



(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 मामलें 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 डयूटी केडिट 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 प्रपन्न संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः– 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 <u>(सिस्टेट)</u> की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ—20, न्यू मैन्टल हास्पिटल 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.

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- . 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. Registar 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.
- यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश 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 (3) न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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.

- न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क (4) टिंकट 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-l item of the court fee Act, 1975 as amended.
- 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। (5)

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 (6) 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) -

- (Section) खंड 11D के तहत निर्धारित राशि; (i)
- लिया गलत सेनवैट क्रेडिट की राशि; (ii)
- सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि. (iii)

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 predeposit 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:

- amount determined under Section 11 D;
- (i) amount of erroneous Cenvat Credit taken;
- (ii) 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 Mac Dye Chem Industries, Plot No. 295/A, Phase-II, GIDC, Vatva, Ahmedabad- 382 445 (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original No. MP/3275/AC/2017-Reb dated 21.11.2017 (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, CGST South, Div-III, GST Bhavan, Ahmedabad (hereinafter referred to as 'adjudicating authority').

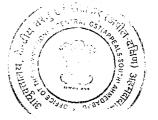
2. The facts of the case, in brief are that appellant has filed the rebate claim of Rs. 30,625/- in respect of ARE-1 No. 18/22.09.2016 on 23.08.2017 u/r 18 of CER, 2002 r/w Notification No. 19/2004- CE(NT) dated 06.09.2004 seeking rebate of duty paid on excisable goods viz. S.O.Dyes (Ch. S.H. 32041439) leviable to 12.5% C.Ex. duty. Export is through Merchant Exporter M/s Ashish Enterprises. Manufacturer has shown the goods "Direct Dyes-Blue" falling under Ch. S.H. 32041439 in Excise Invoices No. 206/22.09.2016 where as corresponding Shipping Bill (SB) No. 1499246 dated 06.10.2016 shows the goods as "Reactive Dyes" falling under Ch. S.H. 32041650/30/90.

3. Adjudicating authority vide impugned OIO held that goods (Direct Dyes-Ch. S.H. 32041439) cleared from factory were different than goods (Reactive Dyes- Ch. S.H. 32041650) exported, therefore said rebate claim of Rs. 30,625/- was rejected.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 01.01.2018 before the Commissioner (Appeals), CGST, Ahmadabad wherein it is contended that-

- a. Both Ch. S.H. 32041439 (Excise Invoice) and Ch. S.H. 32041650 (SB) attracts 12.5% C.Ex. duty. Therefore if there is any variation in CETH mentioned in Excise Invoice and SB, will not alter rate of duty.
- b. SB No. 1499246 shows goods as "REC TUR G-166%" A and "REC TUR BLUE HSG". Said SB also shows ARE-1 No. 18/22.09.2016
- c. Said ARE-1 No. 18/22.09.2016 shows goods as "REACTIVE TURQOISE BLUE G" and "REACTIVE TUR BLUE/ G HSG"
- d. Said ARE-1 at columns No. 10 indicates C.Ex. Invoice No. as 206/22.09.2016, wherein description of goods is as "TUR BLUE G".
- e. Therefore it can be established that goods cleared from factory and goods cleared under said SB are same.

5. Personal hearing in the case was granted on 31.10.2018. Shree Avinash J. Shah and Shri Vaibhav Vahia, Consultant/representative appeared



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before me and reiterated the grounds of appeal. He stated that there is no outstanding against them

DISUSSION 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 appellants, evidences produced at the time of personal hearing.

7. I observe that small rebate of Rs. 30,625/- denied on ground that description and sub-sub-sub heading of goods shown in Excise Invoice and that in SB are not matching. Appellant had correlated the Excise Invoice, ARE-1 and SB in their appeal. I am convinced that goods are same. Quantity is also matching. Difference in sub heading i.e instead of Ch. S.H. 32041650 (SB) it should have been 32041439 (Excise Invoice), is a mistake done by Merchant Exporter who had filed SB before Excise Invoice was made.

8. Facts of manufactured and subsequent export have been co-related, rebate can not be denied. My view is supported by Decision in case of M/s Catlab Exports 2006(205) ELT 1027 (GOI) wherein it was held that in view of collateral evidences and facts of manufactured/ and subsequent export having been proved by collateral evidences as discussed above, demand of duty can not be enforced merely on account of difference in description mentioned on AR4/SB.

9. In view of above, appeal filed by the appellants is allowed and impugned OIO is set aside.

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

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

(उमा शंकर) केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED (R.R. PATEL)

SUPERINTENDENT (APPEAL), CENTRAL TAX, AHMEDABAD



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M/s Mac Dye Chem Industries, Plot No. 295/A, Phase-II, GIDC, Vatva, Ahmedabad- 382 445

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.

δ) P.A. File.