

	<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, Anibavadi, Ahmedabad-380015
	079-26305065	टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(70)/69/Ahd-I/2017-18 / 1721-1725  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-388-2017-18  
दिनांक Date : 15-03-2018 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/323/Reb/2017 दिनांक: 24/5/2017 issued by Assistant  
Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s. Urja Products Pvt. Ltd.  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 अतल 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 :

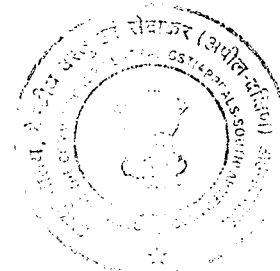
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के  
दौरान हुई हो।

(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 दिनोंक 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(Appel) 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 रू.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।

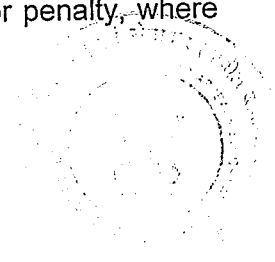
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s Urja Products Pvt. Ltd, 423, GIDC, Telephone Exchange Lane, Odhav, Ahmedabad- 382 415 (*hereinafter referred to as 'appellants'*) have filed the present appeals with delay condonation appeal, against the Order-in-Original No. MP/232/Reb/2017 dated 24.05.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, C. Ex., Div-V, Sahjanand Arcade, Ahmedabad-I (*hereinafter referred to as 'adjudicating authority'*).

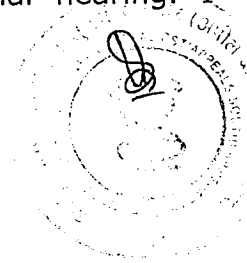
2. The facts of the case, in brief are that appellant had imported goods and had availed CENVAT of Additional Duty of Customs leviable u/s 3(5) of the Customs Tariff Act, 1975. On re-exportation i.e removal as such under ARE-1, appellant had paid "**amount** equal to the credit availed" as envisaged rule 3(4)(b) of CCR, 2004 and asked for rebate u/r 18 of CER, 2002 on exportation under Notification No. 19/2004-CE (NT). Adjudicating authority had rejected the rebate of Rs. 70,552/- on ground that it is a case of re-export of imported goods and said notification is not applicable to appellant.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 31.07.2017 before the Commissioner (Appeals), CGST, Ahmadabad wherein it is contended that removal of "input as such is "deemed manufactured" goods as if such goods have been manufactured in the same factory and that the amount paid as duty in manner prescribed under CCR, 2004 Rule 3(5) r/w rule 3(6) is duty of excise paid and not at all a duty of customs even if it is paid equal to credit taken of Customs duty and that the Notification 19/2004- CE (NT) explanation 1(a) is satisfied.

4. Personal hearing in the case was granted on 03.01.2018. Shree Pooja N. Shah, CA appeared before me and reiterated the grounds of appeal. She stated that Imported goods removed as such and exported on reversal of credit taken and that defective goods were removed.

### DISUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing. I condone the delay of three days in filing appeals.



Preamble of Notification No. 19/2004-CE (NT) is reproduced as below –

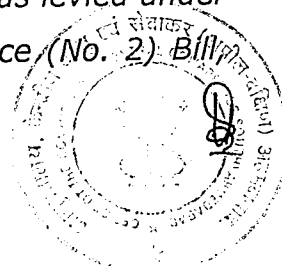
*"In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 .....insofar as it relates to export .....Central Government hereby directs that there shall be granted rebate of the whole of the **duty** paid on all **excisable goods** falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), ....."*

From above it is evident that rebate of **duty** paid is required to be given and not the rebate of an "**amount** equal to the credit availed".

6. Which duty paid is required to be given rebate is given in Explanation-I of notification. Further I agree with the adjudicating authority that "Additional Customs Duty" is not considered as "duty of excise" in terms of Explanation-I of said Notification which reads as below-

*Explanation I. - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely :*

- (a) *the Central Excise Act, 1944 (1 of 1944);*
- (b) *the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
- (c) *the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);*
- (d) *the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);*
- (e) *special excise duty collected under a Finance Act;*
- (f) *Additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);*
- (g) *Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004.*



Above list does not contain "Additional Duty of Customs leviable u/s 3(5) of the Customs Tariff Act, 1975". Further it also does not contain any indication of refund of "amount"

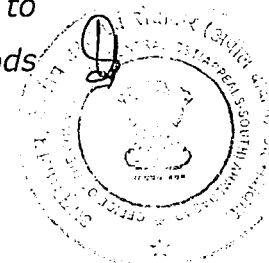
7. Rule 3 (4) of Cenvat Credit Rules, 2004 provides the purpose for which CENVAT credit can be utilized. The list of purposes given is exclusive and therefore, it is to be noted that CENVAT credit can be utilized only for the purposes specifically mentioned in the list. The relevant text of Rule 3 (4) is reproduced below for your ready reference:

- (4) *The CENVAT credit may be utilized for payment of-*
- (a) *any **duty** of excise on any final product; or*
- (b) *an **amount** equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or*
- (c) *an **amount** equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or*
- (d) *an **amount** under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or*
- (e) *service tax on any output service.*

From above rule 3(4)(b) it is evident that CENVAT has been utilized for payment of "amount". If rule allows to utilize the CENVAT for payment towards "amount" for removal as such, that does not mean that whatever legally paid is eligible for rebate under notification 19/2004- CE (NT). Every legally paid duty may not be eligible for "rebate" under said notification. Explanation-I of notification gives the list of different duty paid as eligible "rebate".

8. Rule 3 (5) of CCR, 2004 which is specifically for "**removed as such**" is reproduced below for ready reference:

*"(5) When inputs or capital goods, on which CENVAT credit has been taken, are **removed as such** from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an **amount** equal to the credit availed in respect of such inputs or capital goods*



and such removal shall be made under the cover of an invoice referred to in Rule 9."

From above it is evident that appellant had paid "amount" and not the "duty" on such re-exportation of imported goods, therefore said notification No. 19/2004-CE (NT) is not applicable as notification says rebate of "duty" and not of "amount".

9. In view of above, appeal filed by the appellants is rejected and impugned OIO is upheld.

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

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

*उमा शंकर*  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

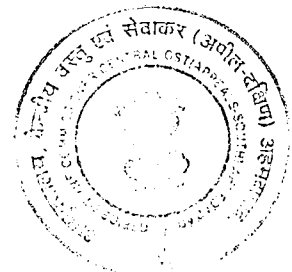
*R.R. Patel*  
(R.R. PATEL)

SUPERINTENDENT (APPEAL),  
CENTRAL TAX, AHMEDABAD

To,  
M/s Urja Products Pvt. Ltd, 423,  
GIDC, Telephone Exchange Lane,  
Odhav, Ahmedabad- 382 415

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST, Ahmedabad South.
- 3) The Asst. Commissioner, Central Tax, Div-V, Ahmedabad South
- 4) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 5) Guard File.
- 6) P.A. File.



7

