



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर शुल्क भवन, 7<sup>th</sup> Floor, Central Excise Building,  
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/10/EA-2/Ahd-I/2016-17 / 3005 to 3008  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-105-2017-18  
दिनांक Date : 27.9.2017 जारी करने की तारीख Date of Issue 1-11-17

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

ग Asst. Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं AC/11/Div-II/16-17 दिनांक: 24/10/2016, से सृजित

Arising out of Order-in-Original No. AC/11/Div-II/16-17 दिनांक: 24/10/2016 issued by Asst. Commissioner, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/sUshanti Colorchem  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए संक्षम 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) केन्द्रीय 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 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 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.

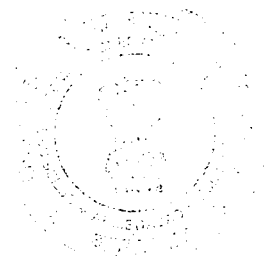
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैटल 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 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 filed 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

This is a departmental appeal filed by Assistant Commissioner, Central Excise, Division II, Ahmedabad-I, on the basis of authorization granted by the Commissioner of Central Excise, Ahmedabad-I, vide Review order No. 10/2016-17 dated 5.1.2017. The departmental appeal is filed against OIO No. AC/11/Div-II/2016-17 dated 24.10.2016 issued by the Assistant Commissioner, Central Excise, Division II, Ahmedabad-I. [in short - 'adjudicating authority'] in the case of M/s. Ushanti Colorchem Pvt. Ltd., Plot No. 88/8, Phase-I, GIDC, Vatwa, Ahmedabad- 382 445 [hereinafter referred to as 'Ushanti'].

2. Briefly, the facts are that based on a CERA objection that M/s. Ushanti had availed CENVAT credit of service tax paid on transportation charges involved in the clearance of waste/sludge i.e. hazardous waste from the factory during the period from 2008-09 to 2013-14 a show cause notice dated 26.10.2015 was issued to demanding *inter alia* that the CENVAT credit of Rs. 67072/- be disallowed; that interest be recovered. The notice further proposed penalty on M/s. Ushanti under Rule 15(2) of the CENVAT Credit Rules 2004 read with Section 11AC(1)(c) of the Central Excise Act, 1944. This notice was adjudicated vide OIO dated 24.10.2016, wherein the adjudicating authority set aside the notice and held that the credit availed was admissible. However, vide the aforementioned Review order dated 5.1.2017, the impugned OIO was reviewed and this appeal is filed on the below mentioned grounds:

- that the impugned OIO is contrary to law, judicial discipline as laid down in the case of Ispat Industries [2015(324) ELT 670(SC)];
- that in the aforementioned decision of the Hon'ble Supreme Court, service tax paid on outward freight and other expenses incurred for transportation of final product from the factory of manufacture to the place of buyer will not be available.

3. Personal hearing in respect of this departmental appeal was held on 13.9.2017, wherein Shri Minku Gandhi, Managing Director of M/s. Ushanti, appeared before me and explained the case. He also submitted their cross objections wherein the the following averments were raised:

- that the GTA service was used in connection with disposal and treatment of hazardous waste in compliance to the provisions of pollution control and direction of the Honourable High Court of Gujarat for processing the effluent in common effluent treatment plant;
- that they wish to rely on the case of Murugappa Morgan Thermal Ceramics Limited [2014(33) STR-181], Hindustan Zinc [2013(30) STR 324];
- that there is a nexus between manufacture of final product and GTA service;
- that in the case law relied upon in the departmental appeal viz. Ispat Industries [2015(324) ELT 670(SC)] the issue was with regard to place of removal; that the reliance on the said case law is not applicable;
- that the definition of input service includes outward transportation upto the place of removal. However, in the case of M/s. Ushanti the transportation service was not used either as inward transportation or outward transportation. The transportation service was used in relation the manufacture of final product covered under Rule 2(1)(ii) of CCR;
- that service of transportation was used in relation to manufacture of final product and not as inward transportation or outward transportation;
- that hazardous material sent for treatment cannot be construed as transportation of finished goods or outward transportation;

- that amount paid for effluent treatment cannot be construed as GTA service: that in their books the expenses have been shown as 'pollution expenses' (sic).

