



- 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(54)/61 to 64/Ahd-I/2016-17 Stay Appl.No. NA/2016-17 12739-47

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 08 to 011-2017-18
दिनांक 30.05.2017 जारी करने की तारीख Date of Issue 15/11

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

ग Joint Commissioner, Div-IV केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
06/Jt.Commr/2008 दिनांक: 31/1/2008, से सृजित

Arising out of Order-in-Original No. 06/Jt.Commr/2008 दिनांक: 31/1/2008 issued by Joint
Commissioner, Div-IV Central Excise, Ahmedabad-I

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

**M/s. Unique Processors Pvt.Ltd. & Directors.
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।

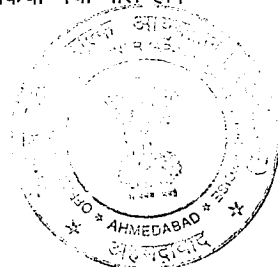
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

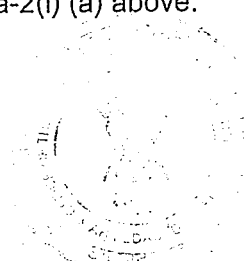
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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, मेघाणी 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 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 रूपए 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।

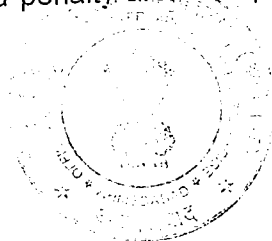
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



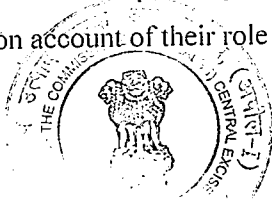
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F. No. V2(54) 61/AHD-I/2016-17
F. No. V2(54) 62/AHD-I/2016-17
F. No. V2(54) 63/AHD-I/2016-17
F. No. V2(54) 64/AHD-I/2016-17

ORDER IN APPEAL

Appeals were filed by [a] M/s. Unique Processors Pvt. Ltd. 274, New Cloth Market, Ahmedabad & Village Piplej, Pirana Road, Ahmedabad 382 405 (for short - 'appellant'), [b] Shri Narendra R. Mittal, Director of the appellant (for short - 'appellant No.1'), [c] Shri Vijender R Mittal), Director of the appellant. (for short - 'appellant No.2'), and [d] Shri Rajesh R. Mittal, Director of the appellant. (for short - 'appellant No. 3'), against the OIO No. 6/Joint Commissioner/2008 dated 31.1.08. passed by the Joint Commissioner, Central Excise, Ahmedabad-I. These appeals were decided vide OIA No. 114-117/2008(Ahd-I)CE/ID/Commr(A) dated 8.7.2008 by the then Commissioner(A). However, on an appeal against the said OIA by the aforementioned appellants, the Hon'ble Tribunal vide its order No. A/404 to 407/WZB/AHD/2009 dated 3.2.2009, remanded the matter to the Commissioner(A). for denovo adjudication. It is in this backdrop that the present OIA is being issued.

2. The facts briefly are that the appellant - a Merchant Exporter, was processing grey fabrics in their own processing unit situated at 85. Village Piplaj, Pirana Road, Ahmedabad and also getting grey fabrics processed from the factory of M/s. Rajesh Textiles Industries, Ahmedabad and were clearing the same for export under B-1 bonds executed by the appellant. On the basis of an intelligence, that the appellant did not export the goods and fraudulently forged/fabricated the export documents. for the purpose of proof of export, the Officers of the Customs Commissionerate, Mumbai conducted an investigation, which revealed that the appellant had grossly misused the DEEC Scheme. The investigations further revealed that the goods cleared for export without payment of Central Excise duty, were diverted to the local market by resorting to forgery of export documents to project the completion of export obligation under DEEC scheme. Based on the investigation, show cause notices were issued to the appellant by the Commissioner Customs, Mumbai.

3. Consequently, Dy. Director, DGAE, Mumbai, issued a show cause notice no. DGAE/BZU/101/12(4)18/95 dated 25.5.1999 to the appellant demanding central excise duty of Rs. 16,44,688/- in respect of processed man made fabrics cleared from their factory and from the factory of M/s. Rajesh Textile Industries, Ahmedabad without payment of duty, since the shipping bills under which the goods were said to have been exported were bogus and no export had taken place against these shipping bills. Appellants 1, 2 and 3, were made co-noticee on account of their role in the entire fraud.



11

4. The aforementioned show cause notice dated 25.5.1999, was adjudicated by the Joint Commissioner, vide his impugned OIO dated 31.1.2008, wherein, he confirmed the duty demand along with interest and further imposed penalty equivalent to duty on the appellant. Penalty of Rs. 1.00 lac each was imposed on the appellants 1,2 and 3.

5. Feeling aggrieved the appellant(s) had filed these appeals raising the following grounds:

Appellant

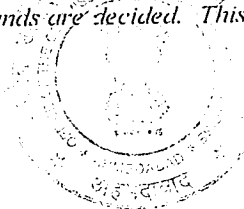
- that the order was passed ex parte without giving adjournments in violation of the principles of natural justice;
- that the adjudicating authority erred in confirming the demand in the notice especially when the Hon'ble Tribunal had passed an order directing the department to furnish copies of the documents to the appellant as well as to consider its request for cross examination;
- that the appellant is only a merchant exporter for its supporting manufacturers; that the goods were removed from the premises of the supporting manufacturer under factory sealing in the presence of a designated excise officer; that the demand cannot be raised on the appellant in as much as he is not the manufacturer of the goods and is therefore not liable to pay excise duty;
- that the customs notices does not even raise a whisper about diversion of impugned goods to local buyers;
- that in so far as the valuation of impugned goods purportedly diverted to local buyers is concerned, the adjudicating authority had erred in adopting the FOB value of the export consignments for the purposes of valuation.

