

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065	टेलिफैक्स 079 - 26305136	

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(85)/107/Ahd-I/2017-18 / 10h23 to 10h28
 Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-191-2017-18
 दिनांक Date : 28-11-2017 जारी करने की तारीख Date of Issue 01-12-17

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

ग Assistant Commissioner, केंद्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं IV/204/Div-
 VI/Bond/Bossh/CGST/2017-18 दिनांक: 9/10/2017, से सृजित

Arising out of Order-in-Original No. IV/204/Div-VI/Bond/Bossh/CGST/2017-18 दिनांक: 9/10/2017
 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Bossh technology India Ltd
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, 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।



(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 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.

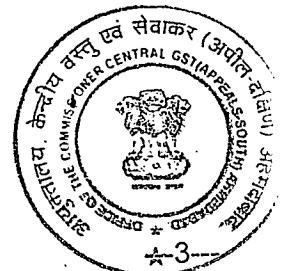
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल 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 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 Bossh Technology India Limited, U/L24, Fair Deal House, Near Swastik Cross Road, Opp Ladies hostel, Navarangpura- Ahmadabad (south) (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order issued from F.No.IV/204/Div-VI/Bond/Bossh/CGST/2017-18 dated 09.10.2017 (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioners, CGST, Division-VI (Vastrapur), Ahmedabad (South), Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, the appellant is registered with the Central Excise Department as manufacturer their registration no. AAACH9238CEM001, Now under GST regime registered no. is GSTIN/Temporary ID/UIN- 24AAACH9238C1ZV, The appellant is engaged in manufacturing of Led Television of various sizes. For the aforesaid activities the appellant has been procuring inputs in the nature of Led Panels, printed circuit board, and accessories to the printed circuit board like remote censor, cables/wires etc. speakers, body of television, backlight/diffuser/reflector and terminal plates etc. and using them for manufacture of Led Television set which are then sold by the appellant in the local market. Some of the inputs are procured from the local sources but as no manufacturer in India manufactures specialized items such as led panel, the said item is imported by the appellant from various foreign sellers. The present appeal pertains only to import of LED panels and declaration cum bond filled by the appellant in respect of import of such LED panels and not in respect of import/procurement of other parts/accessories. The appellant filed an application for import of Goods at concessional Rate of Duty Rules, 2017 on 22.09.2017 with the jurisdictional Assistant Commissioner, who in turn rejected the application assigning the reason that **"no new product emerges, as the TV was imported almost in ready condition except some superficial assembling by the applicant which could have also been done by the supplier of the goods."**

3. Being aggrieved with the impugned order the appellant has filed the present appeal on the ground that;

- i) Gross Violation of principle of natural justice,
- ii) That the authority has concluded against the appellant on the ground that the product imported by the appellant and the product claimed to be manufactured by them did not have distinct name, characteristic and/or use. To sustain the said finding, the authority has also concluded that the product imported by the appellant was nothing but a dismantled led television set and not merely parts of the led television sets.
- iii) The authority has further erred in not appreciating that the definition of the term "manufacture" in terms of the said Rules requires any processing which brings into existence a new product having a distinct name, characteristic and use. Though the activities carried out by them were extensive/elaborate and intricate processes and not mere assembling but even assuming that the appellant carried out mere superficial assembling, such process has brought into existence a new product i.e. Led Television set, having a distinct name characteristic and use and therefore the conclusion by the authority that no manufacturing process had been undertaken is not justified.
- iv) The appellant submits that the exemption notification merely mandated the importer/appellant to follow the procedure prescribed



under the rules and there was no stage of determination of eligibility of the exemption notification.

- v) The action of the authority even otherwise contrary to the stand of the department for the same scheme during the earlier period. The appellant have been availing the benefit of the said notification during the earlier imports as well and the claim to such benefits has been accepted by the department. The scheme of the Notification No.50/2017 dated 30.06.2017 has been verbatim to the earlier notifications and hence, there has been no change in stand by the department.

3.1 The appellant requested vide their letter dated 29th October, 2017 for early hearing for the reasons that they are involved in continuous import of led panels as there is no domestic manufacturer of the said product. Other importers/manufacturer are availing the benefit of concessional rate of duty, it would be serious prejudice to them which will lead to ultimate closure of business.

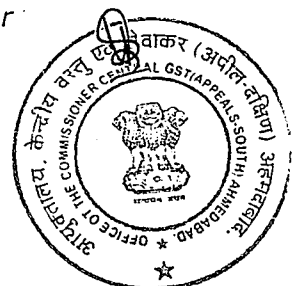
4. Considering their request, the personal hearing was granted on 21.11.2017. Personal hearing was also given to the divisional authority. Shri Rakesh Gupta, advocate appeared on behalf of appellant and superintendent, from division also appeared. Shri Rakesh Gupta reiterated the grounds of appeal, and superintendent reiterated the facts mentioned in the letter of the department.

4.1 I have carefully gone through the facts of the case on records, the appeal memorandum, grounds of appeal put forth by the appellant. Relevant notification, governing rules for Import of goods at concessional rate of duty, Looking to the facts of the case, I proceed to decide the case on merits.

