



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(29)/115/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

2163 to 2167

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-398-2017-18  
दिनांक Date : 20-03-2018 जारी करने की तारीख Date of Issue

6/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/13/Dem/2017-18 दिनांक: 8/9/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent :  
**Synpol 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) केंद्रीय 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।

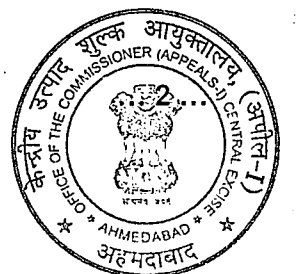
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

(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 हॉस्पिटल 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 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 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।

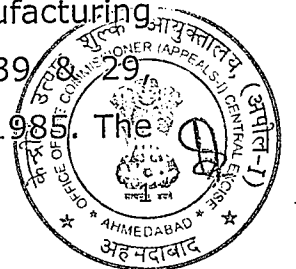
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute."



**ORDER IN APPEAL**

M/s. Synpol Products Pvt. Ltd., Synpol International(EOU OF Synpol Products Pvt. Ltd.), situated at 31-A/107, GVSMA Vasahat Ltd., Odhav IE, Ahmedabad – 382415, a 100% EOU, (*hereinafter referred to as the 'appellant'*) having Letter of Permission (LOP) No. KASEZ/100%EOU/II/951/2000-01/2376 dt.11.04.2001, as amended, issued by the Deputy Development Commissioner, Kandla Special Economic Zone and having licence under Section 58 of the Customs Act, 1962, for Private Bonded Warehouse as EOU, and permission for the manufacture and other operations in the Bonded Warehouse under Section 65 of the Customs Act, 1962, is holding Central Excise Registration No. AADCS9255PXM002. As per the aforementioned LOP the appellant was permitted to manufacture goods viz. Amino Resins, Polyamide Resins, Epoxy Resins, Epoxy Esters & Reactive Diluents, Hardeners & Accelerators, Polyvinyl Acetal Resins & Polyvinyl Butyl Resins, Acrylin Resins, Phenolic Resins, Ketonic Resins, Alkyd Resins and Polyester Resins. As per Foreign Trade Policy (herein after referred as FTP), a 100% EOU can sell in DTA its products, similar to the goods which are exported from the unit, at a concessional rate. The Appellant had never exported Polyester Resins in Primary form (Synpol SC 28) and at the same time they had sold the said goods in DTA during 2011-12 to 2015-16 (Up to Dec'15) by paying concessional rate of duty instead of full rate of duty. The appellant was given a Show Cause Notice for short payment of duty of Rs.17,79,479/-, on 18.04.2016. The Adjudicating Authority vide OIO No. MP/13/Dem/2017-18 dt.8.09.2017 (herein after referred as the impugned order), confirmed the demand of Rs. 17,79,479/-, for the recovery of differential duty, alongwith interest, redemption fine, penalty and enforcement of B-17 Bond & appropriation of security for the duty liabilities. The Appellant aggrieved by the said OIO, filed an appeal against the same, before me.

2. The facts of the case, in brief, are that the appellant had executed a B-17 Bond with the jurisdictional Central Excise authority for procurement of raw-materials, capital goods and clearance of the goods under bond for export purpose etc. The appellant was importing certain raw materials and inputs without payment of duty under Notification No. 52/2003-Cus dated 31.03.2003, as amended, and was also procuring various goods indigenously without payment of duty under Notification No. 22/2003-CE dt.31.03.2003, as amended. The appellant was manufacturing various types of Resins and Hardeners falling under Chapter 39 respectively of the First Schedule to the Central Excise Tariff Act, 1985. The



