



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/195/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

2288/202286

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-407-2017-18
दिनांक Date : 22-03-2018 जारी करने की तारीख Date of Issue

2/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/3080 to 3082/AC/2017-Reb दिनांक: 30/11/2017 issued by
Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**Shreeji Organics
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 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 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 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।

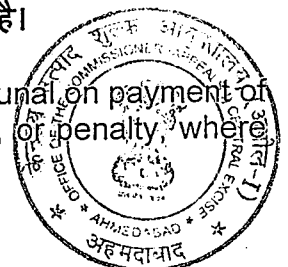
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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. Shreeji Organics, Plot No. 3421/3422, Phase IV, GIDC Estate, Vatwa, Ahmedbad 382 445 [for short 'appellant'] against OIO No. MP/3080-3082/AC/2017-Reb dated 30.11.2017, passed by the Assistant Commissioner, CGST, Division III, Ahmedabad South Commissionerate. [for short -'adjudicating authority']

2. Briefly, the facts are that the appellant filed a rebate claim of Rs. 8,07,476/- under Rule 18 of the Central Excise Rules, 2002, read with notification No. 19/2004-CE(NT) dated 6.9.2004. A show cause notice dated 3.11.2017, was issued to the appellant *inter alia* alleging that in the excise invoice the chapter sub heading was mentioned as **29222926** while in the shipping bill the sub heading was mentioned as **29214290**; that the goods mentioned in both the sub headings are different; that the goods cleared from factory, falling under sub heading 29222926 [as declared in the central excise invoice] were not the one which were exported; that the export clearance was made under advance licence; that the appellant had not mentioned the chapter sub heading in the ARE-1s and therefore it appeared that they had mis-communicated it to the custom authorities. The notice, therefore, asked the appellant to show cause as to why the rebate should not be rejected, since the goods cleared from the factory were not exported.

3. This notice dated 3.11.2017, was adjudicated vide the impugned OIO dated 30.11.2017, wherein the adjudicating authority rejected the rebate claim on the grounds that the contention of the appellant that their product is classifiable both under **29214290** and **29222926** is not correct; that it is important to ascertain that the goods cleared from the factory were the infact the goods which are exported; that no justification has been given as to why two different classifications were given in the different documents, pertaining to the same export; that the appellant has submitted copy of advance licence as per which they were required to export *meta ureido aniline* falling under chapter sub heading **29214290**; that in the shipping bills they have mentioned the sub heading and availed the benefits from customs and DGFT; that the claimant has not mentioned the chapter sub heading in the ARE-1s.

4. Feeling aggrieved, the appellant has filed this appeal raising the following grounds:

- that the adjudicating authority failed to appreciate the facts and circumstance of the case;
- that the substantive benefit of the right of rebate claim cannot be denied in terms of the judgement of the Hon'ble Supreme Court in the case of Mangalore Refinery;
- that they wish to rely on the case of Reliance Industries [2012(275) ELT 277], 2014(314) ELT 953 and 2013(293) ELT 641;
- that the appellant had submitted all documents showing the goods were exported including the BRC; that all the documents are correlated and therefore it cannot be concluded that the goods were not exported;
- that the only difference is in the chapter sub heading.

5. Personal hearing in the matter was held on 22.3.2018 wherein Shri N K Oza, Advocate appeared on behalf of the appellant. The learned advocate reiterated the grounds of appeal. He further stated that the rebate was allowed with the same mistake vide OIO no.



MP/2844-2846/AC/2017-Reb, a copy of which is submitted during the course of personal hearing. Further a copy of OIA no. 126/14-15 dated 19.12.2014, was also submitted to substantiate the plea that rebate was wrongly denied. During the course of personal hearing he further submitted additional written submissions wherein he reiterated that the lapse was a procedural lapse; that even chapter 29 is same except detailed eight digit sub heading; that once goods are cleared on payment of duty and export is fulfilled, rebate claim is not to be denied.

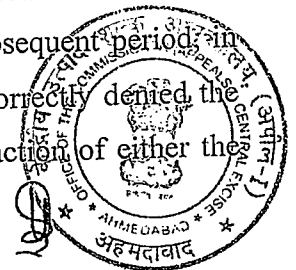
6. I find that certain facts that are not in dispute are [a] that the chapter sub heading mentioned in the central excise invoice was 29222926, while in the shipping bill it was mentioned as 29214290. It is also not disputed that the appellant had not mentioned the chapter sub heading in the ARE-1s. Now it is in this background that I will be recording my findings.

