

- आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क \*  
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटैकनिक के पास, आमबाबाडि,  
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(62)/83/Ahd-I/2016-17 / 3048-52  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-015-2017-18  
दिनांक 28.06.2017 जारी करने की तारीख Date of Issue 12/7/17

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

ग Deputy Commissioner, Div-IV केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
MP-01/DC/Div-IV/2015-16 दिनांक: 14/05/2015, से सृजित

Arising out of Order-in-Original No. MP-01/DC/Div-IV/2015-16 दिनांक: 14/05/2015 issued by  
Deputy Commissioner, Div-IV Central Excise, Ahmedabad-I

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

M/S Zedex clothing pvt.ltd  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिति 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, 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 :

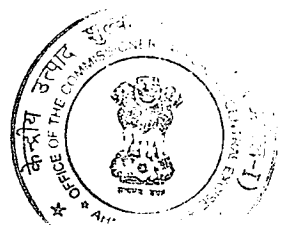
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के  
दौरान हुई हो।

(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 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.

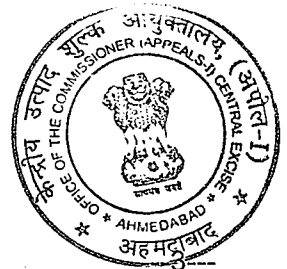
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.



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 यथारिथिति 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 यथारिथिति 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।

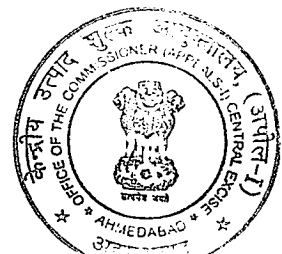
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Zedex Clothing Private Limited, 132/2, Balaji Estate, Isanpur Narol Highway, Behind Monti Hotel, Isanpur, Ahmedabad, Gujarat- 382 443. [for short - 'appellant'] has filed this appeal against OIO No. MP/01/DC/Div-IV/2015-16 dated 14.5.2015, passed by the Deputy Commissioner, Central Excise, Division IV, Ahmedabad [for short - 'adjudicating authority'].

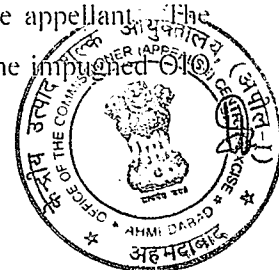
2. Briefly, the facts are that a show cause notice dated 23.12.2014, was issued to the appellant alleging *inter-alia*, that they had wrongly availed CENVAT credit of Rs. 3,82,028/- in respect of service tax paid to commission agent for sale of finished goods cleared to their customers during the period from March 2011 to April 2013. The adjudicating authority vide his impugned OIO, relying on the case of M/s. Cadila Health Care Limited [2013-TIOL-12-HC-AHM-ST] held that the appellant is not eligible for CENVAT credit of service tax paid on commission paid to sales agents. He therefore, disallowed the CENVAT credit, ordered recovery of interest and further imposed penalty on the appellant.

3. It is against this OIO, that the appellant feeling aggrieved, has filed this appeal on the grounds that:

- (a) the impugned order has been passed without fully appreciating the fact that the inputs service so used was in relation to the manufacture of final product;
- (b) the issue had reached its finality when the Government issued notification No. 2/2016-CE(NT) dated 3.2.2016, wherein the definition of input services was amended by inserting an explanation, which stated that sales promotion includes service by way of sale of dutiable goods, on commission basis;
- (c) the Hon'ble CESTAT, vide its order in the case of M/s. Essar Steel India Limited [2016-TIOL-520 CESTAT-AHM], held that the aforementioned amendment was retrospective.

3.1 The appellant has filed an application for condonation of delay on the grounds that they had received the impugned OIO dated 14.5.2015 only on 8.9.2016; that the appellant was required to file appeal within three months of receipt of impugned OIO; that the name of the applicant is not available on the postal receipt which is provided to the applicant as proof of receipt of OIO by the department; that the signature on the postal receipt, is not of the director/account clerk/excise clerk of the appellant; that the signature on the postal acknowledgement is not of any of the applicant's employees or even the chowkidar of the factory.

4. Personal hearing in respect of the appeal was held on 20.6.2017. Shri M.K.Kothari and Shri G.R.Shah, Consultants, appeared on behalf of the appellant. The consultants, reiterated the grounds of appeal and further submitted that the impugned OIO was not received by them.



5. I have gone through the facts of the case, the grounds of appeal and the oral submissions made by the consultants. The primary issue to be decided in this appeal is whether the appellant is eligible for CENVAT credit in respect of service tax paid on commission paid to commission agent for sale of finished goods in respect of the period from March 2011 to April 2013 or otherwise.

6. However, before moving into the merits of the matter, I find that the appeal has been filed after almost 15 months after the date of communication of the impugned OIO. The appellant's averment in this regard is that he had not received the impugned OIO and that it was only received on 8.9.2016. Since, there was an abnormal gap from the date of issue of OIO and the date of receipt of OIO, as claimed by the appellant, Assistant Commissioner, Central Excise, Division IV, Ahmedabad-I was asked vide letter dated 10.11.2016, to confirm the date of issue and date of communication along with evidence. Assistant Commissioner, Central Excise, Division IV, vice his letter dated 1.2.2017, submitted the following reply:[relevant extracts]

" In this connection, it is to submit that OIO No., MP/01-DC/Div IV/2015-16 dated 14.5.2015 issued by the Deputy Commissioner, C.Ex. Div-IV, Ahmedabad-I was dispatched to the concerned assessee by this office through Registered Post on 19.5.2015 and same was delivered at their premises on 25.5.2015 as per postal acknowledgement received. Copy of postal acknowledgement is enclosed for ready reference please.

This fact was already reported to the assessee in response to their letter dated 13.6.2016 by JRO vide letter dated 11.8.2016."

I have gone through the postal acknowledgement, enclosed with the aforementioned letter which clearly depicts the name of the appellant and further shows the receipt of the impugned OIO on 25.5.2015. The address also appears to be correct. The contention, therefore, of the appellant that the impugned OIO may have been delivered at some other place and that they were not able to recognise the signature of the person, is not a tenable argument.

7. I find that the aforementioned appeal have been filed beyond the stipulated 60 days time limit specified under section 35(1) of the Central Excise Act, 1944. Relevant extracts of Section 35 of Central Excise Act, 1944, is reproduced below for ease of reference:

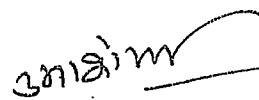
**SECTION 35. Appeals to [Commissioner (Appeals)].** — (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the [Commissioner (Appeals)]] [within sixty days] from the date of the communication to him of such decision or order :

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]



8. I find that the aforementioned appeal has been filed beyond the prescribed time limit of sixty days. The delay in filing said appeals is more than thirty days after the prescribed time limit of sixty days. As such I am not empowered to condone the delay in this appeal, as it was filed after 90 days from the date of communication of the impugned order. In view of the foregoing, I reject the appeal on limitation as provided under Section 35 of the Central Excise Act, 1944.

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




(उमा शंकर)

आयुक्त (अपील्स - I)

Date 28/06/2017

Attested

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

By RPAD.

To,  
M/s. Zedex Clothing Private Limited,  
132/2, Balaji Estate,  
Isanpur Narol Highway, Behind Monti Hotel,  
Isanpur, Ahmedabad,  
Gujarat- 382 443

Copy to:-

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