appellant was exporting some of the manufactured goods and also clearing the manufactured goods in DTA on payment of concessional rate of duty. During the test check audit of the records of the appellant by the Central Excise Revenue Audit (CERA), it was noticed that the appellant was manufacturing and clearing the products i.e.(i) Hardener (CTH 29420090), (ii) Polyvinyl Acetal Resins (Synpol B-18:CTH 39059990), (iii) Polyamides in Primary form (Synpol 150:CTH 39089090) and (iv) Polyester Resins in Primary form (Synpol SC 28: CTH 39079990) for exports and Domestic Tariff Area (DTA). All the four products manufactured by the appellant fell under different Customs Tariff Sub-headings. The appellant cleared their finished goods in DTA as per the Development Commissioner's DTA Sale Permission No. KASEZ/100%EOU/II/951/2000-01/Vol.1/13160 dated 27.03.2012, against export made during the period from April, 2010 to March, 2011. The appellant also cleared Polyester Resins in Primary form (Synpol SC 28) in DTA on payment of concessional rate of duty as provided under Notification No. 23/2003-CE, as amended, though they had never exported similar goods. It appeared that as per provisions of Para 6.8 of the Foreign Trade Policy (FTP) 2009-2014, an EOU was entitled for clearance of their products in to DTA up to 50% of the FOB value of exports, subject to fulfilment of positive Net Foreign Exchange Earnings (NFE), on payment of concessional rate of duty. The term "similar goods" means "goods which is although not alike in all respects, have like characteristics like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark and produced in the same unit by the same person who produced the export goods". Therefore, it was observed that Resins falling under separate Chapter sub-headings ( even if all of such goods are Resins) cannot be considered as "similar goods". The content of the products and the manufacturing process of the products were different and hence the products cannot be considered as "similar goods". It appeared that the appellant had calculated the duty liability for clearing Polyester Resin in Primary Form (Synpol SC-28) in DTA during the period from April, 2011 to December, 2015, by availing concessional rate of duty as per Notification No. 23/2003-CE, instead of full rate of duty. As such, they had short paid duty for clearances of Polyester Resin in Primary Form (Synpol SC-28). Therefore, the appellant was issued a Show Cause Notice as to why the differential duty aggregating Rs.17,79,479/-, leviable on Polyester Resin in Primary Form (Synpol SC-28) cleared in DTA during the period 1.04.2011 to



31.12.2015, should not be recovered from them alongwith interest, and also proposing to impose redemption fine and penalty on them. The Adjudicating Authority confirmed the demand of Rs.17,79,479/-, vide the impugned order. The Adjudicating Authority found that the periodical returns filed by the appellant were self-assessed and that they had never disclosed to the Department that they had cleared their goods under DTA by availing concessional rate of duty, in excess to their eligible limit, as provided under FTP and Notification No. 23/2003-CE. The Adjudicating Authority concluded that the appellant was fully aware that the said Polyester Resin in Primary Form (Synpol SC-28) is not similar to the other three products manufactured by them, but suppressed these material facts from the Department and therefore the extended period had rightly been invoked in the present case.

3. Being aggrieved by the impugned order dt. 08.09.2017, the appellant has filed this appeal before me on the grounds that (i) the Adjudicating Authority has erred in not considering the several judgements including the judgement in the case of M/s. Meghmani Dyes & Intermediates Ltd. regarding the principle that extended period of limitation cannot be invoked by the Revenue against and EOU who has filed ER-2 returns on a monthly basis declaring all details and information of DTA clearances; (ii) the Adjudicating Authority should not have decided whether the appellant had committed any breach the permission given by the Development Commissioner or not; and (iii) the impugned order denying the benefit of Notification No. 23/2003-CE and demanding differential duties solely based on the Circular No. 7/2006-Cus, that the goods sold by the appellant in DTA were not similar to the goods exported by them, was illegal.

4. During the personal hearing, Smt. Shilpa P. Dave, Advocate, authorised by the appellant, appeared before me and reiterated the grounds of appeal. She also submitted that in a case of similar nature, the Hon'ble CESTAT has stated that extended period cannot be invoked and showed ER-2 returns to prove that the goods were in the knowledge of the department.

5. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of personal hearing.

