

 सत्यमेव जयते	केन्द्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केन्द्रीय कर शुल्क भवन		
7 th Floor, Central Excise Building,		
Near Polytechnic,		
सातवीं मंजिल, पॉलिटेक्निक के पास,		
आम्बावाडी, अहमदाबाद-380015		
☎ 079-26305065		टैलेफैक्स 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/36/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

16079-83

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-141-2017-18
दिनांक Date : 20.10.2017 जारी करने की तारीख Date of Issue 17/11/2017

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

ग Assistant Commissioner Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/227/AC/2017-18 Reb दिनांक: 7/4/2017, से सृजित

Arising out of Order-in-Original No. MP/227/AC/2017-18 Reb दिनांक: 7/4/2017 issued by
Assistant Commissioner Commissioner, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Orjet intermediates pvt ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए राक्षम 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 :

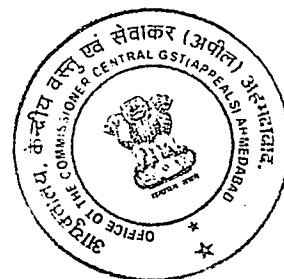
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के
दौरान हुई हो।

(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 हैं 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 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.

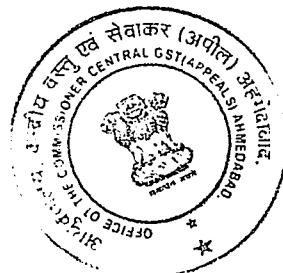
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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, 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 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 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

M/s. Orjet Intermediates Pvt. Ltd., Plot No.C-1, B-130, Phase-II, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred to as "the appellants"), has filed the present appeal against the Order-in-Original No.MP/227/AC/2017-18 Reb. Dated 07.04.2017 (hereinafter referred to as 'impugned orders') passed by the Asst.Commissioner, Div-III, Central Excise Bhavan,Ambawadi, Ahmedabad-1. (hereinafter referred to as 'adjudicating authority').

2. The facts of the case are that the said appellants had filed a rebate claim on 15.12.2016. Certain documents were not filled along with the claim therefore appellant was issued a Query Memo bearing F.No. Ch-32/18-4876/16-17-Reb, dated 23.12.2016 in this regard and it was requested to submit the aforesaid documents. The appellants replied vide letter dated 12.01.2017 whereby they clarified that they have lost Original and Duplicate Copies of ARE 1 and EP Copy of the Shipping Bill in their factory office; that they have filed a complaint in the Police Station and enclosed the certificate of losing the documents received from Police Inspector, GIDC Vatva Police Station, Ahmedabad. A Show Cause Notice F.No. Ch-32/18-4876/16-17-Reb, dated 07.02.2017 was issued to them for rejection of rebate claim in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004 and Section 11B of the Central Excise Act, 1944, on the grounds of time bar as the documents were submitted on 31.03.2017 i.e. after one year from the date of export. The said SCN was adjudicated vide OIO No.MP/227/AC/2017-18 Reb. Dated 07.04.2017. The Adjudicating authority rejected the Rebate Claim for the reason cited above.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that order passed by the adjudicating authority is "Per-Se Arbitrary". The Assistant Commissioner while passing the impugned order has not considered any submission made by the appellants and has not considered the fact that the appellant has already submitted the claim on 15.12.20216 and various queries which were raised on the claim were satisfied by the appellant and the authority did not considered the facts that the claim was filed along with the police complaint for loss of original and duplicate copies ARE-I and EP copy of Shipping Bill. Remaining all the documents was submitted including the Bank Realization Certificate wherein the subject shipping Bill No. is mentioned, which is the concluding evidence of Export. Exporter copy of Shipping Bill was also submitted at the time of filling the claim on 15.12.2016.



4. While rejecting the claim as time barred the date of submission of Original and Duplicate Copies of ARE-I and EP copy of Shipping bill which were submitted on 31.03.2017 was considered as date of filing the claim. The adjudicating authority has not consider the fact that initially the rebate claim was filed on 15.12.2016 and after solving various query the documents were submitted on 31.03.2017, The appellant further added that since the rebate claim was not sanctioned within three months of the submitted therefore they are entitle for the interest on the same. They have cited various judgments in their favour.

