

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

रजिस्टर्ड डाक. ए.डी. द्वारा

क फाइल संख्या : File No : V2(13)/121/Ahd-I/2017-18 *11741 to 1745*
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-386-2017-18
दिनांक Date : 12-03-2018 जारी करने की तारीख Date of Issue *22/03/18*

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

ग Arising out of Order-in-Original No. MP/2533-2542/AC/2017-Reb दिनांक: 20/9/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Agri W S Products
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 :

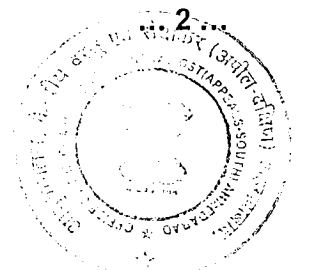
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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।

9. Feb



(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.

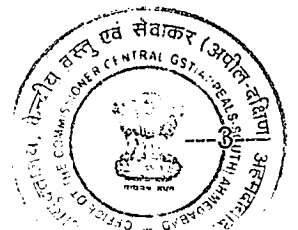
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैटल हॉस्पिटल 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 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 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।

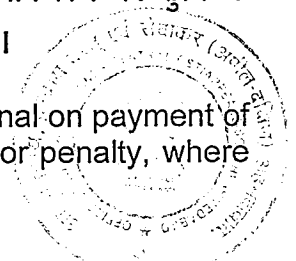
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

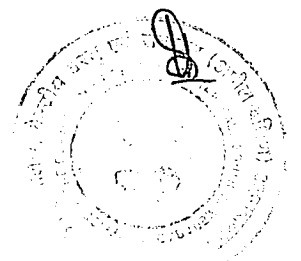
This appeal has been filed by M/s. Agri. W S Products, Plot No. 6817, Phase VI, GIDC Estate, Vatwa, Ahmedabad 382 445 [for short – ‘appellant’] against OIO No. MP/2533-2542/AC/2017 dated 20.9.2017 passed by the Assistant Commissioner, Central Tax, Division III, Ahmedabad South Commissionerate [for short – ‘adjudicating authority’].

2. Briefly, the facts are that the appellant, engaged in the manufacture and export of Tamarind Kernel Powder, filed rebate claims on 22.6.2017 in respect of ten ARE-1s. A show cause notice dated 7.9.2017 was issued to the appellant *inter alia* alleging that [a] they had availed drawback in respect of entire quantities under 130299A of notification No. 131/2016-Cus (NT) dated 31.10.2016; [b] that they were not eligible for drawback under the said serial number since they were availing CENVAT credit; [c] that the rebate was being claimed in respect of duty debited through their CENVAT credit register; and [d] that as this would amount to double benefit, the rebates filed were liable for rejection. Thereafter, the adjudicating authority vide his impugned OIO dated 20.9.2017, rejected the refund of Rs. 10,95,311/-.

3. The appellant feeling aggrieved has filed this appeal on the following grounds:

- that the consignment of finished goods were exported through the merchant exporter under different ARE-1s during the period from November 2016 to March 2017;
- that the appellant had accepted the mistake which had occurred while filing the shipping bill before Customs under higher rate instead of lower rate of drawback and informed the adjudicating authority that they had already approached the Customs along with payment of challan towards excess drawback for amendments in the shipping bills;
- that the impugned OIO rejecting the substantial claim without due consideration is bad in law and without due consideration of facts and circumstances of the case as well as without following the principles of natural justice;
- that the impugned OIO has been issued in a hasty manner without going into the merits of the case;
- that the Customs department has issued the required amendment under relevant shipping bills in terms of section 149 of the Customs Act, 1962;
- that the appellant and the merchant exporter had reversed the excess drawback against total 22 shipping bills out of which only 10 shipping bills are relevant to this case which proves the bonafides of the appellant;
- that when the appellant had submitted the proof of the application of amendment for shipping bills the adjudicating authority should have returned the rebate claim instead of rejecting the same;
- that not providing sufficient time to represent the matter is grossly violative of the principles of natural justice;
- that there is no condition under the notification debarring the appellant from rebate of duty on finished goods paid through CENVAT credit;
- that they would like to rely on the case of M/s. Iscon Surgical Limited [2016(344) ELT 108], Spentex Industries Limited [2015(324) ELT 686], Suksha International [1989(39)ELT 503], A V Narasimhalu [1983(13) ELT 1534], Formic India [1995(77) ELT 51], Mangalore Chemical and Fertilizers Limited [1991(55) ELT 437], Sun Pharmaceutical Ltd [2015(3280) ELT 792].

4. Personal hearing in the matter was held on 22.1.2018, wherein Shri Jignesh Kumar Bhatt, appeared on behalf of the appellant and reiterated the grounds of appeal. He further stated that drawback shipping bill was filed at a higher rate; that they had requested the original authority to wait for amendment of shipping bill but the adjudicating authority issued the impugned OIO.

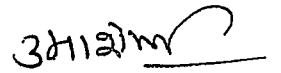


5. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing. The issue to be decided is whether the appellant is eligible for the rebate of duty under Rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 6.9.2004.

6. I find that the adjudicating authority has rejected the rebate on the grounds that [a] the appellant was availing the benefit of CENVAT credit which is evident from the fact that the duty in respect of which rebate is being claimed has been debited from the CENVAT credit account; [b] that they had availed drawback in respect of entire quantities of the ARE 1s under 130299A; [c] that rebate is not applicable in the case because if granted it would lead to dual benefit. The adjudicating authority therefore rejected the rebate under Rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 6.9.2004, notification No. 131/2016-Cus(NT) dated 31.10.2016 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

7. The major grouse of the adjudicating authority in rejecting the rebate is that the appellant had availed the benefit of drawback under Sr. No. 130299A of notification No. 131/2016-Cus(NT) dated 31.10.2016. However, it is an undisputed fact that the appellant on realizing their mistake had made an application for amendment of the shipping bills. Now the appellant in his appeal has stated that Customs Mundra has amended the shipping bill and accordingly the sr. no. under which drawback is claimed stands amended from 130299A to 130299B. He has also enclosed copy of the two letters from Superintendent of Customs(Export), Custom House, Mundra to this effect.

8. In view of the foregoing, before dwelling into the legality of the issue, I find that in the interest of justice, the matter needs to be remanded back to the adjudicating authority since the major ground on which the rebate was rejected [which was that the appellant had availed drawback at a higher rate], now stands amended. The appellant has also stated that they have already paid the excess drawback. Now, therefore, the appellant is directed to produce all the relevant documents to the adjudicating authority, who will verify the documents so produced and pass an order as per law. Needless to state, that the adjudicating authority would adhere to the principles of natural justice while deciding the matter.

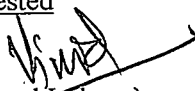


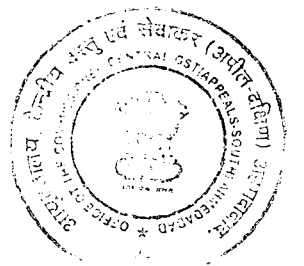
(उमा शंकर)

आयुक्त (अपील्स)

Date : .2.2018

Attested


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



By RPAD.

To,

M/s. Agri W S Products,
Plot No. 6817, Phase VI,
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.

