
 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 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()/97/Ahd-I/2017-18 /886 to 890
Stay Appl.No. NA/2017-18
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-311-2017-18
दिनांक Date : 02-02-2018 जारी करने की तारीख Date of Issue 08/02/18
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/681to682/Reb/2017
दिनांक: 29/8/2017, से सृजित
Arising out of Order-in-Original No. MP/681to682/Reb/2017 दिनांक: 29/8/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**adroit techna engineering solution
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।

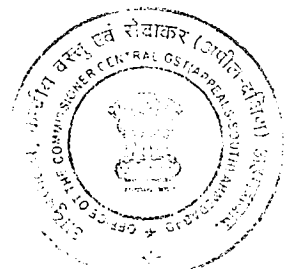
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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।

Signature

... 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.

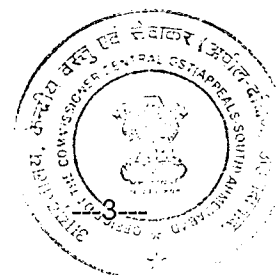
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैन्टल 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 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।

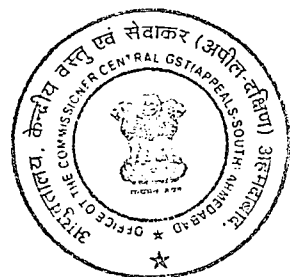
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Adroit Techna Engineering Solutions LLP, 77, Shreenath Sarthak Industrial Park, Kathwada GIDC, Nikol, Ahmedabad- 382350 (*hereinafter referred to as the 'appellant'*) has filed the present appeal against the Order-in-Original No. MP/681 to 682/Reb/2017 dated 29.08.2017 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Div-V, Ahmedabad South Commissionerate (*hereinafter referred to as 'adjudicating authority'*);

2. Briefly stated the appellant had exported the goods under claim of rebate of duty in terms of Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 06.09.2004. The appellant filed 2 rebate claims in respect of ARE-1s 01/ 09.06.2016 and 02/22.06.2016 on 05.06.2017 along with the relevant documents. On scrutiny of the documents, it was noticed that the triplicate copies of the ARE-1s, submitted were not signed by the Range Superintendent; that the appellant filed the rebate claims with the improper authority.

Consequently, a show cause notice was issued to the appellant for rejecting the rebate claims on the ground that they did not submit proper requisite documents along with the rebate claims as per provision of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004; that they did not follow Para 8.3 and 8.4 of Chapter 8 of CBEC's Central Excise Manual. These rebate claims were later on rejected vide the impugned order by the adjudicating authority.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that:

(i) they filed rebate claims on 05.06.2017, however the deficiency memo was said to be issued on 11.07.2017 i.e after a month. As per the Board's circular No. 130/41/95-Cx dated 30.05.1995, deficiency memo is required to be issued within 48 hours of the receipt of the rebate claim and they did not receive any deficiency memo and hence could not rectify the deficiency, if any.

(ii) the personal hearings were given in quick succession i.e on 08.08.2017/09.08.2017/10.08.2017, it is clear from the personal hearing dates that sufficient opportunity was not given to appellant to



defend their case and thus the Assistant Commissioner did not follow the principles of natural justice, while deciding the case.

(iii) they submitted reply to the show cause notice on 28.08.2017 to the Assistant Commissioner but the same was not considered while passing the order.

(iv) they followed the procedure of self sealing and self removing and in such case there is no requirement of certification of the original and duplicate copies of the ARE-1s by the Range Superintendent and the appellant submitted the original and duplicate copies of the ARE-1s duly endorsed by the Customs officer while filing the rebate claim.

(v) they submitted the triplicate, quadruplicate and quintuplicate copies of the ARE-1s to the Range officer but after one year the Range officer returned all the copies without putting signature on them and the same is beyond the control of the appellant.