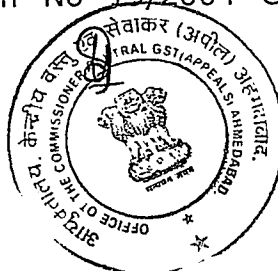
1. *Motherson Sumi Systems Ltd. reported in 2011 (22) STR 496 (Tri.Mum),*
2. *Fame Care Ltd. reported in 2014 (311) ELT 871 (G.O.I)*
3. *Reliance Communication Ltd. reported in 2008 (11) STR 258 (Tri.Mum),*
4. *Dagger Forst Tools Ltd. Reported in 2011 (271) ELT 471(G.O.I.),*
5. *Shasun Pharmaceuticals Ltd. reported in 2013 (291) ELT 189 (Mad.),*
6. *Duraline India Pvt.Ltd. reported in 2009 (237) ELT 689 (Tri.Mum),*
7. *Arya Exports and Industries reported in 2005 (192) ELT 89 (Del.)*

Appellants also placed reliance on the Order-In-Appeal No. AHM-EXCUS-002-APP-097-16-17 dated 3.3.2017 issued by this authority, in acse of M/s. Meghmani Organics Ltd. Wherein date of filing rebate originally was held to be date of filing, not date of re-submission of the claim once returned in terms of para 2.4 of Chapter-9 of the CBEC Manual of Supplementary instructions.

5. Personal hearing in the case was granted on 12.10.2017 which was attended by the representative of the appellant, Shri Shaktisinh Excise officer, he reiterated the written submission and grounds of appeal.

6. I have carefully gone through the facts of the case on records, grounds of appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

7. The appellant has filed the present appeal on the ground that the adjudicating authority rejected the rebate claim filed by the appellant on the ground that they have filed the rebate claim on 31.03.2017 i.e after one year. The adjudicating authority was in a view that rebate claim was rejected under the provision of Notification No 19/2004 CE(NT) dated



06.09.2004 and CBEC central Excise Manual of Supplementary Instruction 2005 read with Section 11 B of the Central Excise Act, 1944.

8. I find that Appellant had filed a rebate claim on 15.12.2016. Further query raised by the department on 23.12.2016 was complied on 12.01.2017. The documents were submitted on 31.03.2017. However department on 07.04.2017, rejected the claim in terms of Notification No 19/2004 CE(NT) dated 06.09.2004 and CBEC central Excise Manual of Supplementary Instruction 2005 read with Section 11 B of the Central Excise Act, 1944. In pursuance of Para 2.4 of Chapter 9 of the CBEC Central Excise Manual. Therefore the issue to be decided is:-

(1) What should be the relevant date and whether the rebate claim was filed within time limit?

To, decide the issue I hereby reproduce the relevant para of Section 11B Central Excise Act, 1944.

Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

"(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

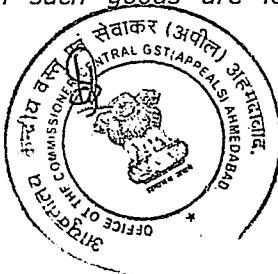
Explanation. - For the purposes of this section, -

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India"



8.1 Therefore it is clear that one year will be counted from the day on which the goods are loaded in the ship. In the present case the export date is 28.12.2015 and the rebate claim was filed on 15.12.2016. It is clear that the claim was filed within time limit. The queries were raised for the want of documents. The documents which were initially submitted proves payment of duty, export of goods and realization of sale proceeds, therefore the documents which were not submitted were a procedural only. It is settle law that if the claim is filed and the documents were submitted later on then the relevant date will be counted on which they initially file the rebate claim. I therefore allow the appeal with consequential relief.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeals filed by the appellant stand disposed off in above terms.

(Handwritten Signature)

(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL TAX AHMEDABAD.

ATTESTED

(Handwritten Signature)

(K.H.Singhal)
Superintendent (Appeal)
Central Tax, Ahmedabad.

To
M/s. Orjet Intermediates Pvt. Ltd.,
Plot No.C-1, B-130, Phase-II,
GIDC, Vatva, Ahmedabad-382445.

Copy To:-

1. The Chief Commissioner, Central TAX, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Tax Ahmedabad-South, Ahmedabad.
3. The Dy./Assistant Commissioner, Division-III, Central Tax Ahmedabad-South. Ahmedabad.
4. The Assistant Commissioner(Systems), Central Tax Ahmedabad-South Ahmedabad
5. Guard File.
6. P.A. File.

