



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/11/EA-2/Ahd-I/2016-17 / 30/22 to 30/23
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-114-2017-18
दिनांक Date : 3.10.2017 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 MP/12/AC/2016-17
Ref(ST) दिनांक: 6/9/2016, से सृजित

Arising out of Order-in-Original No. MP/12/AC/2016-17 Ref(ST) दिनांक: 6/9/2016 issued by Asst. Commissioner, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Bodal Chemicals Unit-4
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) 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, 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।

... 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 मैन्टल हास्पिटल 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.

6. Personal hearing in the matter was granted and held on 13.09.2017. Mr. N. K. Tiwari, Consultant on the behalf of respondent appeared before me and requested 7 days time for submitting concerned Shipping Bills.

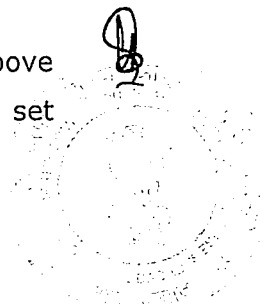
7. The respondent vide their letter dated 16.09.2017 submitted the concerned (i) Shipping Bills (ii) two acknowledgement slips issued by the "Sevottam", Ahmedabad-I, Central Excise, Ambawadi with reference no. 40359 dated 01.01.2016 and 40907 dated 21.01.2016 (iii) and a copy of the Respondent's letter dated 20.01.2016 addressed to the Assistant Commissioner, Central Excise, Division-III, Ahmedabad. I find that the said letter dated 20.01.2016 is devoid of any acknowledgement from the department.

8. I have carefully gone through the facts of the case on records, impugned OIOs, grounds of appeal in the Appeal Memorandum and oral as well as records submitted by the respondents and found that the date of filing in the instant case is crucial. Department (appellant) says the refund claim was filed on 21.01.2016 however respondent says they filed the refund claim on 01.01.2016. If refund claim in question was filed on 01.01.2016 then the respondent was eligible for the refund under para 3 (g) of Notification No. 41/2012- ST dated 29.06.2012.

9. On going through the two acknowledgement slips issued by the "Sevottam", Ahmedabad-I, Central Excise, Ambawadi reference no. (i) 40359 dated 01.01.2016 (ii) 40907 dated 21.01.2016, two refund claims had been filed by the M/s Bodal Chemicals Ltd, Vatva. On going through the acknowledgment Reference No. 40359, a refund claim was filed by M/s Bodal Chemicals Ltd, **Unit-I**, Ph-II, GIDC, Vatva on 01.01.2016 and on going through the Sevottam acknowledgement Reference No. 40907, another refund claim was filed by M/s by M/s Bodal Chemicals Ltd, **Unit-IV**, Ph-II, GIDC, Vatva for the amount of Rs. 11,260/- on 21.01.2016

10. In the present case, the respondent i.e. M/s Bodal Chemicals Ltd, **Unit-IV** filed refund claim of Rs. 11,260/- which clearly shows in Sevottam acknowledgement Reference No. 40907 and the same was filed on 21.01.2016. The refund claim file on 01.01.2016 was by M/s Bodal Chemicals Ltd, **Unit-I** under Sevottam acknowledgement Reference No. 40359. Hence, the argument of respondent that they filed the refund claim on 01.01.2016 is not sustainable.

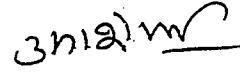
11. In view of the above facts and discussions held in the above paragraph, I allow the appeal filed by the Department (appellant) and set



aside the impugned order upto the extent of, amount of refund claimed sanctioned in respect of Shipping Bill no. 7131278 dated 09.01.2015, Shipping Bill No. 7201053 dated 13.01.2015 and Shipping Bill No. 7174874 dated 12.01.2015 total amounting to Rs. 8,219/-.

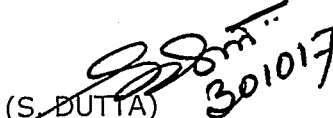
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeals filed by the appellant stand disposed off in above terms.



(UMA SHANKER)
COMMISSIONER (APPEAL)
CENTRAL TAX, AHMEDABAD.

ATTESTED


(S. DUTTA)
301017
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Bodal Chemicals Ltd,
Unit-IV, Plot No. 252, 253, C-1/254,
Phase-II, GIDC, Vatva, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, South.
3. The Dy. / Asstt. Commissioner, Central Tax, Division-III, Vatva.
4. The Addl./Joint Commissioner, (Systems), Central Tax, South.
5. Guard file.
6. P.A file.

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।

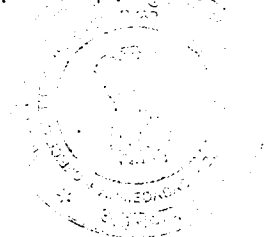
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The Assistant Commissioner, Central Excise, Division-Gandhinagar, Ahmedabad (hereinafter referred to as 'appellant') has filed the present appeal against following Order-in-Original (hereinafter referred to as 'impugned orders') passed in the matter of refund claim filed by M/s. Bodal Chemicals Ltd, Unit-IV, Plot No. 252, 253, C-1/254, Phase-II, GIDC, Vatva, Ahmedabad (hereinafter referred to as 'respondents');

2. The facts of the case, in brief, are that the Respondents having Central Excise registration No. AAACD5352MXM004 and Service Tax Registration No. AAACD5352MXM004 had filed refund claim amounting to ₹ 11,260/- on 21.01.2016 under Notification No.41/2012-ST dated 29.06.2012 read with Section 11B of Central Excise Act, 1944 in respect of Service Tax paid on the specified services used for export of goods for the period 12.01.2015 to 02.02.2015(LEO date).

3. In the instant case, the place of removal was port of export and service used in export of goods were taken up to the port of export. During scrutiny of the claim certain discrepancies were noticed and accordingly a Show Cause Notice dated 11.05.2016 was issued. The adjudicating authority dropped said Show Cause Notice and sanctioned the refund claim of Rs. 11,260/- vide impugned order.

4. The impugned order was reviewed by the Commissioner of Central Excise, Ahmedabad-III, and issued review order No. 11/2016-17 dated 11.01.2017 for filing an appeal under section 35E of Central Excise Act, 1944 before Commissioner of Appeals, Central Excise, Ahmedabad on the ground that the refund claim was filed beyond the period prescribed under para 3 (g) of Notification No. 41/2012- ST dated 29.06.2012 in respect of (i) shipping bill no. 7131278 dated 09.01.2015, dated of LEO 12.01.2015, amount of duty claim Rs. 4,812/- (ii) shipping Bill No. 7201053 dated 13.01.2015, dated of LEO 15.01.2015 amount of duty claim Rs. 2,946/- and (iii) Shipping Bill No. 7174874 dated 12.01.2015, dated of LEO 15.01.2015 amount of duty claim Rs. 461/-.

5. In light of the above mentioned review order, the appellant department filed the present appeal to set aside the impugned order upto the extent of, amount of refund claimed sanctioned in respect of Shipping Bill no. 7131278 dated 09.01.2015, Shipping Bill No. 7201053 dated 13.01.2015 and Shipping Bill No. 7174874 dated 12.01.2015 total amounting to Rs. 8,219/-.