

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर भवन, 7 th Floor, GST Building, Near Polytechnic, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015		
☎ : 079-26305065		टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(73)/126/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-360-2017-18
दिनांक Date : 26-02-2018 जारी करने की तारीख Date of Issue

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

ग Arising out of Order-in-Original No. MP/2523/AC/2017-Reb दिनांक: 14/09/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**B.M Engineers
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 :

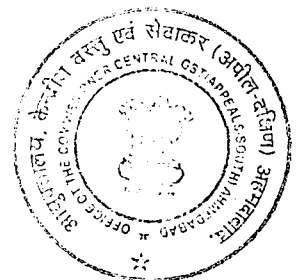
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.

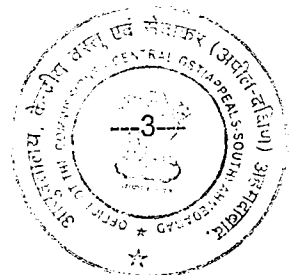
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 appeal has been filed by M/s. B. M. Engineers, 12, Shree Vijay Appt. 10, Sundarvan Soc., B/h Mehta Sweet, Vana, Ahmedabad (hereinafter referred to "as the appellant") against the Order-in-Original number MP/2523/AC/2017-Reb dated 20.09.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Tax, Division III, Ahmedabad South, (hereinafter referred to as "the adjudicating authority").

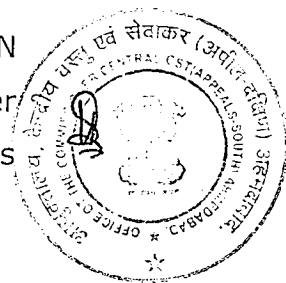
2. The facts of the case, in brief that the appellant is merchant exporter filed refund claims under Rule 18 of Central Excise Rules, 2002 against ARE-I No. 07/16-17 dated 14.03.2017. The adjudicating authority reject the rebate claims On the basis given below:

- (a) Mismatch of chapter heading between the exported goods and goods cleared from manufacturer
- (b) Bill of Lading is not signed
- (c) Non production of Proper Disclaimer/NOC certificate by the manufacturer
- (d) Difference of Rs. 1/- from rebate claim to duty payment
- (e) Original ARE-1 not properly endorsed by the Customs authority.

3. Being aggrieved, the appellant have filed the present appeal and requested to set-aside the impugned order and allow the refund claim of Rs. 30,494/-. The appellant has submitted following facts in their grounds of appeal:

(i) The adjudicating authority has disallowing the rebate of Rs. 30,494/- on Account of wrong HSN code. The learned officer has passed the order without considering the substance of the transaction i.e. the nature of "dish Ends" and "Parts of Water Heater" is similar and hence there is human error on the part of appellant in mentioning same.

(ii) While preparing the invoice Accountant has mentioned HSN No. i.e. 85169000, the Description of the goods parts of Water Heaters and the HSN no. mentioned in the invoice of the M/s



Steelfit Engineering Co. is 73269099 i.e. Other Articles of Iron and Steel. Further stated that M S Dish Ends is manufactured from Iron and Steel only and there is no change in the Description of the goods either on the part of seller nor on the part of purchaser.

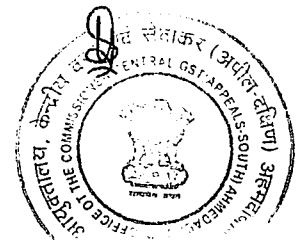
4. I have carefully gone through the facts of the case on records, impugned OIOs, grounds of appeal in the Appeal Memorandum and oral as well as written submissions made by the respondents at the time of personal hearing.

4.1 I find that in this appeal there are five issues (a) to (e) to be decided by me which are given in the para 2 of this order, I will take the issues one by one as under.

4.2. Issue no. (a) Mismatch of chapter heading between the goods-exported goods and goods cleared from manufacturer: The adjudicating authority has observed that manufacturer M/s Steelfit Engineers Co. cleared the goods to the said appellant under H. S. Code 73269099 whereas the exporter has exported the goods under H. S. Code 85169000(as per Shipping Bill No. 4684794 dated 11.03.2017). It appeared that the goods cleared from the factory is different from the goods exported vide said Shipping Bill.

4.3 On going through the invoice No. BME/EXP/16-17/008. The same invoice no. also found in the Shipping Bill No. 4684794 dated 11.03.2017. It is observed that appellant describe the goods in the said invoice as "Part of Water Heaters" and also written "M.S. Dish Ends" with HS Code 85169000 in the same. Dish Ends can also be used as part of Water Heater, Boiler, Pressure Vessel, Hydraulic Press etc. I find, the goods are same only the classification is different. Therefore, I disagree with the views of the adjudicating authority.

4.4 The issue no. (b) Bill of Lading is not signed: The adjudicating authority has observed that Self certified copy of Bill of Lading is not certified/issued by the issuing authority as it doesn't bear any signature thereon. I find that Bill of Lading No. SWLAHM0156L7 dated 16.03.2017 submitted by the appellant is signed.

