



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7th 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(32)/109&154/Ahd-I/2017-18 / 1726-1730.
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-378 to 379-2017-18
दिनांक Date : 27-02-2018 जारी करने की तारीख Date of Issue 22-02-2018.

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/2531-2532/AC/2017-Reb दिनांक: 18/9/2017,
MP/3251/AC/2017-Reb दिनांक: 13/11/2017 issued by Assistant Commissioner, Central Tax,
Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Gopal Chemicals
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।

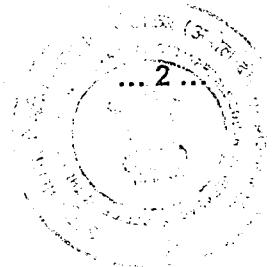
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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।



(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 हैं।

(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.

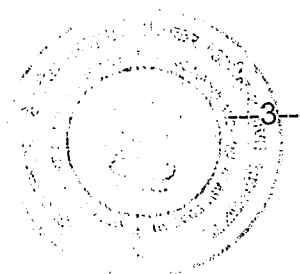
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

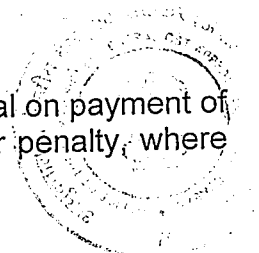
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

Two appeals have been filed by M/s. Gopal Chemicals, Plot No. 563, Phase-II, GIDC Estate, Vatwa, Ahmedabad 382 445 [for short – ‘appellant’], against the below mentioned impugned OIOs, the details of which are as follows:

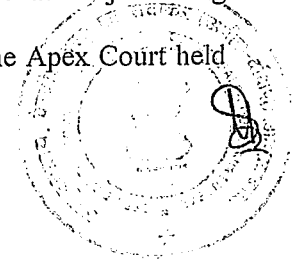
Sr. No.	OIO No. & date	Adjudicating authority	Appeal No.
1	MP/2531-2532/AC/2017-Reb dated 18.9.2017	Assistant Commissioner, Central Tax, Division III, Ahmedabad South Commissionerate	V2(32)109/Ahd-I/2017-18
2	MP/3251/AC/2017-Reb dated 13.11.2017		V2(32)154/Ahd-I/2017-18

Since both the appeals are on the same issue, they are being taken up together vide this OIA.

2. Briefly, the facts are that vide the aforementioned impugned OIO, the adjudicating authority rejected refunds of Rs. 3,46,250/- and Rs. 3,75,000/- in respect of three ARE-1s filed by the appellant. The adjudicating authority held that the appellant had manipulated/forged their CENVAT credit records as is clear from the different sheets of computer print out of the same page submitted at different times and therefore, the payment of duty through such manipulated/forged documents, cannot be accepted as genuine payment of duty.

3. Feeling aggrieved, the appellant has filed these two appeals raising the following grounds:

- that the amount of excise duty involved in the goods exported which is claimed as rebate was paid from available balance of basic excise duty in the CENVAT credit register; that the mistake was only in the opening balance of additional duty, which was not used for payment of excise duty in respect of the present refund claims;
- that there was no reason for any manipulation for the purpose of payment of excise duty for goods exported under claim of rebate;
- that the opening balance of additional duty, which was wrongly mentioned, was subsequently rectified by the appellant on their own while filing ER-3 returns; that such balance of additional duty was at no stage used or intended to be used for the purpose of debit of excise duty payment of goods exported under claim of rebate;
- that since it was a genuine clerical mistake on the part of the appellant in the balance of additional duty, which was not used for debit of said goods, it cannot be considered as a manipulated or forged CENVAT credit register;
- that when the final print out of the said CENVAT credit register is also matched with ER-3 return for the period April 2017 to June 2017, submitted on 6.7.2017, before issue of show cause notice on 7.9.2017 it is evident that the clerical mistake is not reflected in the said returns;
- that it is not coming out from the impugned OIO as to why the appellant manipulated especially when he had sufficient funds in the basic excise duty from which the debit was done in respect of the rebate claims;
- that they would like to rely on the case of Amtrek India Limited [2007(210) ELT 009];
- that the denial of the rebate is discriminatory; that the classification of the mistake into manipulation/forged document is not based on intelligible differentia;
- that there is not law that a mistake once committed cannot be rectified;
- that the appellant accepts the mistake on their part in opening balance of additional duty but it has no effect on debit of duty from basic excise duty as sufficient balance was available in basic duty was available;
- that the amount of Rs. 1,03,251/- was opening balance for March 2017 which through oversight was also shown as balance in the month of April 2017;
- that the appellant had relied upon the below mentioned case laws before the adjudicating authority which were not discussed by him viz.
 - o Mangalore Chemicals & Fertilizers Ltd [1991(8) TMI 83- wherein the Apex Court held that substantive benefit cannot be denied on procedural lapse;



