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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(20)/17/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

*1609/01613*

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-365-2017-18  
दिनांक Date : 27-02-2018 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. 15/AC/2016-17 Ref दिनांक: 15/3/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s Rasna 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 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, 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.

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 अनुसूचि-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 Rasna Pvt. Ltd., Rasna Centre, Opp. Sears Tower, Gulbai Tekra, Ahmedabad (herein after referred to as the appellants) against the OIO No. 15/AC/2016-17/Ref dtd. 15.03.2017 (herein after referred to as the impugned order) passed by the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-I (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants filed rebate claims for Rs. 3,22,498/- in respect of the duty paid excise material used in the manufacturing of goods exported under Rule 18 of the Central Excise Rules, 2002 ('CER' for brevity). Among many other discrepancies, it was noticed that the appellants had not submitted the original and duplicate copies of the concerned ARE-2's. The appellants resubmitted the claims after more than two years without complying query. In view of this, a show cause notices dtd. 28.03.2016 was served upon the appellants proposing rejection of the refund claims. The adjudicating authority, vide the impugned order, held that the claim was time barred and was submitted without mandatory documents i.e. original and duplicate copies of the concerned ARE-2's and no proof of export had been submitted in the concerned rage, rejected the refund claims.

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

- a) That the refund claim was filed originally within the time limit;
- b) That they had submitted necessary documents such as original white, buff and pink coloured copies of ARE2's duly certified by Customs, ICD, self certified EP copies of Shipping Bills, self certified EP copies of Bills of lading, input invoices, self certified EP copies of BRCs etc. as required under Rule 18 of the CER within one year of export. However the same was returned by the Deptt. Therefore it was resubmitted removing the defects;
- c) That there was no dispute as regards goods having been exported as well as that the rebate was admissible on duty paid inputs used in the manufacture of exported goods;
- d) That they had fully followed the procedure regarding export;
- e) That benefit of rebate cannot be denied to an exporter on technical grounds for which they seek to rely on various case laws;

4. The personal hearing in the case was held on 30.11.2017 in which Shri Uday Joshi, Advocate and Shri Mukesh Motreja, Consultant appeared on

behalf of the appellants. They drew attention towards two letters dtd. 31.08.2015 and 25.03.2015 and cited case laws of Garg Tex-O-Fab – 2011 (271) ELT-449 (GOI) and Dorcas Market Makers Pvt. Ltd. – 2015 (321) ELT-45 (Mad.). They also submitted additional submissions (copies of proof of export).

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 rebate claim has been rightly rejected by the adjudicating authority on the ground mentioned in the impugned order.

7. First of all, I take up the issue of rejection of rebate claim on the issue of limitation as the adjudicating authority has held that the rebate claim was filed after more than two years. I find that the appellants have relied upon the case law of DY. COMMISSIONER OF C. EX., CHENNAI Vs DORCAS MARKET MAKERS PVT. LTD.- 2015 (321) E.L.T. 45 (Mad.). I further find that in case of Apar Industries (Polymer Division) vs. Union of India – 2016 (333) ELT-246 (Guj.), the Hon'ble High Court of Gujarat has held that the time limit provided under Section 11B of Central Excise Act must be computed from date of original filing of rebate claim and not from date of resubmission of claim after rectification of defects. In view of this, I also hold that the rejection of rebate claim on the ground of limitation is not proper and the impugned order to this extent is set aside.