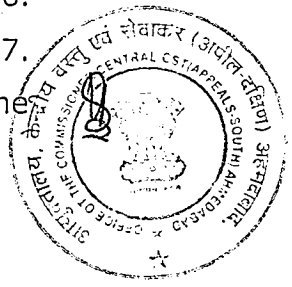


The Scan copy of the said Bill of Lading reproduced below:

<p>Sarewater Lines (I) Pvt. Ltd. 602 P.I.I.X. Rd. 7th Floor, Road: Bhandari, West, Mumbai - 400 078 Phone: 25056600 (30 Lines) Fax: 25056601/25056633 Telex: 91010 SAREWATER (D) SAREWATER (D) SAREWATER (D) SAREWATER (D)</p>	
<p>MULTIMODAL TRANSPORT DOCUMENT REG. NO. MTO/DGS/4453/JUL/2017</p>	
<p>1. Description of goods: WOODEN BOXES</p>	
<p>2. Gross weight: 7.1200 CBN</p>	
<p>3. Net weight: 7.1200 CBN</p>	
<p>4. Volume: 0.0000 CBM</p>	
<p>5. Number of packages: 0</p>	
<p>6. Date of issue: 14.03.2017</p>	
<p>7. Place of issue: MUMBAI</p>	
<p>8. Place of destination: MUMBAI</p>	
<p>9. Name of shipper: SAREWATER LINES (I) PVT. LTD.</p>	
<p>10. Name of consignee: SAREWATER LINES (I) PVT. LTD.</p>	
<p>11. Name of carrier: SAREWATER LINES (I) PVT. LTD.</p>	
<p>12. Name of vessel: SAREWATER LINES (I) PVT. LTD.</p>	
<p>13. Name of vessel: SAREWATER LINES (I) PVT. LTD.</p>	
<p>14. Name of vessel: SAREWATER LINES (I) PVT. LTD.</p>	
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<p>44. Name of vessel: SAREWATER LINES (I) PVT. LTD.</p>	
<p>45. Name of vessel: SAREWATER LINES (I) PVT. LTD.</p>	
<p>46. Name of vessel: SAREWATER LINES (I) PVT. LTD.</p>	
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<p>100. Name of vessel: SAREWATER LINES (I) PVT. LTD.</p>	

Therefore denial of refund claim on this ground is not justified.

4.5 The issue no. (c) Non-production of Proper Disclaimer/NOC certificate by the manufacturer: The adjudicating authority has found that Disclaimer/NOC certificate by the manufacturer alongwith the Rebate claim documents submitted by the appellant is not proper as this certificate addressed to the Superintendent, Division-III. On going through, the said certificate, I find that the same certificate is addressed to the Division Superintendent. But the content of the certificate is that the manufacturer has no objection for the goods sell out vide Bill No. EX/0347 and exported under ARE-1 no. 07/16-17 dated 14.03.2017. Only the NOC is addressed to the Superintendent, Division-III (in the



instant case, The Division-III is Office of the Adjudicating Authority) denial of refund claim on this ground is not justified.

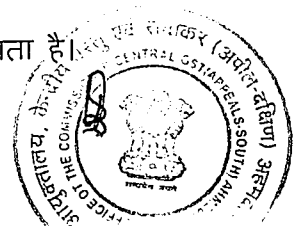
4.6 The issue no. (d) Difference of Rs. 1/- from rebate claim to duty payment: The adjudicating authority found that The amount of rebate claim is Rs. 30,4934/-, however the amount of duty paid vide Cenvat account is Rs. 30,493/-, so the amount of rebate claim is more than the amount of duty paid. The appellant has claimed rebate claim of Rs. 30,494/- instead of Rs. 30,493/- which is difference of Rs. 1/- only. It is not sufficient reason for reject the claim. The adjudicating authority restricted the rebate claim amount up to Rs. 30,493/- only. Denial of refund claim on this ground is not justified.

4.6 The issue no. (e) Original ARE-1 not properly endorsed by the Customs authority: The adjudicating authority had observed that ARE-1 No. 07/16-17 dated 14.03.2017HAS has not been properly endorsed by the Customs authority as not name and stamp of the officer is appearing therein. The proper endorsement in the ARE-1 viz. signature and stamping etc is not in the hand of the appellant. It is liability of the concerned officer to sign and stamp the documents properly. Proper sign and stamp is not only crotalaria to decide the genuineness of the documents. If the genuineness of the ARE-I and signature of the officer are not in question then, the rebate claim cannot be denied on this ground.

5. The basic concept of the granting the refund of duty is that, the same goods should be exported on which the duty has been paid. The adjudicating authority, nowhere in the impugned order, has denied the fact that the goods have been exported. His entire argument is based on the procedural lapse committed on the part of the appellant. I am of the view that once export procedure has been completed, consecutive benefits arising out of the said export should not be denied to the appellant.

6. In view of the above, In view of the discussion above, I do not agree with the views of the adjudicating authority. So, I allow the appeal filed by the appellant.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता




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

3/11/2018

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(S. DUTTA)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

M/s. B. M. Engineers,
12, Shree Vijay Appt. 10,
Sundarvan Soc., B/h Mehta Sweet,
Vana, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, South.
3. The Dy. / Asstt. Commissioner, Central Tax, Division-III, Ahmedabad-South.
4. The Addl./Joint Commissioner, (Systems), Central Tax, South.
5. Guard file.
6. P.A file.

