



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

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

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.सी. द्वारा

क फाइल संख्या : File No : V2(73)/32/EA-2/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

वधन-10731

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-277-2017-18
दिनांक Date : 29-01-2018 जारी करने की तारीख Date of Issue

6/2/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/03/AC/Div.III/2017-18 दिनांक: 25/04/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Pharmalab Process Equipments 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा कं 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 :

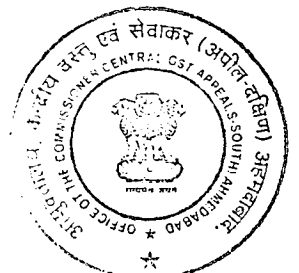
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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 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.

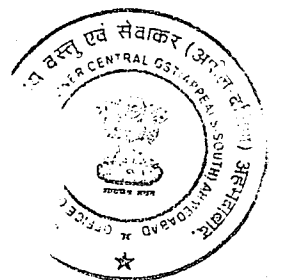
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मेटल 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 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 .

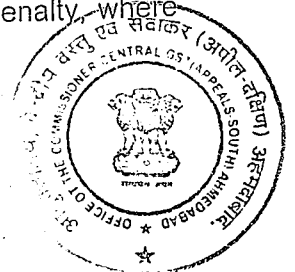
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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."



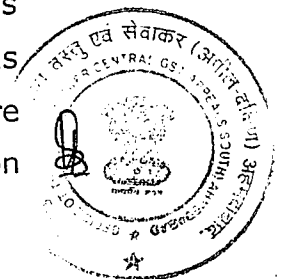
ORDER IN APPEAL

Revenue Department (*hereinafter referred to as 'appellants'*) vide review order No. 10/2017-18 dated 21.07.2017, has filed this present appeal against the Order-in-Original number MP/03/AC/Div-III/17-18 dated 25.04.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Central Excise, Div-III, Ambawadi, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*) in respect of M/s Pharmalab Process Equipment Pvt. Ltd., Siddhi Vinayak Estate, Santej-Vadsar Road, Taluka-Kalol, Dist- Gandhinagar- 382 721 (*hereinafter referred to as 'respondent'*).

2. The facts of the case, in brief are that respondent assessee, the manufacturer of Pharma machinery and parts there of had sold (inter-unit transfer) some of their production amounting to Rs. 1,35,84,423/- (transaction value adopted in 110 invoices) during 10.12.2003 to 29.10.2005. Respondent was required to ascertain the value of the goods dispatched to their Maoraiya Unit on by loading 10% of value towards notional profit in terms of rule Rule 8 of Central Excise (Valuation) Rules, 2000 r/w Section 4(b) of CEA, 1944.

3. Differential duty of Rs. 2,19,225/- was confirmed u/s 11AC (1) invoking extended period with interest liability along with imposition of Penalty u/s 11AC vide original OIO No. 02/AC/Dem/08 dated 28.01.2008, which was upheld by OIA No. 90/2008(Ahd-I)CE/ID/Commr(A) dated 24.06.2008. On being filing appeal by respondent assessee, CESTAT has remanded back the matter to original adjudicating authority to decide the case afresh after considering CA certificate and other documents to pass order in according with the law. On being re-adjudicated afresh vide impugned OIO dated 25.04.2017 demand raised and penalty proposed has been dropped on ground that value adopted was more than the value determined under Rule 8 of Central Excise (Valuation) Rules, 2000 r/w Section 4(b) of CEA, 1944.

4. Being aggrieved with the impugned order, the Appellant revenue had preferred an appeal on 17.08.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that respondent was required to determine the liability on 110% of valuation calculated as per CAS-4. But respondent assessee had not followed this procedure and adjudicating authority had erroneously dropped the demand on



value not arrived as per CAS-4 and also refrained from imposition of penalty and levy of interest.

5. Personal hearing in the case was granted on 22.01.2018. Shree Vipul Khandhar, CA, on behalf of respondent assessee, appeared before me and submitted additional written submission. He stated that as per valuation rule 8 of C. Ex., CA certificate is valid (either CA or Cost A/c).

DISCUSSION AND FINDINGS

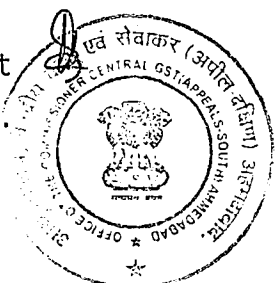
6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellant revenue and respondent assessee, evidences produced at the time of personal hearing.

7. CESTAT has remanded case back to original adjudicating authority with direction to pass order after considering the CA Certificate. Relevant para 4 of CESTAT order No. A/10075/2016 dated 02.02.2016 is reproduced as below-

"4. The learned Counsel for the Appellant is not disputing the applicability of Rule 8 of the Valuation Rules. He is disputing the method of determination of 110% of the cost of production. We agree with the submission of the learned Counsel that the Value of the goods shall be 100% of the cost of production and the transaction value. We find that they submitted CA certificate and no findings was given by the lower authorities. Hence, it is required to be examined by the Adjudicating authority to decide the case after considering the CA certificate to the extent of 110% of the cost of production for determination of the value."

8. As directed by CESTAT to work out taxable value for the purpose of Rule 8 of Central Excise (Valuation) Rules, 2000 r/w Section 4(b) of CEA, 1944, on the basis of cost amount furnished by CA certificate, adjudicating authority held that cost of production for all the 110 invoices comes to Rs. 1,12,11,534/- and 110% of cost of production is Rs. 1,23,32,687/- on which respondent assessee was liable to pay duty.

9. Since value (Rs. 1,35,84,423/- SCN value) on which respondent assessee had paid the duty was more than the value (Rs.



1,23,32,687/-) determined on the basis of CA certificate, adjudicating authority vide impugned OIO dated 25.04.2017 dropped the demand raised and refrained from imposing penalty proposed.

10. Appellant revenue has argued that taxable value should be 110% of value calculated as per CAS-4. I find that appellant revenue has not denied that the, CA certificate submitted does not show the cost of production. Revenue has neither said that cost of production furnished by CA is not in accordance with the CAS-4 nor it is said that taxable value Rs. 1,23,32,687/- (110% of cost of production) worked out by adjudicating authority is wrong. Revenue has relied upon Part-III, para 3 (3.2) of CBEC manual and simply stated that **"cost of production of captivity consumed goods will be done strictly in accordance with CAS-4"**.

11. I find that, as value (Rs. 1,35,84,423/- SCN value) on which tax is paid is more than the value (Rs. 1,23,32,687/-) re-worked out by adjudicating authority, respondent had paid more than what they were required to pay.

12. In view of above, appeal filed by the appellant revenue is rejected and impugned OIO is upheld.

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

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील)

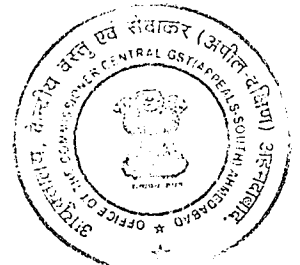
ATTESTED

R.R. Patel

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD



To,

M/s Pharmalab Process Equipment Pvt. Ltd.,
Siddhi Vinayak Estate, Santej-Vadsar Road,
Taluka-Kalol, Dist- Gandhinagar- 382 721

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST, Ahmedabad South.
- 3) The Asst. Commissioner, Central Tax, Div-III, Ahmedabad South
- 4) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 5) Guard File.
- 6) P.A. File.



