

(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 मेटल 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.



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 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 order arises out of an appeal filed by M/s. Karnavati Engineers, Plot No. 8, Road No.1, GIDC, Kathwada, Ahmedabad (in short 'appellant') against Order – in - Original No. MP/02/SUPDT/AR-V/2017-18 dated 25.04.2017(in short 'impugned order') passed by the then Superintendent, Central Excise Range-V, Division-V, Ahmedabad-I (in short 'adjudicating authority').

2. Briefly stated that the appellant filed triplicate and quadruplicate copies of 5 ARE-1s for verification for the goods cleared under SRP to the merchant exporter viz. M/s. Vijayraj Quarry Works, Ahmedabad. During verification, it was observed that the relevant CT-1 certificates presented by the appellant were issued after the respective date and time of clearance excisable goods from the factory of production i.e. CT-1 certificates were issued after the goods cleared without payment of duty. Hence, SCN dated 16.02.2017 was issued for recovery of duty of Rs.4,52,413/-. This SCN was adjudicated by the adjudicating authority vide impugned order wherein duty of Rs.4,52,413/- was confirmed alongwith interest under Section 11A(10) and 11AA of the Central Excise Act, 1944 respectively and Penalty of Rs.45,241/- was also imposed under Rule 25 of the Central Excise Rules, 2002 with an option to pay 25% of penalty imposed if confirmed demand is paid alongwith interest within 30 days of communication of the impugned order.

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, *interalia*, they submitted that:

- (a) the mistake occurred in making documents is that the date of invoice is mentioned before CT-1 and it is intimated to concern authority that it was happened due to typographical mistake. This letter was also addressed to the CT-1 issuing authority.
- (b) the proof of export is pending because of non-returning ARE-1 copies by the concerned authority though they had intimated to the deptt. well in advance before issue of notice.
- (c) there is no ground to demand duty when the goods are exported.
- (d) being procedural mistake, duty cannot be demanded from them on flimsy ground and rely upon case laws viz. Supreme Industries Ltd-2002(144) ELT-729(GOI), Tejal Paper Mills Pvt. Ltd. vs. CCE, Ahmedabad-2003(156) ELT-364 (Tri. Delhi) and CCE, Nagpur Vs. Simplex Mills Co. Ltd.-2007(215) ELT-107(Tri. Mum).
- (e) when demand of duty is not sustainable, interest and penalty is also not sustainable.





4. Personal hearing in the matter was held on 11.10.2017. Shri N.K. Oza, Advocate, appeared on behalf of the appellant and re-iterated the grounds of appeal and stated that goods have been exported.

5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and other evidences available on records. I find that main issue to be decided is whether demand of duty is sustainable or otherwise for goods cleared against CT-1. Accordingly, I proceed to decide the case on merits.

5.1 Prima facie, I find that the appellant has cleared the goods under SRP against 5 ARE-1s without payment of duty against CT-1 to the merchant exporter M/s. Vijayraj Quarry Works, Ahmedabad who in turn has exported the same as detailed below:

S.no.	ARE-1 No.	CT-1 No./ date	C.Ex.invoice no./ Date	Shipping bill no./Date
1	006/2016-17	003/2016-17/ 07.09.2016	086 dt.06.09.2016	9978789 dt.10.09.2016
2	007/2016-17	004/2016-17/ 07.09.2016	087 dt.06.09.2016	9978779 dt.10.09.2016
3	008/2016-17	005/2016-17/ 07.09.2016	088 dt.06.09.2016	9978786 dt.10.09.2016
4	009/2016-17	006/2016-17/ 12.09.2016	092 dt.09.09.2016	1040216 dt.14.09.2016
5	010/2016-17	007/2016-17/ 12.09.2016	094 dt.10.09.2016	1040209 dt.14.09.2016

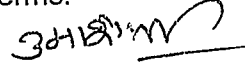
From the above, it is clear that C.Ex. invoices have been prepared well before the issue of said CT-1s by the concerned authority as evident from the said ARE-1s. The SCN have been issued for clearance of goods without payment of duty. On being asked, it is contended by the appellant that this being typographical mistake, has also been informed to the CT-1 issuing authority. The goods cleared by the appellant to the merchant exporter against said CT-1s have been exported by the merchant exporter which is not in dispute. The only disputed fact is clearance of goods and issue of invoices by the appellant prior to issue of said CT-1s by the concerned authority. The difference between the date and time of clearance of subject goods and that of date of issue of said CT-1s is very nominal i.e only 1 to 3 days. I find that since the goods cleared against said CT-1s have been exported by the merchant exporter as evident from the said



shipping bills, said lapse may be considered as procedural lapse and needs to be condoned as held by the apex court in series of case laws. As such, no demand is sustainable and so the interest and penalty imposed vide impugned order.

6. In view of the above discussion and findings, I allow the appeal filed by the appellant with consequential relief, if any, permissible under the law and set-aside the impugned order.

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



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:



(B.A. Patel)
Superintendent(Appeals),
Central Tax, Ahmedabad.

BY SPEED POST TO:

M/s. Karnavati Engineers,
Plot No. 8, Road No.1, GIDC, Kathwada,
Ahmedabad.

Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Principal Commissioner, Central Tax, Ahmedabad-South (RRA Sec.).
- (3) The Asstt. Commissioner, Central Tax Division-IV(Narol), Ahmedabad-South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad-South.
(for uploading the OIA on website)
- (5) Guard file
- (6) P.A. file.

