



• 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(85)/87/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

3037-42

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-018-2017-18
दिनांक 07.07.2017 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. Comm. Commissioner, Div-V केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/648/Reb/2016-17 दिनांक: 27/09/2016, से सृजित

Arising out of Order-in-Original No. MP/648/Reb/2016-17 दिनांक: 27/09/2016 issued by Asstt.
Comm. Commissioner, Div-V Central Excise, Ahmedabad-I

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

M/s Aquatherm engineering consultants Inc.
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) 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, चौधी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली
: 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Gcyt. 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।



(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 मामले 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 चेनिर्दिष्ट 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.

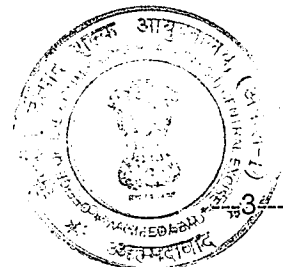
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपील 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, 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 लेखा 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।

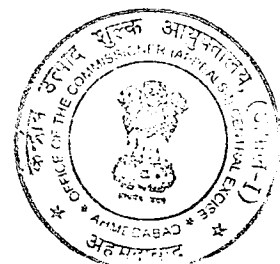
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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 appeal has been filed by M/s Aquatherm Engineering Consultants Inc., A-402, Ansal Chambers-1, 3, Bhikaji Cama Place, New Delhi (hereinafter referred to as "the appellant"] against Order-in-Original No.MP/648/Reb/2016 dated 27.09.2016 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, Central Excise, Division-V, Ahmedabad-1 [hereinafter referred to the "adjudicating authority"].

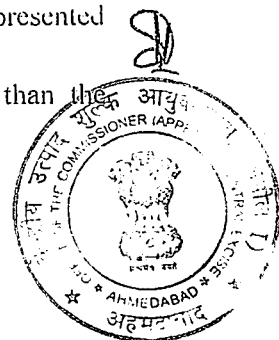
2. The facts of the case is that the appellant had filed a refund claim of Rs.17,50,000/- on 30.03.2016. On scrutiny of the claim, it was noticed that the appellant had exported the goods from their jurisdiction by purchasing the export goods from two different factory of M/s Transformers & Rectifiers (I) Ltd located at Ahmedabad; that they have not followed the procedures prescribed under notification No.19/2004- CE(NT) dated 06.09.2004 and not furnished Central Excise endorsed copy of triplicate copy of ARE-1 and other relevant documents. Accordingly, a show cause notice dated 25.07.2016 was issued to them for rejecting the rebate claim which was later on confirmed by the adjudicating authority, vide the impugned order.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that the exported goods was purchased by them from M/s Pushpit Steels Pvt Ltd, a registered dealer vide invoice dated 31.03.2015; that the said dealer has purchased the goods from the manufacturer viz M/s Transformers & Rectifiers (I) Ltd under invoice dated 30.03.2015. Both the manufacturer and the dealer have issued NOC in favour of the appellant for claiming rebate of excise duty paid; that rebate is allowed for export of goods from a place other than a factory where it is correlate the goods and their duty paid character and in the instant case the goods and duty paid character stand verified by customs. They relied on various case laws in support of eligibility of rebate claim similar to their case.

5. A personal hearing in the matter was held on 17.05.2017. Shri Kapil Gautam, Advocate appeared for the same on behalf of the appellant and reiterated the grounds of appeal. The issue to be decided in the matter is regarding eligibility of rebate on duty paid goods which was exported other than the place of factory or warehouse.

6. I have carefully gone through the submissions made in the appeal memorandum and other relevant records. I observe that while rejecting the said rebate claim, the adjudicating authority has taken following observation mainly that:

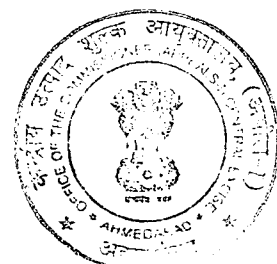
- The appellant had not followed the procedures and conditions prescribed under Notification No.19/2004-CE (NT) dated 06.09.2004 that exports goods have been not sealed at the place of dispatch by the concerned Govt. officer; not presented ARE-1s to the jurisdictional central excise authority etc.
- The FOB value declared in the shipping bill has been much more than the assessable value mentioned in the ARE-1.



- As per Range Superintendent, New Delhi's report, the appellant is a registered dealer and not followed any procedures prescribed under the said notification either with the central excise office or with the Maritime Commissioner.
- The appellant had exported the goods as a trader.

On the other hand, the appellant has contended that they have purchased goods from a registered dealer and exported after following procedures. Further they relied on case laws viz. [i] VST Precision Components Ltd-2003 (157) ELT 493-Tri.Bang]; [ii]Mcnally Bharat Engineering Co. Ltd -2006 (194) ELT 318 -Tri. Bang]; [iii] Union Carbide (I) Ltd-1987 (31) elt 262-Tri. Del]; [iv] Commissioner of Central Excise, Bhopal [2006 (205) ELT 1093-GOI].