6. I find that the basic thing to be decided in this matter is whether extended period of limitation can be invoked in this case. The appellant has cited the Hon'ble Tribunal's judgement of Meghmani Inds. Ltd.



v/s. Commr., C. Excise, Ahmedabad-I [cited at 2010(261) ELT (411) (Tri.Ahd.)] , wherein at Para 4, it is stated that -

*"Applicability of extended period in our opinion is not sustainable in this case when the appellant has submitted returns which would show exemption notification availed by them, it cannot be said that there was any suppression or mis-declaration once the details of exemption Notification is given. Central Excise officer who is receiving the returns would be able to checkup whether the clearances by the appellants were in terms of the notification or not. Since the condition of the Notification are known to the officer as well as the appellants".*

Further, in the same para, it is stated that -

*"In any case, we find that mention of the notification number in the return and giving quantum of the clearances would be sufficient for the purpose of department. Therefore, the extended period cannot be invoked and demand if upheld would be limited to one year from the date of show cause notice. Therefore, we consider it a fit case for waiver of pre-deposit. Further, we also find that two Supreme Court decisions and a Tribunal decision have been cited before Commissioner but there is no finding in respect of these decisions. Commissioner simply observed that the facts of each case are different from this case and therefore, the case law is not relevant. In this case what was required to be considered was whether the definition of "similar goods" available in Customs Valuation Rules can be applied to the facts of the case. Basically the issue involved appears to be covered by the decisions cited by the learned advocate. The facts were not relevant but ratio of the decision as regards words 'similar' was to be considered. Therefore these decisions are applicable. Ratio of these decisions is that definition available in the Customs Act cannot be used in respect of Notification issued under another enactment. In such cases common parlance or dictionary meaning has to be applied. Therefore, we find this issue has not been dealt with properly by the Commissioner. We could have considered this issue here in the Tribunal but for the fact that there is no examination of the goods in question which have been cleared in the DTA in terms of definition of similarity. In our opinion, in such cases, there has to be examination in respect of each product to show that this product is not similar to the one exported and why benefit of notification is not available to this particular product. In the absence of clear finding in respect of each product, we consider the order would be incomplete. As already observed by us in respect of dyes, there seems to be clarity in view of the fact that demand shown under the heading VAT dyes would give an impression that department has accepted that VAT dyes, OBA and solvent dyes form distinct categories. There is no finding as regards agro-chemicals which are similar and if they are not similar*



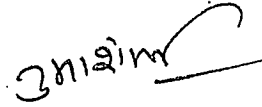
why they are not similar. Commissioner has to consider all these facts and give finding on the issues. Therefore, we remand the matter to the Original Adjudicating Authority, who shall consider in respect of each item the eligibility in DTA and also which meaning of "similar goods" to be adopted. We have already held that extended period cannot be applied".

The above-mentioned CESTAT order has been upheld by the Hon'ble High Court of Gujarat vide order dt.12.03.2012 [cited at 2013(288) ELT 514 (Guj.)]. I also find that the appellant has submitted copies of their ER-2 monthly returns for September, 2011 and December, 2011, submitted to the Department, alongwith their appeal, which clearly depict the Product as 'Polyester Resin in Primary Form and also depict the availment of benefit of Notification No. 23/2003 and the effective rate & duty amount paid by the appellant. On going through the said ER-2 returns, it is amply clear that the appellant had provided the required data as per the ER-2 returns and the Adjudicating Authority had overlooked this fact, even while mentioning it in the order, while applying the extended period of limitation in this matter.

7. I, therefore, set aside the impugned order and remand the case back to the Adjudicating Authority to decide the matter afresh, considering the disclosure of the products in the ER-2 returns filed by the appellant in this regard.

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

8. The appeal filed by the appellant stands disposed off on above terms.



(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED



(R.R. NATHAN)  
SUPERINTENDENT,  
CENTRAL TAX APPEALS, AHMEDABAD.

To,  
M/s. Synpol Products Pvt. Ltd.,  
Synpol International,  
(EOU of Synpol Products Pvt. Ltd.),  
31-A/107, GVMSA Vasahat Ltd.,  
Odhav IE,  
Ahmedabad - 382 415.





**Copy to:**

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-South.
- 3) The Dy./Asst. Commissioner, Division-V, Central Tax, GST, Ahmedabad (South), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (South).
- 5) Guard File.
- 6) P.A. File.