8. Now I take up the issue of rejection of claim on the ground that the appellants failed to submit copies of original and duplicate copies of ARE-2s. Rebate of duty, in case of export of goods, is governed by Rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 6.9.2004, as amended. The procedure spelt out is that the excisable goods are required to be cleared for export under ARE-I form. Original and duplicate copies contain the certification from customs authorities that said goods are exported vide relevant Shipping Bill. The triplicate copy of ARE-I contains the duty payment certification from Range Superintendent. Thus, it becomes quite clear that ARE-1 is the basic essential document for export of duty paid goods under rebate claim. The Customs certification on these copies of ARE-1 proves the export of goods. The rebate sanctioning authority has to compare these documents with triplicate copy of ARE-1, as stipulated vide Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, to satisfy himself about the correctness of the rebate claim, to establish that excisable goods

cleared from factory of manufacture on payment of duty has been exported. In the instant case, I find that the appellants have not been able to submit the first and second copies of the concerned ARE-2s which makes it impossible to correlate the goods manufactured and exported. I find that in the case of Cipla Ltd cited in 2016 (343) E.L.T. 894 (G.O.I.), it has been held that "The point which needs to be emphasized is that when the Applicant seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the Applicant should have ensured strict compliance of the conditions attached to the said Notification." I also hold accordingly that non-submission of documents in manner prescribed imparts a character of invalidity to rebate claim - Establishment of export of same duty paid goods cleared from factory fundamental requirement for sanctioning rebate under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.).

I further find that in the case of Manik Machinery Pvt. Ltd. Vs Union Of India - 2014 (310) E.L.T. 26 (Bom.), it has been held that collateral documents These documents may prove export of certain goods but would not prove further that those were same goods removed from manufacturer's factory - No hyper technical view taken. In view of this, I am of the view that the submission of first and second copies of the ARE-2s is a necessary requirement and has to be fulfilled.

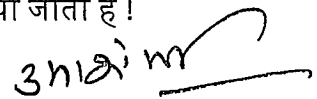
8. I find that the appellants has enclosed photo copies of all the AREs. On perusal, I find that the export under ARE-2 Nos. 21 & 23 to 25 took place under "self removal procedure" and therefore it is the statutory obligation of the appellants to prove that the goods removed were the same for which the rebate claim has been filed with supporting documents. I find that the appellants have not been able to submit even Xerox of first and second copies duly endorsed by the customs authorities. In such a scenario, their contention about these ARE-2s cannot be accepted and the appeal to this extant stands involving rebate claim amount of Rs. 59,277/- is rejected. The case laws submitted by the appellants i.e. Garg Tex-O-Fab cited at 2011 (271) ELT-449 (GOI) is not of any help to the appellants as in para 8, it records that respondents could have reconstructed the documents and that the respondent had lodged an FIR with the Police Authorities for documents having been lost but in the appellants' case, they have not submitted any such documents ie. Xerox of first and second copies of the ARE-2s duly endorsed by the customs authorities and correlated with the other documents. The case laws submitted by the appellants i.e. Dy.

Commissioner of Central Excise vs. Dorcas Market Makers (supra) is not of any help to the appellants as the issue decided in that case was of limitation whereas in the instant case, the issue of limitation has already been held in their favour.

Now I take up the issue of rejection of rebate claim pertaining to ARE-2 nos. 3 to 20 and 22 involving amount of Rs. 2,63,221/-. I find that the export under these ARE-2s took place under supervision of Central Excise officers and therefore it is logical that all the copies of the ARE-2s contain same description of the goods exported. So the identity of the goods exported is already established. The appellants have also submitted collateral documents which need to be examined and correlated with the details of the ARE-2s 3 to 20 and 22 involving amount of Rs. 2,63,221/-. For this limited purpose of ascertaining the details given in the ARE-2s mentioned in this para with the collateral documents submitted by the appellants and matching them, I remand the issue to the adjudicating authority. In view of the above findings, it is made clear that in the event that the details given in the ARE-2s mentioned in this para with the collateral documents submitted by the appellants are matching, the rebate to that extent shall stand allowed.

10. 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: 27.2.2018

सत्यापित



(धर्मेन्द्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

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

To:

M/s Rasna Pvt. Ltd.,  
Rasna Centre,  
Opp. Sears Tower,  
Gulbai Tekra,  
Ahmedabad

**Copy to:-**

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