7. The appellant's main plea is that since there is only a procedural lapse, substantive benefit in the form of rebate cannot be denied. The appellant has relied upon the case of Mangalore Refinery, to substantiate his plea. However, I find that it is not Mangalore Refinery but the case of Mangalore Chemicals & Fertilizers Ltd [1991(55) ELT 437 (SC)], wherein the head notes [relevant] states as follows:

Interpretation of statute - Exemption and refund - Condition precedent - Distinction to be made between a procedural condition of a technical nature and a substantive condition - Non-observance of the former condonable while that of the latter not condonable as likely to facilitate commission of fraud and introduce administrative inconveniences. -

7.1 I find that in the case of Sanket Food Products P Ltd. [2015(328)ELT 693 (GOI)], the fundamental condition for grant of rebate under Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-C.E. (N.T.), dated 6-7-2004, has been spelt out which is that **for granting of rebate claim [a] duty should be paid and [b] the duty paid goods are to be exported.** In this case, I find that the adjudicating authority has held that what is cleared from the factory [said to be goods falling under chapter sub heading 29222926], were not the goods which were exported. I find that the fundamental condition has not been satisfied. The appellant in his grounds of appeal has not been able to counter this finding of the adjudicating authority. I am aware that procedural lapses can be condoned, but in the appellant's case it is not a procedural lapse but something very substantial. The appellant has failed to counter the allegation and has not produced anything which could substantiate his claim that the goods removed were in fact the goods exported.

8. The appellant has relying on the OIO no. 2844-2846/AC/2017 dated 11.10.2017 in their own case, has contended that in the said case their rebate was sanctioned even though their invoice classified the goods under sub heading 29222926 and the shipping bill mentioned the sub heading as 29214290. The averment raised cannot be accepted because sanction of rebate through oversight in one instance, cannot become a norm for the subsequent period in case certain infirmities are noticed. The adjudicating authority, I find has correctly denied the rebate, more so since the appellant has not been able to prove to the satisfaction of either the



adjudicating authority or before me that the duty paid goods removed were in fact the goods that were exported.

9. The appellant lastly has relied upon certain case laws, which I would now like to refer, viz.

[a] OIA No. 126/2014-15 dated 19.12.2014. The reliance placed on this case is not correct because in this case, the rebate was granted on the grounds that the description, package, weight did not tally since 2 boxes were stuffed into the container free of charge having no commercial value; that the said goods were brought out items and were hence not appearing in the ARE-1; that the two boxes exported were free sample. It is on this ground that the appellant authority allowed the rebate. I am not able to understand as to how the rationale of this case would be applicable to the present dispute.

[b] The appellant has also relied on the case of M/s. Reliance Industries Ltd [2012 (275) E.L.T. 277 (G.O.I.)], the head notes of which are as follows:

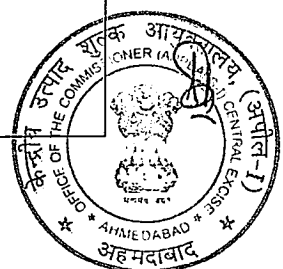
Rebate - Exports - Territorial jurisdiction - Order of original authority sanctioning rebate except for lack of jurisdiction - ACCE, Div.-I, Ahmedabad-II, could have either advised the applicant on returned rebate claim papers to file the same with ACCE having jurisdiction over the factory - But ACCE, Div.-I accepted claims and sanctioned them on merit - Applicant cannot be penalized for the lapse of departmental authorities - In view of this, impugned order set aside and order-in-original restored - Rule 18 of Central Excise Rules, 2002. [paras 8, 9, 10, 11, 12]

Again, I am not able to understand as to how this case would be applicable the present dispute.

[c] The appellant has relied upon the case law of Rans Pharma Corporation [2014 (314) E.L.T. 953 (G.O.I.)], the relevant of extracts of which is as follows:

10. Aggrieved with the said order dated 16-4-2008, the claimant again filed appeal before Commissioner (Appeals) who set aside the Order-in-Original, dated 16-4-2008 and allowed the appeal of the claimant. Now the department has filed this revision application on the ground stated in para 4 above. Department has mainly contended that the appellate authority has failed to consider that the issue involved in the matter is as to whether the produce exported and the product cleared from the factory of manufacturer is one and the same. The goods cleared from the manufacturer premises against the ARE-Is and the Central Excise Invoice and the description appearing on the relevant Shipping Bills against which the goods were exported/shipped do not tally, which are shown as under :-

Sl. No.	ARE-1 No., Date & Description	Description appearing on Invoice	Description appearing on Shipping Bills
1	KTPL/20/2005-06 dated 28-11-2005 Ranimil (Diminazene Aceturate & Phenazone Granules)	Diminazene Aceturate & Phenazone Granules	Diminazene Diaceturate Injection
2	KTPL/26/2005-06 dated 25-12-2005 Ranimil (Diminazene Aceturate & Phenazone)	Diminazene Aceturate & Phenazone	
3	KTPL/30/2005-06 dated 4-1-2005 Ranimil (Diminazene Aceturate & Phenazone Granules)	Diminazene Aceturate & Phenazone Granules	
4	KTPL/32/2005-06 dated 11-1-2006 Ranimil (Diminazene Aceturate & Phenazone)		



By RPAD.

To,
M/s. Shreeji Organics,
Plot No. 3421/3422, Phase IV,
GIDC Estate, Vatwa,
Ahmedbad 382 445.

Copy to:-

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

