



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/72/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

79170795

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-303-2017-18  
दिनांक Date : 30-01-2018 जारी करने की तारीख Date of Issue 8/2/2018

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

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं MP/05/AC/Div-IV/17-18  
दिनांक: 18/5/2017, से सृजित

Arising out of Order-in-Original No. MP/05/AC/Div-IV/17-18 दिनांक: 18/5/2017 issued by Assistant  
Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s Neel Agrotech Pvt 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 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।

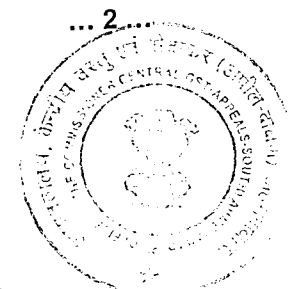
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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 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।



(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 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, 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, 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 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."



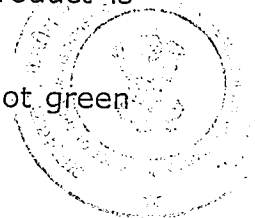
**ORDER IN APPEAL**

This is an appeal filed by M/s Neel Agrotech pvt. Ltd., B-26 & 27, Ambica Estate, Aslali Bypass, Aslali, Ahmedabad (herein after referred to as the appellants) against the OIO No. MP/05/AC/Div-IV/17-18 dtd. 18.05.2017 (herein after referred to as the impugned order) passed by the Asstt. Commissioner, Division-IV, Central Excise, Ahmedabad-I (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants were engaged in manufacture of customized Green House falling under Chapters 84 & 94 of the Central Excise Tariff Act, 1985. During the scrutiny of central excise returns from March-2014 to December-2014, it was observed that the appellants had availed concessional rate of duty by availing Notification No. 04/2014 but the notification nowhere specifies any specific rate of duty for Chapter-94060011. This notification prescribed rate of duty @ 10% for only Chapter 84198960. This resulted in short payment of central excise duty by Rs. 2,67,667/- for which a show cause notice dtd. 26.07.2016 was issued proposing recovery of short paid central excise duty with interest and proposed imposition of penalty. The adjudicating authority, after having considered their defence arguments and case records, held that the products viz. "Prefabricated Buildings" and "Green House" were to be classifiable under Chapter heading 94060011 where it was specifically mentioned and appellants were not eligible for exemption contained in Notification No. 04/2014 and therefore, vide the impugned order, confirmed the demand of central excise duty of Rs. 2,67,667/- alongwith interest and also imposed penalty of equal amount under Section 78 of the Act.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the issue of suppression of fact with intent to evade excise duty invoked by the adjudicating authority is completely wrong as they obtained central excise registration in the year 2010 claiming classification of the final goods viz. "Green House" under Sub Heading No. 84198960 and this fact is on record;
- b) That they had submitted copies of communication with the TRU, Chief Commissioner and decision of the Audit officer holding classification under chapter 84;
- c) That the adjudicating authority has relied heavily on the word "Green House" and arrived at the conclusion that the product is classifiable under Chapter 84;
- d) That their products are plant growth chambers only and not green house denied in chapter 94;



e) That the order is hit by limitation;

4. The personal hearing in the case was held on 22.01.2018 in which Shri V.N. Bhagat, Consultant and Shri Mitul G. Shah, Director appeared on behalf of the appellants. They reiterated the grounds of appeal and submitted that they wrote to TRU thrice but no reply was received and copies were submitted. Audit party also classified under 84198960 and submitted a copy thereof.

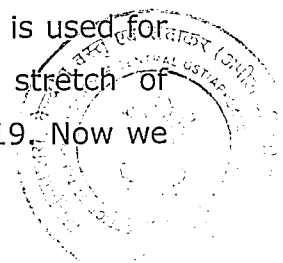
5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the central excise duty has been rightly demanded on the products manufactured by the appellants by denying them the benefit of Notification No. 04/2014.

7. I find that the appellants have claimed the benefit of exemption contained in the Notification No. 04/2014 dtd. 17.02.2014. The notification prescribes specific rate of duty for goods falling under chapter 84. For the sake of better understanding of the issue, it would be appropriate to refer the goods falling under the said chapter. Chapter 84 covers only nuclear reactors, boilers, machinery and mechanical appliances; parts thereof. From this, it is very clear that the goods of only this description i.e. machinery and mechanical appliances only fall under the Chapter 84. Now we refer to the goods falling under Chapter 8419. The description of the goods under chapter 8419 is produced herein below for ready reference:

*"machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), **for the treatment of materials** by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric" (emphasis supplied)*

From the above, it is very clear that the chapter 84 covers goods which are only machinery and mechanical appliances (among other things). For specific description of the product manufactured by the appellants and claimed to be falling under 8419 covers only those machinery and plant or laboratory equipment which are used for the treatment of materials whereas their product is not used for any treatment of any material and it is used for providing controlled conditions to the plants etc. So by any stretch of imagination, their product cannot be classified under chapter 8419. Now we



take up the issue of chapter heading of their product i.e. "green house". The chapter 94 covers "furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishing; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; **prefabricated building**" (emphasis supplied). From a plain reading of the goods covered under this chapter, it is very clear that this chapter covers, among other things, prefabricated buildings and further chapter 9406 precisely covers Green House under prefabricated buildings and this is the product which is manufactured by the appellants. In view of this, it is beyond any doubt that the product under question is correctly classifiable under chapter 9406 as held by the adjudicating authority. In view of this, I find no reason to interfere with the impugned order.

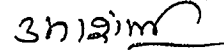
8. I now take up the issue of exemption contained in the notification No. 04/2014 dtd. 17.02.2014. This notification prescribes specific rate of central excise duty but does not cover products falling under chapter 94. So there is no doubt that the appellants were not entitled for concessional rate of duty and have thereby paid less duty. I therefore rejected the plea made by the appellants.

9. Now I take up the plea given by the appellants that they had approached higher authorities for clarification regarding the correct classification of their product. They have also said that the Audit also confirmed the classification given by the appellants. I find it impossible to accept this plea as if they had any doubt about the correct classification and the correct rate of duty applicable, they could have taken recourse to Provisional assessment. Rule 7 of the Central Excise Rules provides that where the assessee is unable to determine the value of excisable goods or the rate of duty applicable thereto, he may request the AC/DCof Central Excise in writing giving reasons for payment of duty on provisional basis. Further the Audit was not deciding the issue of classification dispute or query raised by the appellants. In view of this, I reject the contentions raised by the appellants regarding the issue of suppression of facts by them.

10. In view of the above findings, the appeal is rejected.

11. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !



(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित



(धर्मेन्द्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद



**By R.P.A.D.**

To:  
M/s Neel Agrotech pvt. Ltd.,  
B-26 & 27,  
Ambica Estate,  
Aslali Bypass,  
Aslali,  
Ahmedabad

**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Asth. Commissioner, CGST, Div.-IV, Ahmedabad (South),
- (4) The Dy./Asth. Commissioner(Systems),CGST, Ahmedabad (South),
- ~~(5) Guard File,~~
- ✓ (6) P.A.File.