Appellants-1,2 and 3

- that there is no finding in the impugned OIO that the appellants had physically dealt with any excisable goods in any manner as specified or contemplated under Rule 26 of the Central Excise Rules, 2002.

5.1 As is already stated above, these appeals were decided vide OIA No. 114-117/2008(Ahd-I)CE/ID/Commr(A) dated 8.7.2008 by the then Commissioner(A), wherein he rejected the appeals on the grounds that the Stay Order dated 29.5.2008 was not complied with. However, the appellants feeling aggrieved approached the Hon'ble Tribunal, who vide its Order No. A/404 to 407/WZB/AHD/2009 dated 3.2.2009, remanded the matter to the Commissioner(A), for denovo adjudication, the relevant text of which is reproduced below:

"3. We are informed that the said order of CC Mumbai relied upon in the impugned order stand set aside by Tribunal. In an identical case this Bench held that as the entire case of Revenue was based upon the investigations conducted at the end of Customs authority, Mumbai, alleging forged and fabricated export documents. It may be in the interest of justice that the main case as regards export is decided first and then the present demands are decided. This was so held in the



6

F. No. V2(54) 61/AHD-I/2016-17
F. No. V2(54) 62/AHD-I/2016-17
F. No. V2(54) 63/AHD-I/2016-17
F. No. V2(54) 64/AHD-I/2016-17.

case of *M/s. R K Exports* vide Order No. A/2591-2595 WZB/AHD 2008 dated 26.11.2008.

4. *By following the ration of the above, we set aside the impugned order and remand the matter to Commissioner(Appeals) for de novo adjudication, after the proceedings at Customs Mumbai are finalized.*

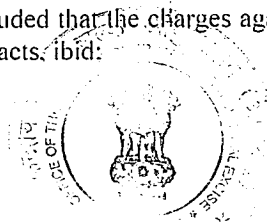
5.2 Since the case in Customs Mumbai was pending, the matter was kept in call book. Deputy Commissioner of Customs, Group VII D (Ch 50-99), NCH, Mumbai, vide his letter no. S/16-Misc-1210/2007 Gr. VII D dated 1.8.2016 provided this office a copy of OIO No. CAO No. 93/2014/CAC/CC(ADJ)/SJ dated 5.9.2014, wherein the show cause notice No. SD/INT/HQIV/285/95 was decided. Since the matter stands decided at Customs Mumbai, the case was retrieved from call book.

6. Mr. Hardik P. Modh, and Shri Amit Laddha, both advocates, appeared on behalf of all the appellants for the personal hearing on 20.4.2017. The advocates reiterated the grounds of appeal and submitted an additional submission. They further requested that the matter be remanded to the original adjudicating authority since the original matter in Mumbai is still pending.

7. I have carefully gone through the facts of the case and written submissions made by appellants. The allegation against the appellant is that they had cleared goods for export without payment of Central Excise duty and that these goods were diverted to the local market by resorting to forgery of export documents to project the completion of export obligation under DEEC Scheme. On the completion of investigation, Customs Mumbai, issued show cause notices demanding customs duty on imported PFY and imposition penalty for alleged contravention of various provisions of Customs Act. The present dispute before me is relating to duty demand in respect of goods which were diverted to the local market in the guise of removal of goods for export which were cleared without payment of Central Excise duty. The primary question to be decided in the present appeal is whether the allegation of diversion of export goods removed without payment of duty is correct and consequently whether the appellant is liable for payment of Central Excise duty.

8. The adjudicating authority [refer para 18 of impugned OIO] has heavily relied upon *Statement of facts* [Annexure A to the show cause notice dated 25.5.1999], to confirm the charges against the appellant, and therefore, I find that the impugned order suffers from the following infirmities:

[a] the adjudicating authority has nowhere concluded that the charges against the appellant(s) are confirmed except for relying on the statement of facts, *ibid*:



[Handwritten signature]

[b] the contention of the appellant(s) was not considered owing to the fact that the appellant did not file any defence reply, this is notwithstanding the fact that the appellant(s) failed to avail the opportunity of personal hearing, though they were granted the same on three different occasions.:

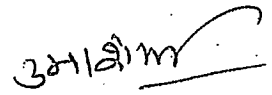
[c] the genesis of the case is the investigation conducted and the resultant show cause notice that was issued by Customs, Mumbai. The adjudicating authority has issued his original order without waiting for the conclusion from the main case at Mumbai Customs. to conclude.

9. During the course of personal hearing, the advocate of the appellant requested that the matter be remanded back to the original adjudicating authority for denovo adjudication. In view of the infirmities pointed out supra, I find that justice would be rendered, if the matter is remanded back to the original authority. The original authority is therefore, directed to take into consideration, the OIO passed by Mumbai Customs in the matter while deciding the issue. Further, the adjudicating authority will pass a specific finding in respect of all the shipping bills, in respect of which the department alleges that the exports were bogus and on which central excise duty is being demanded. Needless to state, that the adjudicating authority will adhere to the principles of natural justice, before finalizing the matter.

10. In view of the foregoing, the four appeals are partly allowed by way of remand.

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

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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 30/05/2017.

Attested



(Vinod Lukose)

Superintendent (Appeal-I)

Central Excise, Ahmedabad.

BY R.P.A.D

To All four Appellants.

Copy to

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



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