7. I observe that the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of Central Excise Rules, 2002 states that rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985, exported to any country, other than Nepal and Bhutan, shall be granted, subject to the conditions, limitations and procedures specified therein. One of the main condition therein is that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order. Further, the said notification also provides in detail the procedure of sealing/verification of the goods/duty paying documents by the Central Excise authority having jurisdiction over the factory of production or manufacture or warehouse. In the instant case, I observe that the export goods was manufactured from two different factory of M/s Transformers & Rectifiers (I) Ltd located at Ahmedabad, who in turn cleared the said goods to a dealer viz. M/s Pushit Steels Pvt Ltd, Puducherry and from the said dealer, the goods was purchased by the appellant and exported under the coverage of ARE-1 and other documents. The CBEC Manual (chapter 8, para 1.1 (ii)) states that "*in certain case, the Board may issue instruction/procedures for exporting the duty paid goods from a place other than the factory or the ware house. In this regard, a general permission has been granted in respect of goods where it is possible to correlate goods and their duty paid character*". The said permission (circular No.952/13/2011-Cx dated 08-09-2011) allows exporter other than those procuring the goods directly from the factory are allowed to export the goods sealed at the place of dispatch by Central Excise Officer. Further, para 5.2 of the said chapter further stipulates export from place other than factory or warehouse (including diversion of duty paid goods for export). The said para states that where goods are not exported directly from the factory of manufacture or warehouse, the distribution of ARE-1 will be same as sealing of export in place of dispatch except that the triplicate copy of application shall be sent by the Superintendent having jurisdiction of over the factory of manufacture or warehouse who shall, after verification forward the triplicate copy in the matter specified. Undisputed facts on both side revealed that the appellant has not followed any procedures as laid down in the said notification.



8. The adjudicating authority, in para 3 of the impugned order has cited a verification report of jurisdictional Superintendent of Central Excise, AR-29, Division-VI, Delhi-II Commissionerate which is not disputed by the appellant. As per the said report, the appellant is a registered dealer with Central Excise and they have not followed any procedures as per CBEC Manual or Notification No.19/2004-NT and not submitted any ARE-1s relating to export of goods. In the circumstances, I observe that the appellant has failed to comply in total with the procedures as laid down in the CBEC Manual and Notification No.19/2004-NT.

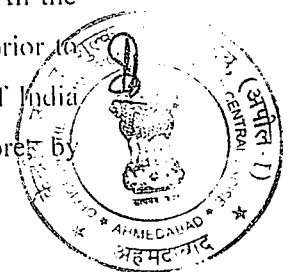
9. I observe that the Hon'ble High Court of Gujarat in case of M/s Intas Pharma Ltd [2016 (332) ELT 680] on similar issue has held that "Export rebate claim - Notification No. 19/2004-C.E. (N.T.) prescribing procedure for sealing of goods and examination at place of dispatch, not followed - Basic requirements of notification ibid were not satisfied - Hence, its benefit was not available". The Hon'ble Court in para 8 of the decision has further held that:

"8. It is by now well settled that in a taxing statute there is no scope of any intendment and the same has to be construed in terms of the language employed in the statute and that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the rules and the notification. As noticed earlier, the procedure laid in the notification dated 6-9-2004 provides for sealing of the goods and examination at the place of the despatch. Undisputedly, in the case of the present petitioner, no such procedure has been followed. Moreover, the notification defines duty for the purpose of the notification to mean the excise duty collected under the enactments stated therein. Undisputedly, the duties paid by the petitioner in relation to the goods in question do not fall within the enactments stipulated in the notification. Clearly therefore, the petitioner has failed to satisfy the basic requirements for availing of the benefits under the notification."

Further, I observe that while deciding the issue, the adjudicating has relied on decision of Government of India in case of M/s Manoj Automative [2012 (275) ELT 496], wherein it has been held that :

"8. As per laid down procedure in case goods are cleared for export from a place other than factory or warehouse then the goods will be cleared for export under Central Excise supervision and the triplicate copy of ARE-1 will be verified for payment of duty by the Central Excise Range Supdt. in-charge of factory where goods are manufacture. No such procedure is followed in this case. There are no mark/No on the packages/goods to identify the exported goods in those goods which were cleared from factory. Applicant is claiming that all goods purchased from market are to be treated as duty paid in terms of C.B.E. & C. Circular No. 16/2009-Cus., dated 25-5-2009. Government notes that this circular also stipulates that rebate cannot be granted in case of export of goods purchased from market as the trader exporter does not have duty paying documents. This argument is not applicable for claiming rebate of duty on exported goods since the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 are not complied with. Since the duty paid character of exported goods is not proved in this case, the rebate of duty is not admissible under Rule 18 of Central Excise Rules, 2002. Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same".

10. The appellant has cited various case laws as mentioned at para 6 above. All the case laws of Hon'ble Tribunal and Government India, cited by the appellant is prior to above referred case laws of Hon'ble High Court of Gujarat and Government of India discussed at para above and, I bound to follow the latest decision. Therefore, by



following the said decision of Hon'ble High Court and Government of India referred at para 9 above and the procedures laid down in the notification No.19/2004-CE (NT) supra. I do not find any merit to interfere in the impugned order and uphold the same.

11. In view of above, the appeal filed by the appellant is rejected and stand disposed of accordingly.

उमाशंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 07/07/2017

Attested

Mohanan V.V
(Mohanan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad
BY R.P.A.D.

To,
M/s Aquatherm Engineering Consultants Inc.,
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Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-I.
3. The Additional Commissioner (Systems) Central Excise, Ahmedabad - I
4. The Additional Commissioner, Central Excise, Ahmedabad-I
5. The AC/DC, Central Excise, Division-V, Ahmedabad-I
- ✓ 6. Guard file
7. P. A

