



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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/35/EA-2/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

1619/01623

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-382-2017-18  
दिनांक Date : 28-02-2018 जारी करने की तारीख Date of Issue 20/3/2018

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

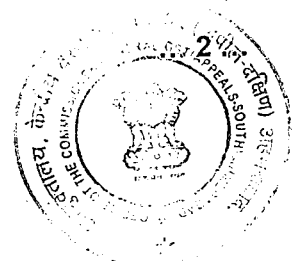
Arising out of Order-in-Original No. MP/03/AC//2017-18Ref दिनांक: 20/4/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Meghmani Dyes and Intermediates LLP**  
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 :**

- (i) 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 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.

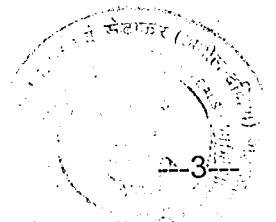
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

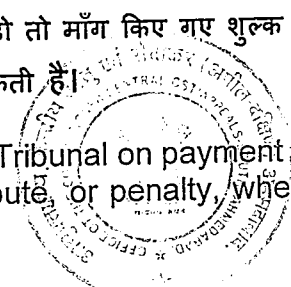
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 the Assistant Commissioner, CGST, Division-III, Ahmedabad South (in short 'appellant') in terms of Review Order No.18/2017-18 dated 09.08.2017 passed by the Principal Commissioner, CGST, Ahmedabad South (in short 'Review Authority) against Order-in-Original No.MP/03/AC/2017-18-Ref. dated 21.04.2017 (in short 'impugned order') passed by the then Assistant Commissioner, Central Excise Division-III, Ahmedabad-I (in short 'adjudicating authority') in case of M/s. Meghmani Dyes & Intermediates LLP, Unit-IV, Plot No.96to98,103, Phase-II, GIDC Vatva, Ahmedabad-382445(in short 'respondant') .

2. Briefly stated that the adjudicating authority sanctioned the refund claim of Rs.82,952/- (EC Rs.33,552/- + SHEC Rs.49,400/-) filed by the respondant which was lying unutilised in their Account Current(i.e.PLA) on account of abolition of both the cess from 01.03.2015, vide impugned order.

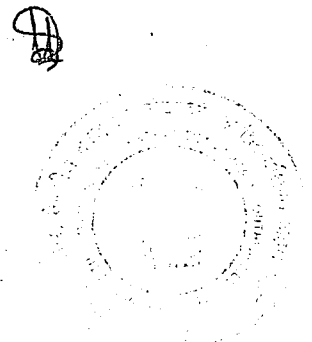
3. Aggrieved with the impugned order, the review authority vide Review Order No.18/2017-18 dated 09.08.2017 directed the appellant to file appeal on the following grounds viz.

- (a) proviso no.03 to Sub-rule 7(b) of Rule 3 of Cenvat Credit Rules, 2004 does not allow refund of the balance of accumulated credit of Education Cess and Secondary & Higher Education Cess paid on inputs or capital goods.
- (b) in terms of instruction issued from F.No.96/85/2015-CX-1 dated 07.12.2015 of Tariff Conference, it was Govt's conscious policy decision not to allow utilization of accumulated credit of Education Cess and Secondary & Higher Education Cess after these cesses have been phased out.

4. The respondant also filed counter submission vide letter dated 28.10.2017 wherein, inter alia, submitted that

- (a) whole controversy has arisen because of mis-understanding and not differentiating the balance available in PLA/Account Current or Cenvat credit account caused by accumulation of credit on account of procurements. The payment made in cash is not the accumulated credit but deposits.
- (b) the appeal filed by the department is not maintainable as the same is filed after expiry of 90 days from the date of order or its communication, the time limit permitted under the law for filing the appeal. Thus, appeal filed by the department is barred and hit by limitation.

5. Personal hearing in the matter was held on 22.01.2018. Shri Manohar Maheshwari, Sr. General Manager Commercial, appeared on behalf of the respondant and explained the case.

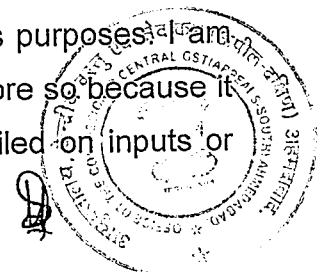


6. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the respondent is eligible for refund or otherwise. Accordingly, I proceed to decide the case on merits.

