CENVAT credit was availed on the strength of proper invoices accompanied with subject raw material;
- (iii) that no penalty is imposable on appellant-2.

5. Personal hearing in the matter was held on 19.4.2017. Shri N.R.Parmar, Consultant, appeared on behalf of the appellants-1 and 2 and reiterated the grounds of appeal.

6. I have gone through the facts of the case, the grounds mentioned in the appeal and the oral averments, raised during the course of personal hearing. The primary issue to be decided is whether as alleged by the department, the appellant-1 has availed CENVAT credit on invoices without receiving inputs in the factory or otherwise.

7. The adjudicating authority in his impugned OIO had ordered recovery of CENVAT credit taken and utilized on the grounds that:

- the affidavits given by the transporters showed that the goods mentioned in the invoices were delivered at address other than the address mentioned in the invoices as per the direction of Shri Manish Raval, Sales Executive of the supplier firm;
- that as per the affidavit, appellant-1 is also one of the recipients of the goods without invoices;
- the modus was to supply the goods to some other persons, collect cash payments from them and hand it over to those manufacturers who had received only invoices and in turn they would issue cheques in the name of the supplier which was thereafter deposited in the suppliers account;
- Appellant-2 was asked to produce original invoices of the supplier on which credit was taken along with the payment particulars but he did not cooperate with the investigation;
- from the statements of Shri Surendrakumar Sharma, Shri Bhupendra Shah and Shri Manish Raval, it is evident that the supplier had indulged in paper transactions to pass on CENVAT credit to certain units without supply of goods;
- that the appellant-1 failed to produce any corroborative evidence like payment particulars, weighment slips or any other private records to substantiate their claim that they had received the disputed goods;
- that once the department had produced evidences to prove that the goods under the impugned invoices were not received by appellant-1 in their factory premises, the onus of proving that the goods had actually been received, would shift on appellant-1.



8. Appellant-1, however has vehemently denied the charges and has stated that they had received the goods, which were accounted for in their RG 23A part-I register and that these inputs were utilized for further manufacture of final excisable goods which were removed on payment of duty.

9. I find that the case is built primarily on a complaint/FIR filed by the General Manager of the supplier of inputs to appellant-1. In the FIR filed on 21.10.2011, the complainant states that a total of 58 consignments covering the period from January 2011 to September 2011, relating to various quality of master batches were delivered to various customers and that the supplier had not received payment against these supplies; that on being approached for payment, the customers informed that at times they received goods along with invoice but in some instances they received only invoices from Shri Manish Raval [against whom the FIR was filed]; that since they had not received the goods, they had not made payments against the said invoices. The complainant further in his statement dated 29.10.2012, deposed that Shri Raval, had been expelled from their depot; that he had manipulated the records by raising invoices in the name of various customers and selling the goods to somebody else and accepting the money in cash and not depositing the money with the supplier company.

10. It is against this backdrop that the case was booked. Statements of various officers of the supplier, viz Shri Surendra Kumar Sharma, Shri Bhupendra Shah and Shri Manish Raval, contain admission that the goods were not supplied and only invoices were raised. The worksheet prepared based on the invoices and affidavit submitted by the General Manager of the supplier has been confirmed by the sales executive of the supplier. When the supplier of the goods insists that the goods were not supplied, for which a complaint is filed before the Police authorities, and when the complaint is backed by evidences in the form of affidavits from the transporters that they had supplied goods to somebody else and not the manufacturers or persons in favour of whom the invoices were raised, the appellant-1's contention that they had received the goods does not hold ground.

11. The adjudicating authority has very clearly in his impugned OIO stated that no proof/corroborative evidence has been produced to substantiate the claim that the goods were received. The appellant-1, however, states that they had produced the RG 23 A part-I register. This is a register which is maintained by the appellant-1. This is no proof of receipt of goods. As regards non payment, the appellant has come up with an afterthought that since the goods were of inferior quality they had asked for replacement and had not released the payment which is even reflected in the Balance Sheet. No prudent person would believe this. The facts belie the argument. Though the appellant-1 found the goods to be of inferior quality, he entered it in this register, used it to make final products, sold the final products on payment of duty, but till date has not released the payment since the

appellant has not responded. The contention does not appear to be correct also because the complainant in the FIR clearly states that they had contacted the parties in respect of the 58 consignments for release of payment and were informed that since the goods were not received the payment would not be released.

12. Appellant-1 has failed to produce any documentary evidence or corroborative evidence even before me to substantiate their claim, that they have received the goods, which the supplier claims before law of not having been supplied, to the appellant-1. It is a different matter that the entire modus was a planned operation between the supplier and the appellant-1, to pass/avail CENVAT credit without actual receipt of goods. I find that instead of providing documentary evidence, the appellant-1 is trying to prick holes into the affidavits submitted by the transporter. The appellant-1, in the process has not refuted the complaint made by the supplier, that they had not supplied the goods. I therefore, find no reason to interfere with the original order since the appellant has failed to prove that they had in-fact received the goods, claimed by the supplier to have not been supplied.

13. The appellant-1's contention regarding invocation of extended period and his reliance on case laws have been appropriately dealt by the adjudicating authority. In-fact the availment of CENVAT credit without actual receipt of goods clearly falls within the ambit of fraudulent availment of CENVAT Credit and I find that this is a fit case for invocation of extended period.

14. I find that the Director of the appellant-1 has also challenged the imposition of penalty by contending that they had received the inputs without submitting any proof. The appellant-1 and 2 have made a futile attempt by putting the onus on the department to prove as to where the goods have been supplied if not to them. On going through the statement of Shri Raval, it is forthcoming that he appears to have forgotten as to whom the goods were supplied. Since these are illicit transactions, there are no paper trail and therefore becomes all the more difficult for investigators to unravel the entire chain of events. Even otherwise, the Hon'ble Supreme Court in the case of *Collector of Customs, Madras and Others v. D. Bhoormull* [1983(13) ELT 1546(S.C.)] has already held that the department is not required to prove its case with mathematical precision, but what is required is the establishment of such a degree of probability that a prudent man may on its basis, believes in the existence of the facts in issue. The facts of the case, the confessions of the various employees of the supplier, the affidavits filed by the transporter, etc. and especially the conduct of the appellant-1 of non cooperation and non production of any evidence to substantiate the claim of receipt of inputs clearly indicates that they had not received the inputs and therefore, leads me to the conclusion, that the adjudicating authority had correctly ordered recovery of CENVAT credit along with interest and has ordered imposition of penalty both on the appellants-1 and 2 [who are in appeal before me].

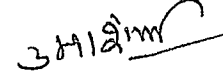
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15. In view of the foregoing, the OIO is upheld and the appeals filed by appellants-1 & 2 are rejected.

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

16. The appeals filed by the appellants stand disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 26/05/2017.

Attested



(Vinod Lukose)

Superintendent (Appeal-I)

Central Excise, Ahmedabad.

By RPAD

M/s. Shakti Woven Sacks Private Limited, Plot No. A/1/3705, Phase IV, GIDC, Vatwa Industrial Estate, Vatwa, Ahmedabad 382 445	Shri Ganpatbhai K Patel, Director M/s. Shakti Woven Sacks Private Limited, Plot No. A/1/3705, Phase IV, GIDC, Vatwa Industrial Estate, Vatwa, Ahmedabad 382 445
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Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Principal Commissioner, Central Excise, Ahmedabad-I
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-I
4. The Dy. / Asstt. Commissioner, Central Excise, Division- II, Ahmedabad-I.
- ✓ 5. Guard file.
6. P.A