



- आयुक्तालय (अपील-1) 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(32)/86/Ahd-I/2016-17 / 3053-57
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-014-2017-18
दिनांक 27.06.2017 जारी करने की तारीख Date of Issue 12/7/17

श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asstt. Commissioner, Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/15/AC/2016-17 दिनांक: 07/09/2016, से सृजित

Arising out of Order-in-Original No. MP/15/AC/2016-17 दिनांक: 07/09/2016 issued by Asstt.
Commissioner, Div-III Central Excise, Ahmedabad-I

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

M/s Bodal Chemicals Ltd.,
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति 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 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।

... 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 हैं।

(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 विल्ट अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल 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 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।

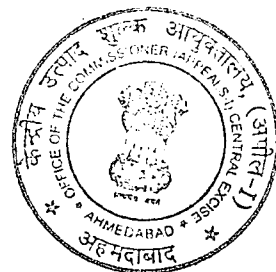
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Bodal Chemicals Limited, Unit-IV, Plot No. 252, 253, C-1/254, Phase-II, GIDC, Vatwa, Ahmedabad [for short - 'appellant'] has filed this appeal against OIO No. MP/15/AC/2016-17-Ref(ST) dated 7.9.2016. passed by the Assistant Commissioner, Central Excise, Division III, Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

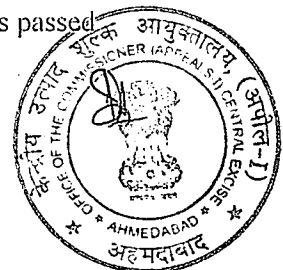
2. Briefly stated, the facts are that the appellant filed a refund claim of Rs. 66,033/- under notification No. 41/2012-ST dated 29.6.2012 read with Section 11B of the Central Excise Act, 1944, in respect of service tax paid on services used for export of goods during the period from 5.5.2015 to 1.6.2015(LEO date). The services involved were Terminal Handling Services, Port Services, Commission Sales and Transport of Goods by Rail Services. The adjudicating authority consequent to scrutiny of the refund issued a show cause notice dated 11.6.2016, *inter alia*, proposing rejection of the refund on the grounds that [a] the services on which refund was sought were used by the appellant upto the place of removal and [b] in respect of refund of Rs. 20.963/-, the appellant had raised single bill/invoice for services rendered in respect of goods exported through various shipping bill and therefore it was not possible to check the fulfilment of the provisions of paragraph 1(c) of the notification, *ibid*.

3. Vide the aforementioned impugned OIO, the adjudicating authority sanctioned refund of Rs. 58,332/- and rejected the refund of Rs. 7701/- .

4. It is against this rejection of refund vide the impugned OIO that the appellant, feeling aggrieved, has filed this appeal on the grounds that:

- (a) the condition mentioned in para c of the notification, *ibid*, is procedural condition and therefore, it was not open for the adjudicating authority to have rejected the amount claimed based on procedural infraction;
- (b) the adjudicating authority has not spelt out as to how refund of Rs. 12,025/- is not admissible and only Rs. 4,324/- is admissible;
- (c) the amount admissible as per para 2 is more than what has been claimed by the appellant as per para 3, hence, there should not be any reason for the department to reject the claim.

5. Personal hearing in respect of the appeal was held on 21.4.2017, wherein Shri N.K.Tiwari, Consultant appeared on behalf of the appellant and reiterated the grounds of appeal. Shri P.R.Gupta, Assistant Commissioner(in-situ) appeared on behalf of Revenue. During the course of personal hearing it was agreed upon that the invoices would be submitted to the Assistant Commissioner who would send it to the Appeals section. However, till date nothing has been heard in the matter. Since considerable time has passed in the matter, I take up the matter for order.



6. I have gone through the facts of the case, the ground of appeal and the oral submissions made by the Consultant. The primary issue to be decided is whether the appellant is eligible for refund of Rs. 7701/- which stands rejected vide the impugned OIO dated 7.9.2016.\

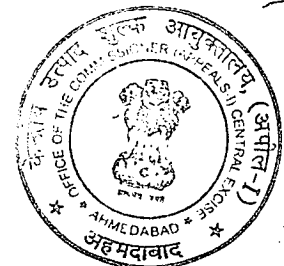
7. As is already stated, the show cause notice proposed rejection of refund on two grounds [refer para 2 supra]. In respect of the first ground, I find that the adjudicating authority has, having relied on notification no. 1/2016-ST dated 3.2.2016 and the retrospective amendment made vide Section 160 of the Finance Act, 2016, read with the tenth schedule, rejected the first charge made in the show cause notice. The impact of the aforementioned retrospective amendment is that 'specified services' would now mean taxable services that have been used beyond the factory gate or any other premises or place of production. The disputes based on the contention that every service upto the port [which in the case of manufacturer-exporter was the 'place of removal'] would not be a 'specified services' and therefore would not be eligible for refund under Not. No. 41/2015-ST dated 29.6.2012, stands resolved. Now, the effect of the aforementioned retrospective amendment is that any taxable service used beyond the factory gate or place or premises of production of manufacturing, etc. would be 'specified services' as per notification supra, and would thus be eligible for refund, provided other conditions of the notification are met.

8. The second charge in the show cause notice revolves around condition (c) of the Notification No. 41/2012-ST dated 29.6.2012, which states as follows :

(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;

In plain language what it means is that the rebate if claimed under para 3 [which in this instance is the case], will be eligible only in case the rebate is more than 20% of the difference between the amount of rebate under the procedure specified under para 2 and para 3. Rebate under Para 2 is to be claimed on the basis of rates specified in the Schedule of rates annexed to the notification.

9. On going through column no. 8 of the table A of show cause notice dated 11.5.2016, it is observed that in respect of 15 shipping bills, the difference between rebate under para 2 and the rebate under para 3 is more than 20% of the rebate under para 2. However, the charge against the appellant on this count is that the appellant had raised single bill/invoice for services rendered in respect of goods exported through various shipping bill and therefore it was not possible to check the fulfilment of the provisions of paragraph 1(c) of the notification, *ibid.* It was specifically for this reason that I had asked

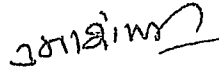


the appellant to submit the documents/invoices to the Assistant Commissioner, who in turn would forward it to the department. However, I find that till date the same has not been submitted.

10. I find that the ends of justice would be served if the appellant is directed to submit the documents/invoices, etc. to the department within 30 days from the receipt of this order to the adjudicating authority who will pass a speaking order after examining the documents/invoices, etc. after following the principles of natural justice. This is in keeping with the principle that it is the goods that are to be exported and not the taxes.


11. In view of the foregoing, the appeal is partly allowed and the matter is remanded back to the adjudicating authority as far as rejection of refund of Rs. 7701/- is concerned.

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


(उमा शंकर)
आयुक्त (अपील्स - I)

Date 27.06.2017

Attested


(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.

To,

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

Copy to:-

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