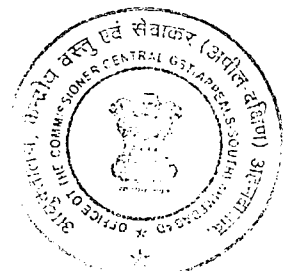
(vi) for sanctioning of rebate claims two things have to be verified viz

(a) that goods have been exported and to substantiate that they have submitted the original and duplicate copies of the ARE-1s duly endorsed by the Customs Officer, shipping bill, bill of lading and bank realisation certificate;

(b) duty has been paid and for that they have submitted copies of invoice, CENVAT Credit Register and PLA register and as both the conditions are fulfilled and they are rightly eligible for the rebate claim.

(vii) the appellant submits that it is the duty of the Range Superintendent to submit the triplicate copies of aforesaid ARE-1s duly endorsed by him to the Assistant Commissioner as per Clause 3 of notification No. 19/2004-CE (NT) dated 06.09.2004 and punishing him for the mistake/fault committed by the Range Superintendent is not proper.

(viii) they have relied on case of M/s. Raj Petro Specialities [2017 (345) ELT 496 (Guj)], M/s. UM Cables Ltd. [2013 (293) E.L.T . 641 (Bom.)] wherein it is held that if exporter is able to prove and satisfies all conditions and limitations mentioned in Clause (2) of the notification no. 19/2004-CE (NT) dated 06.09.2004, exporter shall be entitled to rebate of duty and procedural lapse may be condoned.



4. Personal hearing in the matter was held on 22.01.2018 wherein Shri Bipin Panchal appeared on behalf of the appellant. He reiterated the grounds of appeal and further requested to sanction the rebate along with applicable interest under Section 11BB of the Central Excise Act, 1944.

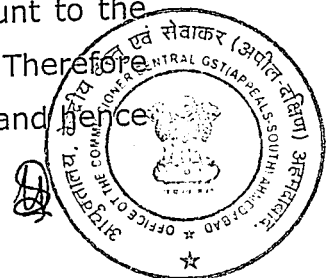
5. I have gone through the facts of the case and submissions made in the appeal memorandum as well as during the personal hearing. In the instant case, the appellant is following self sealing procedure for export of goods and filed 2 rebate claims under Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 06.09.2004 in respect of ARE-1s 01/ 09.06.2016 and 02/22.06.2016 on 05.06.2017 along with the relevant documents. The rebate sanctioning authority rejected the rebate claims on the ground that the triplicate copies of the aforesaid ARE-1s were not signed by the Range Superintendent. I also find that the appellant was given personal hearings in quick succession i.e. 08.08.2017/09.08.2017/10.08.2017 and no opportunity was given to enable them to defend their case. I find that the adjudicating authority failed to adhere to the principles of natural justice.

6. Principles of natural justice constitutes the following:

Natural Justice recognizes three principles:

- (i) *Nemo debet esse judex in propria causa* [meaning - nobody shall be a judge in his own cause or in a cause in which he is interested]
- (ii) *Audi alterem partem*, [meaning - to hear the other side] and finally
- (iii) Speaking orders or reasoned decisions.

Since the appellant has not been heard this is a case of infringement of principles of natural justice and hence, the original order needs to be set aside. My view is also supported by the case of M/s. Afloat Textiles (P) Ltd. [207 (215) E.L.T. 198 (Tri.- Ahmd.)] wherein it is held that giving choice of three dates for personal hearing in one letter and seeking of adjournment by the appellant would not amount to the fact that adjournment have been sought three times. Therefore impugned order has been issued in violation of natural justice and hence



not sustainable. I find that the ends of justice would be met if the matter is remanded back to the adjudicating authority with a direction to decide the matter on merits after giving the appellant reasonable opportunity to present his case. Needless to state the principles of natural justice would be adhered to by the adjudicating authority while deciding this matter.

6. In view of above discussion, the appeal filed by the appellant is remanded back to the adjudicating authority.

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY R.P.A.D.

To,

M/s. Adroit Techna Engineering Solutions LLP,
77, Shreenath Sarthak Industrial Park,
Kathwada GIDC, Nikol,
Ahmedabad- 382350

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad South.
3. The Additional Commissioner, (Systems) Central Excise, Ahmedabad South.
4. The Dy./Asstt. Commissioner, Central Excise, Division -V, Ahmedabad South.
5. Guard file
6. P. A. file.