4. I have gone through the facts of the case, the grounds in the departmental appeal and the arguments raised during the course of personal hearing.

5. The issue to be decided by me is whether M/s. Ushanti is eligible for CENVAT credit availed on Service tax paid on services of Goods Transport Agency on transportation charges involved in the clearance of waste/sludge i.e. hazardous waste, from the factory.

6. The credit was allowed by the adjudicating authority in his impugned OIO on the grounds that:

- GTA service was received by the appellant on disposal and treatment of hazardous waste was in connection with the provisions of Pollution Control and the directions of the Hon'ble High Court of Gujarat;
- that the definition of input service would cover not only the services which are directly essential for manufacturing operation but would also cover the services which are indirectly essential for manufacturing operation like the services required for compliance with the statutory provisions in the instant case the Gujarat Pollution Control Board;
- the issue is already covered in the decision of the Hon'ble Tribunal in the case of Murugappa Morgan [2014(33) STR 18] and Hindustan Zinc [2013(30) STR 324] and the judgement of the Hon'ble Supreme Court in the case of IFCO [1996(86) ELT 177].

7. I have carefully gone through the Review order dated 5.1.2017 wherein the only ground raised against the impugned OIO allowing the CENVAT credit is that the adjudicating authority did not follow judicial discipline since the Hon'ble Supreme Court in the case of Ispat Industries [2015(324) ELT 670] had held that the service tax on outward freight and other expenses incurred for transportation of final product from factory of manufacture to place of buyer, will not be available.

8. I have gone through the aforementioned case. The question to be decided before the Hon'ble Apex Court was as mentioned below [extracts of para 1]

*The issue involved in the present appeal is whether, by virtue of a transit insurance policy in the name of the manufacturer, excise duty is liable to be recovered on freight charges incurred for transportation of goods from the factory gate to the buyer's premises, treating the buyer's premises as the place of removal.*

I find that the Apex Court in the said case was dealing with the valuation dispute covering two periods viz. period from 28-9-1996 to 30-6-2000 and period 1-7-2000 to 31-3-2003, when Section 4 of the Central Excise Act, 1944, underwent amendments. Paras 12 to 17 deal of the said order, deals with Section 4 as it was during the period from 28.8.1996 to 30.6.2000. The consequent paras deal with the amended Section 4 of the Central Excise Act, 1944. It is therefore, not understood as to how para 16 and 17 would be applicable to the present dispute, which is related to availment of CENVAT credit, even if the analogy attempted to be drawn is related to place of removal, which was amended post 1.7.2000. Further, nowhere does the said judgement state that service tax paid on outward freight, and other expenses incurred for transportation of final product from factory of manufacturer to place of buyer will not be

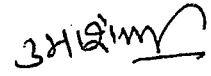


available. In-fact, even the facts of the case, are distinct. Hence, the reliance placed on the said case by the department in its review order is not legally tenable.

9. Moreover, I find that the adjudicating authority has relied upon three judgements to arrive at his findings viz Murugappa Morgan[2014(33) STR 18] and Hindustan Zinc [2013(30) STR 324] and the Supreme Court judgement in the case of IFCO [1996(86) ELT 177]. None of the cases have been distinguished in the departmental review order/appeal.

10. In view of the foregoing, as no other grounds have been raised in the departmental appeal other than the reliance on the judgement in the case of Ispat Industries, *supra*. I do not find any merit in the departmental appeal and hence the same is rejected.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
11. The appeal filed by the department stands disposed of in above terms.




(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : .09.2017

Attested

  
(Vinod Lukose)  
Superintendent,  
Central Tax(Appeals).  
Ahmedabad.

By RPAD.

To,

M/s. Ushanti Colorchem Pvt. Ltd.,  
Plot No. 88/8, Phase-I, GIDC, Vatwa,  
Ahmedabad- 382 445.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad-I.
3. The Deputy/Assistant Commissioner, Central Tax, Division-II, Ahmedabad-I.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad-I.
5. Guard File.
6. P.A.

