
 सत्यमेव जयते	केन्द्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय 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(70)/57/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

1638701642

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-330-2017-18**
दिनांक Date : **21-02-2018** जारी करने की तारीख Date of Issue *20/3/2018*

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

ग Arising out of Order-in-Original No. **78/AC/17-R** 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. Guardian Glass Industries Pvt. Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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 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.

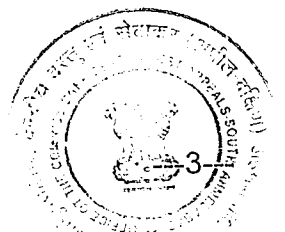
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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।

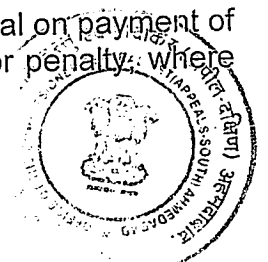
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This order arises out of an appeal filed by M/s. Guardian Glass Industries Pvt. Ltd., Gokul Warehouse Complex, Balaji Estate, Narol-Isanpur Road, Ahmedabad-382445 (in short 'appellant') against Order-in-Original No.78/AC/17-R dated 18.05.2017 (in short 'impugned order') passed by the then Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-I(in short 'adjudicating authority').

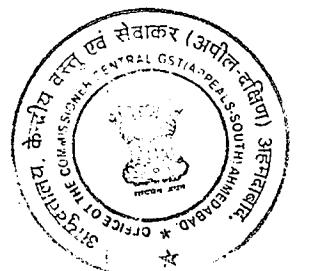
2. Briefly stated that the appellant purchased goods from M/s. Hari Om Tampanes, Daman on payment of duty and then exported under Rule 18 of the Central Excise Rules, 2002. On scrutiny of the subject claim, inter alia, found that documentary evidences were not submitted for payment of duty claimed as rebate which culminated into issue of SCN dated 10.05.2016. This SCN was adjudicated by the adjudicating authority vide impugned order underwhich said rebate claim was rejected.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, inter alia, submitted that:

- The discrepancies raised in the SCN do not have any bearings on the conditions stipulated and the procedures envisaged under Notifn. No.19/204-CE(NT) dated 06.09.2004.
- The adjudication order has been passed without assigning fair reasons for rejecting the claim.
- That duty paid character of the goods establishes from the copy of ER-1 filed by M/s. Hari Om Tampanes, the manufacturer for the relevant period.
- While issuing SCN, the deptt. has lost sight of CBEC's instruction clarifying that a general permission has been granted in respect of export of duty paid goods from a place other than the factory.
- The adjudicating authority has ignored the vital contention of the appellant.

4. Personal hearing in the matter was held on 22.01.2018. Shri P.G. Mehta, Advocate, appeared on behalf of the appellant and reiterated the grounds of appeal; that earlier similar goods were exported and rebate granted; submitted copy of citation no. 2012(282) ELT-137(GOI) and filed additional written submission wherein, inter alia, submitted provisions contained in Chapter 8 of the CBEC supplementary instruction. The appellant also filed further written submission dated 30.01.2018 and submitted copies of OIO No.259/Asstt. Commr/2015-Reb. Dated 05.02.2016 and copies of ARE-1 nos.02 and 03 both dated 08.06.2015.

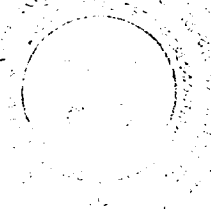
(Signature)



5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that main issue to be decided is whether the appellant is eligible for rebate or otherwise. Accordingly, I proceed to decide the case on merits.

6. I find that the subject rebate claim is filed under Rule 18 of the Central Excise Rules, 2002. Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18ibid provides for conditions and procedure for claiming rebate. I find that there is series of lapses by the appellant as stated in the impugned order. However, the main issue revolves around is proof of duty payment of the exported goods. It is very vital element for sanction of rebate claimed. I find that the appellant has initially purchased the goods on payment of duty from M/s. Hari Om Tempanes, Daman and then exported under its own invoice no.01 dated 05.06.2015 issued to Laxmanbhai & Co., Seychelles. This invoice do not contain any duty payment details. When the query memo was raised, the appellant has mainly stressed on furnishing documents specified under para 8.3 of CBEC's manual but failed to go through the provisions contained in para 8.4ibid. I find that said para clearly provides that rebate shall be sanctioned subject to the satisfaction of the rebate sanctioning authority on two aspects viz. actual export of goods under relevant ARE-1 and that goods are of 'duty paid' character as certified on the triplicate copy of ARE-1 received from the jurisdictional Supdt. Of Central Excise(Range Office). I find that no triplicate copy of ARE-1 appears to have been received from the jurisdictional Range Office. Under the circumstances, it is the duty of the claimant to establish that the goods were of 'duty-paid' character. The appellant has submitted copy of relevant ER-1 of the said M/s. Hari Om Tempanes, Daman, which shows consolidated duty payment made from Cenvat credit account or Account Current i.e. PLA. It is true that retail invoice no.94 dated 15.04.2015 is covered in invoice no. 1 to 236 but it cannot be presumed that the duty payable against said invoice is paid or otherwise unless details thereof is verified and satisfied himself by the rebate sanctioning authority since the conditions and procedures prescribed in the subject notification is "subject to the satisfaction of the rebate sanctioning authority". I find that the appellant has failed to satisfy the adjudicating authority on this aspect i.e. 'duty paid' character of the exported goods.

6.1 Further, it is not clear as to from where the subject goods exported. Had it been exported from the manufacturer's premises at Daman, then procedure prescribed for export and claiming rebate should have been done from Daman. If the said duty paid goods have been brought by the claimant in his factory premises, then also proper procedure should have to be followed i.e. appellant is



required to issue invoice under Rule 11 of the C.Ex. Rules, 2002, prepare ARE-1s, intimate the JRO, make duty payment and then export the goods. I find that no such procedure is followed by the appellant. In short, the appellant has failed to submit concrete evidence of duty payment of exported goods and as such not eligible for rebate claimed.

6.2 The appellant has cited case law of M/s. Positive Packaging Industries Ltd reported in 2012(282)ELT-137(GOI). I have carefully gone through this case law. I find that circumstances and facts of the case are altogether different and hence not applicable in the present appeal.

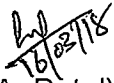
7. In view of the above discussion and findings, I reject the appeal filed by the appellant and uphold the impugned order.

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

उमा शंकर

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)

Attested:


(B.A. Patel)
Superintendent(Appeals),
Central Tax, Ahmedabad.

BY SPEED POST TO:

M/s. Guardian Glass Industries Pvt. Ltd.,
Gokul Warehouse Complex, Balaji Estate,
Narol-Isanpur Road, Ahmedabad-382445.

Copy to:

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Principal Commissioner, CGST, Ahmedabad South (RRA Sec.).
- (3) The Asstt. Commissioner, CGST, Division-V(Odhav), Ahmedabad South.
- (4) The Asstt. Commissioner(System), CGST HQ, Ahmedabad South.
(for uploading the OIA on website)
- (5) Guard file
- (6) P.A. file.