7. Prima facie, I find that the the respondent had deposited Rs. 2,00,000/- under the head EC and Rs.1,00,000/- in SHEC vide challan no. 01155 on 02.07.2013. Consequently, with the issue of Notification No. 14/2015-CE and 15/2015-CE both dated 01.03.2015, exempting the EC and SHEC wholly, the balance of Rs.33,552/- in EC and Rs.49,400/- in SHEC remained unutilized in their PLA. Hence, the respondent filed the refund claim of Rs.82,952/- (Rs.33,552/- + Rs.49,400/-) which remained unutilised since March-2015, in their PLA towards EC and SHEC, respectively. This refund claim was sanctioned by the adjudicating authority vide impugned order. Aggrieved with the impugned order, the review authority vide review order dtd.09.08.2017 directed the appellant to file the present appeal on the grounds mentioned in Para 3 supra.

8. Before dwelling on to the main issue, I find that EC as a levy was introduced in the Budget of 2004. Chapter VI, Sections 91 to 95 of the Finance Act (No. 2), 2004, deal with EC. Section 91 states that there shall be levied and collected, in accordance with the provisions, as surcharge, for purposes of the Union, a cess to be called the EC, to fulfill the commitment of the Government to provide and finance universalised quality basic education. Vide circular dated 6.12.2004 and 22.7.2004, separate accounting codes were provided for EC. Similarly, SHEC as a levy was introduced in the Budget of 2007. Chapter VI, Sections 136 to 141 of the Finance Act 2007, deal with SHEC. Section 136 states that there shall be levied and collected, in accordance with the provisions as surcharge, for purposes of the Union, a cess to be called the SHEC, to fulfill the commitment of the Government to provide and finance secondary and higher education. Vide circular dated 30.3.2007 and 4.10.2007, separate accounting codes were also provided for SHEC.

9. It is correct that there are different accounting codes for BED, EC and SHEC. A It is also a fact that the respondent has deposited in cash under the head EC and SHEC. These payments were never disputed at any point of time. Now when the respondent has filed refund in respect of cash deposit lying in balance towards EC and SHEC, refund is propsoed to be denied on the grounds mentioned in Para 3 supra. Accounting heads, as is well known, are basically for the department's internal management of funds towards various purposes. I am of a strong view that rejection of refund is not legally tenable, more so because it is relating to deposit under PLA(i.e. cash deposit) and not availed on inputs or

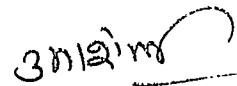


capital goods and accumulated under the provisions of Cenvat Credit Rules, 2004. So, I find that the adjudicating authority has rightly allowed the refund of EC and SHEC vide impugned order. I, therefore, set-aside the appeal filed by the appellant and uphold the impugned order.

10. As regards the limitation issue raised by the respondent, I find that it is true that time limit of three months from the date of communication of the decision or order of the adjudicating authority for filing an appeal before this authority is prescribed under Section 35E(3) of the Central Excise Act, 1944. In the instant case, I find that the adjudicating authority has communicated the impugned order to the review authority on 01.06.2017 and the review authority has passed the said review order on 09.08.2017 i.e. well within the time limit prescribed in Section 35E(3)ibid. Further, the adjudicating authority has filed the present appeal on 08.09.2017 i.e. well within the time limit prescribed under Section 35E(4)ibid. So, I find that the plea of the respondent on limitation issue is not tenable.

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

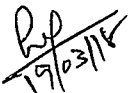
The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:



(B.A. Patel)  
Supdt.(Appeals)  
Central GST, Ahmedabad.

BY SPEED POST TO:

- (1) The Asstt. Commissioner, CGST,  
Division-III(Vatva-II), Ahmedabad South.(Appellant)
- (2) M/s. Meghmani Dyes & Intermediates LLP, Unit-IV,  
Plot No.96to98,103, Phase-II, GIDC Vatva,  
Ahmedabad-382445.(Respondant).

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Principal Commissioner, CGST, Ahmedabad South (RRA Section).
- (3) The Asstt. Commissioner(System), CGST, Ahmedabad-South  
(for uploading OIA on website)
- (4) Guard file
- (5) P.A. file.

