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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(39)/74/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-210-2017-18
दिनांक 4.12.2017 जारी करने की तारीख Date of Issue 21-12-2017

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

ग Asst. Commissioner., Div-II केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं AC/07/Div.-II/2016-17 दिनांक: 29/7/2016, से सृजित

Arising out of Order-in-Original No. AC/07/Div.-II/2016-17 दिनांक: 29/7/2016 issued by Asst. Commissioner. Div-III Central Excise, Ahmedabad-I

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

M/s. Manish Trikamlal Raval
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, 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 प्रक्रिया 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 को 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 मैटल 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.



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 atleast 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 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 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

This appeal been filed by Shri Manish Trikamlal Raval, B-167, Anand Tenament, Canal Road, Opp. Swami Smruti Temple, Ghodasar, Ahmedabad [for short "appellant-1"] against OIO No. AC/07/Div II/2016-17 dated 29.7.2016 passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

2. The facts of the briefly stated are that the appellant was working as a Sales Executive of M/s Superpack (A division of Bajaj Steel Indu. Ltd, Sarkhej, Ahmedabad [for short "the supplier company"]. The Central Excise Preventive office has booked a case against M/s Shakti Woven Sacks, Ahmedabad [for short "said assessee"] and investigations thereof revealed that the said assessee had availed CENVAT credit on inputs based on invoices supplied by the supplier company, without receiving the inputs actually in the factory. Therefore, a show cause notice dated 25.8.2015 was issued to the said assessee for recovery of CENVAT credit wrongly availed with interest and imposition of penalty. The show cause notice also proposes for imposition of penalty on the appellant under Rule 26 of Central Excise Rules, 2002 [CER] as he was the person who looked after obtaining orders, supply of goods and payments and issued the excisable invoices/passed on the CENVAT credit without physical delivery of goods to the said assessee. Vide the impugned OIO dated 29.7.2016, the show cause notice was adjudicated, wherein the adjudicating authority ordered recovery of the CENVAT credit wrongly availed and utilized along with interest. He also imposed penalty on the said assessee and other co-noticee. Penalty of Rs.30,000/- was also imposed on the appellant under Rule 26 of CER. It is against this order that the present appeal is filed by appellant.

4. The grounds raised by the appellants are:

- (i) that he worked with the supplier company for 15 months only and he only done the work as directed by Shri S Sharma, General Manger; hence not done any activities liable for penal action;
- (ii) the invoices under dispute was not issued by the appellant but by the supplier company, hence penalty is required to be issued on the supplier company and not on the appellant;
- (iii) the investigation of the department relies upon the criminal complaint lodged by the supplier company against the appellant that the appellant had received money in cash against the sales proceeds and not deposited in the company accounts; that the criminal complaint has no connection with the investigation of the department; that since the such complaint against the appellant is baseless, no penalty is imposable on the appellant.



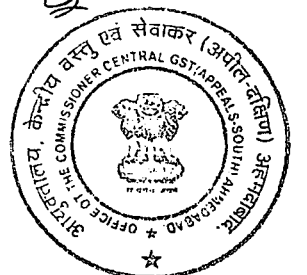
5. Personal hearings in the matter were granted on 19.04.2017, 17.05.2017, 20.06.2017, and 20.07.2017. However, the appellant neither appeared for the same nor sought any adjournments. Since sufficient opportunity has given to the appellant as per provisions of Section 35 of CEA and the appellant did not avail the opportunities, I decide the case ex-parte on the basis of available records.

6. I observe that the appellant has filed the instant appeal on 10.10.2016 against the impugned OIO dated 27.07.2016, received by the on 12.08.2016. As per provisions of Section 35 of the Central Excise Act, 1944, the instant appeal is required to be filed within 60 days of receipt of OIO. In the circumstances, the appellant has filed the instant appeal with a delay of 2 days. I further observe that no application for condoning the delay is filed. Therefore, the instant appeal is required to be dismissed as time barred as per the provisions of CEA and I do so.

7. Further, as regards merit of the case, I observe that the primary issue to be decided is whether as alleged by the department, the appellant is liable for penalty under Rule 26 of CER in respect his alleged involvement in issuance of invoices without supplying goods by the supplier company to the said assessees.

8. I find that the appeal filed by the said assessee and its Director, against the impugned order dated 29.07.2016 has already been decided by me vide OIA No.AHM-EXCUS-01-APP-02 & 03-17-18 dated 26.05.2017 under which the CENVAT credit ordered for recovery, imposition of penalty on them and on the Director was uphold.

9. I find that the case on the said assessee is built primarily on a complaint/FIR filed by the General Manager of the supplier company against the appellant. In the FIR filed on 21.10.2011, the complainant states that a total of 58 consignments covering the period from January 2011 to September 2011, relating to various quality of master batches were delivered to various customers and that the supplier had not received payment against these supplies; that on being approached for payment, the customers informed that at times they received goods along with invoice but in some instances they received only invoices from Shri Manish Raval, the appellant of the instant appeal; that since they had not received the goods, they had not made payments against the said invoices. The complainant further in his statement dated 29.10.2012, deposed that the appellant Shri Raval, had been expelled from their depot; that he had manipulated the records by raising invoices in the name of various customers and selling the goods to somebody else and



accepting the money in cash and not depositing the money with the supplier company.

10. It is against this backdrop that the case was booked. Statements of various staffs of the supplier, viz Shri Surendra Kumar Sharma, Shri Bhupendra Shah and the appellant, contain admission that the goods were not supplied by the supplier company and only invoices were raised. The worksheet prepared based on the invoices and affidavit submitted by the General Manager of the supplier has been confirmed by the appellant. From the records, I find that the appellant was the key person who actively involved the said assessee to enter into the dealing of providing invoices without supply of goods. Since the allegation confirmed by the adjudicating authority against the said assessee and its Director/other co-noticee has upheld by me in the OIA *supra* and looking into the role played by the appellant in the case booked against the said assessee, I do not find any merit to interfere on the penalty imposed by the adjudicating authority against the appellant.

15. In view of the foregoing, the impugned OIO dated 29.07.2016 with regard to the imposition of penalty on the appellant is upheld and the appeal filed by appellant is rejected.

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 4 /12/2017.

Attested

Mohan V.V

(Mohan V.V)
Superintendent (Appeal)
CGST, Ahmedabad.

By RPAD

Shri Manish Trikamlal Raval,
B-167, Anand Tenament, Canal Road,
Opp. Swami Smruti Temple, Ghodasar, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Principal Commissioner, CGST, South
3. The Addl./Joint Commissioner, (Systems), CGST, South
4. The Dy. / Asstt. Commissioner, CGST Division- II, South
5. Guard file.
6. P.A

