



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/8/Ahd-I/2017-18 / 222-226  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-233-2017-18  
दिनांक Date : 28-12-2017 जारी करने की तारीख Date of Issue 17/1/18

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

ग Asst.Commissioner, केंद्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं 4642-4644/AC/2016-17  
दिनांक: 12/16/2016, से सृजित

Arising out of Order-in-Original No. 4642-4644/AC/2016-17 दिनांक: 12/16/2016 issued by  
Asst.Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s Meghmani Dyes and Intermediates LLP  
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, 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 :

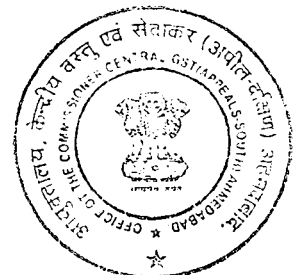
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के  
दौरान हुई हो।

(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 य 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 दिनोंक 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.

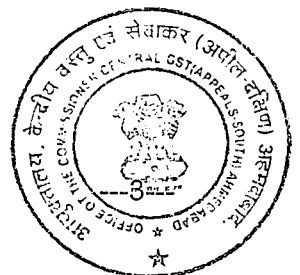
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मेटल 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**

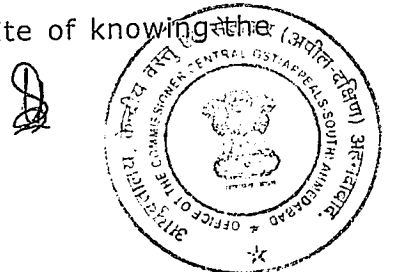
M/s. Meghmani Dyes & Intermediates LLP, unit -IV, Plot No. 100/A, 99 & 102, GIDC, Phase-II, Vatva, Ahmedabad (hereinafter referred to as 'the Appellant'), has filed the present appeal against the Order-in-Original No 4642 to 4644/AC/2016-17 dated 16.12.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner of Central Excise, Division-III, Ahmedabad-I, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The background facts of the case, in brief, the appellant are registered with the Central Excise Department having registration no AABCM6639DEM004 and engaged in manufacturing of goods falling under chapter 32 of Central Excise Tariff Act, 1985. The Appellant had exported excisable goods under claim of rebate to M/s. Meghmani Industries Ltd, SEZ unit and duty was debited from RG23A Pt-II as per Rule 3 (5) of Cenvat Credit Rules, 2004. They had filed rebate claim with the adjudicating authority along with required documents and within time limit of one year from the date of export as required under Section 11B of Central Excise Act, 1944. While removal of goods as such under the provision of Rule 3(5) of the Cenvat Credit Rules, 2004, the appellant paid 4% Additional Duty paid by him at the time of import under Section 3(5) of the Custom Tariff Act, 1975. The adjudicating authority has sanctioned the all three rebate claim to the appellant under the provisions of Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944.

3. Being aggrieved with the aforesaid order, the department had filed the appeal mainly on the grounds that, the Adjudicating Authority has erred in sanctioning the amount of duty paid by the assessee by debiting Cenvat Account (SAD), which is ordered by the adjudicating authority to be re-credited in the Cenvat account is not permissible. The said appeal was allowed in favour of the department vide OIA No.AHM-EXCUS-001-APP-071 to 073-2015-16 dated 21.04.2016. The present appellant has challenged the said order before the Revisionary Authority which is pending. As order of granting rebate was appealed divisional authority issued protective demand for recovery of erroneously paid rebate. The departmental appeal was decided by the appellate authority against the assessee, subsequently adjudicating authority confirmed the demand along with interest. Now the said order is challenged by the appellant at present.

The grounds on which the present appeal has been filed are as under;

3.1 The Assistant Commissioner has grossly erred in issuing the protective demand and deciding the same against the appellant despite of knowing the fact that same is already subjudice matter.



3.2. The appellant submits that the reliance of authority on the decision in the matter of M/s. Vinati Organics Limited and M/s. Alps Laboratories Ltd. 2014 (311) ELT 854 is based on the misinterpretation of the law.

3.3. The assistant Commissioner has erred in arriving at conclusion that duty paid under Rule 3(5) of Cenvat Credit Rules, 2004 is not the duty of excise or the same is not specified under notification 19/2004-CE (NT) dated 6.9.2004 governing the rebate claim of excise duty but a duty (Commonly known as SAD) paid under Section 3(5) of Customs Act, 1975.

3.4. The learned adjudicating authority committed an error in ignoring the provisions and explanation given in the Union Budget 2005-06 for this levy which make the intent of legislature clear about the levy.

3.5. The learned Assistant Commissioner failed to consider the existing and operational Board Circular and taken the view contrary to it which is not permitted under Law. Board Circular No.283/1996 dated 31.12.1996.

3.6. The impugned order is flawed one and against the law governing the rebate claim and Cenvat scheme.

3.7. The learned Assistant Commissioner failed to appreciate and consider various relevant case law and decision squarely applicable in the present case.

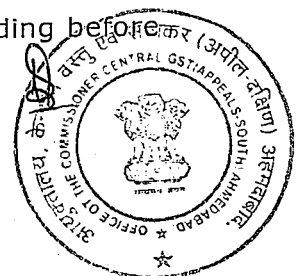
3.8. The appellant submits that the export can't be put to disadvantageous position compare to DTA clearance.

4. Personal hearing in the matter was conducted on 12.10.2017 wherein Shri Manohar Maheshwari, General Manager, Commercial appeared on behalf of the respondent and reiterated the written submissions.

5. I have gone through the fact of the case, grounds of appeal, and their oral submissions at the time of personal hearing. The core issue is to be decided by me is whether the demand confirmed by the adjudicating authority against the recovery of erroneous rebate is correct or otherwise.

6. I find that the department had originally sanctioned the rebate subsequently appealed against the part amount sanctioned, which was decided in favour of the revenue. Thus demand issued and confirmed is subsequent remedial action initiated to recover the erroneously sanctioned rebate. Erroneously sanctioned rebate has already decided in favour of revenue at first appellate stage.

7. The grounds on which appeal is filed by the appellant are nothing but the contention of the appellant to prove that they are entitled for rebate. As the matter of rebate has already decided by the Appellate Authority against the appellant which is pending before the Revisionary Authority. The matter is subjudice. In view of above discussions it is felt that though the matter of rebate is pending before



the Revisionary Authority the confirmation of demand is again creating litigation on the same matter. If the decision of Revisionary Authority comes either way recovery if required will be protected with the decision of RA. To avoid double litigation on the same matter it is felt to remand the matter with direction to decide the issue in consonance with the decision of Revisionary Authority.

8. As discussed above it can be concluded that the order of adjudicating authority confirming demand and interest is creating double litigation of one matter and hence required to be remanded to original authority.

**ORDER**

9. I hereby remand the matter to original authority as discussed in para 7.

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

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

*Uma Shanker*

(UMA SHANKER)  
COMMISSIONER (APPEAL-I)  
CENTRAL EXCISE, AHMEDABAD.

Date:- 28.12.2017

ATTESTED

*K.H. Singhal*

(K.H.Singhal)  
SUPERINTENDENT (APPEAL),  
CENTRAL TAX,  
AHMEDABAD.

BY R.P.A.D.

M/s Meghmani Dyes & Intermediates LLP (Unit-IV),  
Plot No. 100/A, 99 & 102, GIDC, Phase-II, Vatva  
Ahmedabad- 382445.

**Copy To:-**

1. The Chief Commissioner, Central Tax, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-South.
3. The Assistant Commissioner, Central Tax, Division-III, Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad South.
5. Guard File.
6. P.A. File.