First it is to be decided regarding maintainability of appeal as the order issued simply a decision by way of a letter, it is pertinent to refer **Section 35 in the Central Excise Act, 1944**, which reveals that;

35. Appeals to 1[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 2[Commissioner of Central Excise] may appeal to the 3[Commissioner of Central Excise (Appeals)] in the present issue it it is a decision communicated by way of a letter hence it is an appealable order; reference is invited to the case of Bhilwara Spinners Ltd. V/s. Commissioner of C.Ex. Jaipur-II reported at 2002 (147) ELT.528 (Tri.Del.). Also as the issue pertains to acceptance of Bond under Notification No.68/2017-Cus (N.T.) dated 30.06.2017 i.e. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and Notification No.50/2017-Customs dated 30.06.2017. Issuance of Circular No.25/2017-Customs dated 30th June, 2017, wherein the functions bestowed upon the Deputy Commissioner of Customs or, Assistant Commissioner of Customs having jurisdiction over the premises in new Rules, shall be continued to be performed by the officers of the jurisdictional Central Excise Commissionerates like before, hence the present appeal very well falls under Section 35 of the Central Excise Act, 1944.



5. The question to be addressed in the present appeal is that whether the appellant is entitled for benefit of Notification No.68/2017-Cus (N.T.) dated 30.06.2017 i.e. Customs (Import of Goods at Concessional Rate of Duty) Rules,2017 and Notification No.50/2017-Customs dated 30.06.2017. Now it is pertinent to discuss the provisions of aforesaid Rules and Notification which states as under;

Notification No. 50/2017 dated 30.06.2017 has been issued by the Central Government wherein at serial No. 514, import of Led Panels used for manufacture of Television has been extended the benefit of nil rate of the duties of Customs and IGST. The said exemption has been extended on a condition that the importer follows the procedure set out in Customs (Import of Goods at Concessional Rate of Duty) Rules 2017. Now in terms of Rule 5 of the said Rules, following the procedure has been prescribed.

(1) The importer who intends to avail the benefit of an exemption notification **shall provide information** -

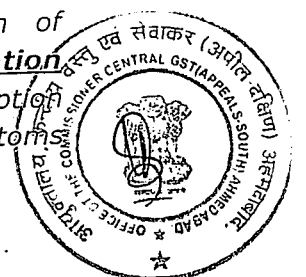
(a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding one year; and

(b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(2) The importer who intends to avail the benefit of an exemption notification **shall submit a continuity bond with such surety or security as deemed appropriate** by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation **shall allow the benefit of the exemption notification** to the **importer who intends to avail** the benefit of exemption notification. The Government has issued Circular No.25/2017-Customs



dated 30th June, 2017 wherein the functions bestowed upon the Deputy Commissioner of Customs or, Assistant Commissioner of Customs having jurisdiction over the premises in new Rules, shall be continued to be performed by the officers of the jurisdictional Central Excise Commissionerates like before.

5.1 The appellant is registered as manufacturer with the department and availing the benefit of Customs (Import of Goods at Concessional Rate of Duty for manufacture of excisable goods) Rules 1996, and Notification No.12/2016-Customs dated 01.03.2016. Till date no question regarding process carried out by them does not amount to manufacture had aroused/objected by the department, they were never denied such benefit. Now the Customs (Import of Goods at Concessional Rate of Duty for manufacture of excisable goods) Rules 1996, have been replaced by Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, Notification No.68/2017-Cus (N.T.) dated 30.06.2017. Last bond was accepted by the department on 2.9.2016 valid till 1.9.2017. It is surprising to note that though there is no change in present and erstwhile provisions and notification, the application of the appellant was rejected by assigning the reasons far from truth on assumptions and presumptions without verifying the facts by the jurisdictional authority. Under the above discussed facts and circumstances I hold that the application of the appellant for import of goods at concessional rate of duty, have been wrongly rejected.

6. In view of above discussed facts, I set-aside the letter of rejection dated 09.10.2017, passed by the Assistant Commissioner of Central GST Division-VI (Vastrapur) Ahmedabad (South). I allow the appeal filed by the appellant; the Jurisdictional authority is hereby directed to accept their application dated 22.09.2017.

7. The appeals filed by the appellant stand disposed off in above terms.

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

उमा शंकर
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

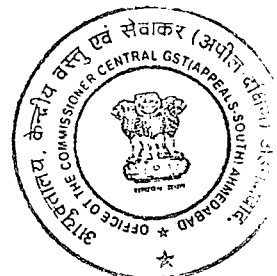
K.H. Singhal
(K.H.Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.
BY R.P.A.D.

To,
M/s Bossh Technology India Limited,
U/L24, Fair Deal House, Near Swastik Cross Road,
Opp Ladies hostel, Navarangpura- Ahmedabad

Copy To:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST South,, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst.Commissioner, Central Tax GST, Div-VI (Vastrapur), Ahmedabad South.
- 5) The Asst. Commissioner (System), GST South, Hq, Ahmedabad.
- 6) Guard File.

7 P.A.



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