- Cipla Limited [2013(9) TMI 996 GOI – wherein it was held that h substantial benefit of rebate claim cannot be denied for mere minor procedural lapses;
- Aglo Pharmaceuticals Ltd [2013(60) TMI 686] wherein it was held that rebate cannot be denied for minor procedural infraction;
- Socomed Pharma Private Limited [2015(3) TMI 861 GOI] wherein it was held that minor procedural infraction cannot be a denial of rebate claim where substantial compliance of provisions of notification and rules made by claimant;
- Usan Pharmaceuticals P Ltd [2013(6) TMI 677] wherein it was held that where export of goods are not in dispute, where rebate claims are not challenged on merit, that when fundamental conditions of rebate stands complied it cannot be denied;
- S P Changalvaraya Naidu [1994(1) SCC 1] wherein the Court held that fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another;
- Amtek India Ltd [2007(120) ELT 9] wherein it was held that the action of the assessing officer in overlooking the documents led him to the conclusion about manipulation which appears to be totally uncalled for and without any reasonable basis;
- Kranti Associates P Ltd [2011(273) ELT 345(SC)] and Shri Swamiji of Shri Admar Mutt [AIR 1980 SC 1].

- that in the facts and circumstances of the case it is a clerical mistake and cannot be considered as deliberate action and equated as default; that it was a bonafide mistake;
- that there is no mens rea attributable and the detection of mistake was by the appellant themselves.

4. Personal hearing in case was granted on 22.1.2018 and 31.1.2018 however, the appellant vide his letters dated 19.1.2018 and 19.2.2018, while waiving the right for personal hearing, requested that the matter be decided on merit.

5. I have gone through the facts of the case and the grounds of appeal. The primary issue to be decided in the matter is whether the appellant is eligible for the rebate of Rs. 3,46,250/- and Rs. 3,75,000/-.

6. As is already mentioned supra, the rebates were rejected on the grounds that the appellant had manipulated/forged their CENVAT credit records as is evident from the different sheets of computer printout of the same page, submitted at different times and hence, the adjudicating authority held that the payment of duty through such manipulated/forged documents cannot be accepted as genuine payment of duty. However, what is not disputed is also the fact that both the payments were made from the credit available in basic excise duty and not additional duty, wherein as per the department, the figures were manipulated, which the appellant states was a clerical mistake.

7. As has been held in a catena of decisions that rebate can be granted when [a] the goods were exported and [b] the duty was paid. As far as [a] goes, there is no dispute. In respect of [b], the payments in respect of all the three ARE-1s, was debited from the balance available from the CENVAT credit lying under the head basic excise duty. So, even the duty payment condition stands satisfied. Therefore, since both the conditions are satisfied, I find that the adjudicating authority erred, in denying the rebate of duty.

8. Coming to the contentious issue of manipulation in the opening balance of additional duty in the CENVAT credit sheet presented with one of the rebate claims. It is not the case of the department that the duty involved in the rebate claims was debited from the additional duty. Therefore, the question of the rebate being rejected on this ground, would not be a legally

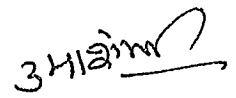
tenable. Moving on to the finding that the appellant manipulated/forged the balance lying under the 'additional duty', I find that the so called manipulated balance was never used/utilized. Further correct figures were reflected in the ER-3 returns filed with the department. I further find that the ER-3 returns were submitted well before the letter seeking month-wise figures were sent to the appellant in connection with the rebate claims.

9. However, after having said so, a word of caution. The appellant is directed to put proper checks and system in place, so as to ensure that such mistakes are not repeated in future.

10. Hence, the impugned OIOs are set aside and the appeals are allowed.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeals filed by the appellant stands disposed of in above terms.




(उमा शंकर)

आयुक्त (अपील्स)

Date : 27.2.2018

Attested


(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Gopal Chemicals,
Plot No. 563,
Phase-II, GIDC Estate,
Vatwa,
Ahmedabad 382 445

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Tax, Division-III, Ahmedabad South.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
5. Guard File.
6. P.A.

