

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/37/Ahd-I/2017-18 /10713 to 10117  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-165-2017-18  
दिनांक Date : 20-11-2017 जारी करने की तारीख Date of Issue 12-12-17

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

ग Deputy Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 02/Div-I/O&A/16-17  
दिनांक: 31/3/2017, से सृजित

Arising out of Order-in-Original No. 02/Div-I/O&A/16-17 दिनांक: 31/3/2017 issued by Deputy Commissioner, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Shri Suresh Bhai C. Mistry**  
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।

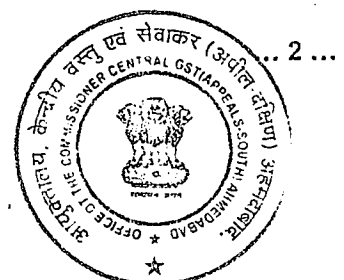
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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।



(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 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.





**ORDER IN APPEAL**

This is an appeal filed by Shri Shaileshbhai Devjibhai Patel (herein after referred to as the appellant), a partner in M/s Akshar Steel Industries (M/s ASI for brevity) against the OIO No. 02/Div-1/O&A/16-17 dtd. 31.03.2017 (herein after referred to as the impugned order) passed by the jurisdictional Dy. Commissioner (herein after referred to as the adjudicating authority).

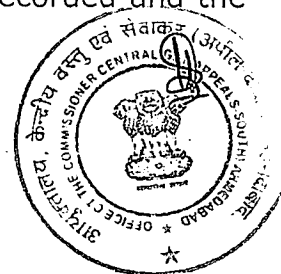
2. The brief facts of the case are that the appellant was a partner in the partnership firm M/s ASI which was not registered with central excise but was engaged in manufacture of excisable goods. It was also found that they had a frontline pseudo-manufacturing unit in the name of M/s Smart Cotton (M/s SC for brevity). M/s SC did not have a manufacturing premises and goods manufactured in the factory of M/s ASI were cleared under the invoices of M/s SC. Accordingly a search was conducted at the premises of both the units and in a statement, the appellant confessed that there was no physical existence of M/s SC and it got goods manufactured from M/s ASI and the central excise duty was evaded. He also made part payment towards duty liability. Consequently statements of their buyers were also recorded and a show cause notice demanding central excise duty of Rs. 46,27,192/- alongwith interest and proposed imposition of penalty. The adjudicating authority, after considering evidences and records, among other orders for notices and co-noticees, imposed a penalty of Rs. 1,00,000/- on the appellant.

3. Being aggrieved by the imposition of penalty, the appellant has filed this appeal on the following grounds:

- (a) That the adjudicating authority has not given any findings on the judgements given by him;
- (b) That the statement of the appellant was not recorded at material time and in the show cause notice, there is no allegation that the appellant has actively involved in disputed case and the day to day activity of M/s ASI and M/s SC;
- (c) That when main appellant's case is settled before the Settlement Commission, no penalty is imposable on co-noticee and that when partnership firm is penalized, no penalty is imposable on partner;
- (d) The appellants sought support from the following case laws:

Commissioner of Customs (Export), Mumbai vs. Mahendrakumar Darewala – 2016 (340) ELT-727 (Tri-Mum.) and Kinship Agency Pvt. Ltd. Vs. Commissioner of Customs, Nhava Sheva regarding when main appellant's case is settled before the Settlement Commission, no penalty is imposable on co-noticee and a case, Pravin N Shah vs. CESTAT – 2014 (305) ELT-480 (Guj) regarding when partnership firm is penalized, no penalty is imposable on partner.

4. The personal hearing in the case was held on 11.10.2017 in which Shri Naimesh K Oza, Adv. appeared on behalf of the appellants. He reiterated the grounds of appeal and pointed out that no statement was recorded and the show cause notice does not list that.



5. I have carefully perused the documents pertaining to the case and submitted by the appellant alongwith the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

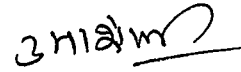
6. I find that the issue to be decided in the instant case is whether the penalty has been rightly imposed on the appellant in view of the circumstances of the case.

7. From the findings given in the impugned order in para no. 12, I find that M/s ASI filed an application before the Settlement Commission - Mumbai Bench on 25.04.2012 and the Settlement Commission, vide its order No. 45/Final Order/CEX/NGG/2013 dated 30.04.2013 settled the case as per details in its order dtd. 30.04.2013. I find force in the argument given by the appellant that once the case of main appellant has been settled, no penalty action can be taken against the co-noticees. I have perused the cases cited by the appellant in his favour i.e. Commissioner of Customs (Export), Mumbai vs. Mahendrakumar Darewala - 2016 (340) ELT-727 (Tri-Mum.) and Kinship Agency Pvt. Ltd. Vs. Commissioner of Customs, Nhava Sheva regarding when main appellant's case is settled before the Settlement Commission, no penalty is imposable on co-noticee. I also hold the same that no penalty is imposable once the main appellant's case is settled.

8. In view of the above findings, the appeal is allowed.

9. The appeal is disposed off accordingly with consequent relief.

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



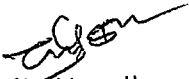
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

अहमदाबाद.

Date: 20.11.2017

ATTESTED



(D. Upadhyaya)  
Superintendent (Appeals),  
Central GST, Ahmedabad.

**BY R.P.A.D.**

Shri Sureshbhai C. Mistry,  
201, Spectrum Commercial Center,  
Opp. Relief Cinema,  
Ahmedabad

Copy To:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (North).
- (3) The Asstt./Dy. Commissioner, CGST, Div-II (Naroda Road), Ahmedabad (North)
- (4) The Asstt./Dy. Commissioner, Systems, CGST, Ahmedabad (North)
- (5) Guard File.
- (6) P.A. File.



