



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)108/Ahd-I/2016-17 / 134-138
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-41-2017-18
दिनांक 27.07.2017 जारी करने की तारीख Date of Issue 24/08/17

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

ग Superintendent, Div-IV, केंद्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं 5/superintendent/AR-I/Div-IV/2016-17 दिनांक: 22/12/2016 से सृजित

Arising out of Order-in-Original No. 5/superintendent/AR-I/Div-IV/2016-17 दिनांक: 22/12/2016 issued by Superintendent, Div-IV, Ahmedabad-I.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Huzlem Dyechem Industries
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।

... 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 Nepa 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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

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

1. This appeal was filed by M/s Huzlem Dyechem Industries, 242, M. K. Compound, Chipa Kui, Nr. Prabhu Ice Factory, Danilimda, Ahmedabad (hereinafter referred to as appellant) , against Order-in-Original No. 5/Superintendent/AR-I/Div-IV/2016-17 dt. 22.12.2016 passed by the Superintendent of Central Excise, Range-I, Division-IV, 5th Floor, Central Excise Bhavan, Nr. Polytechnic, Office Ambavadi, Ahmedabad-15 (herein after referred to as respondent).

2. The appellant is engaged in manufacturing of excisable goods viz. Synthetic Organic Dyes falling under Ch. No. 32 of first schedule to the Central Excise Tariff Act, 1985. The appellant was not observing the Rule 12 of the Central Excise Rules, 2002 and filed the monthly ER-1 returns for the month of April 2012 on 16.06.2012 and for the months from May-2012 to August-2013 on 19.09.2013 and failed to file returns within ten days after the close of the month to which the return relates. Hence, SCN was issued for penal action under Section 27 of the Central Excise Rules, 2002. In the impugned order the original authority imposed total penalty of Rs. 85000/- under Section 27 of the Central Excise Rules, 2002. Aggrieved of the same, the appellant filed this Appeal.

3. In the grounds of appeal the appellant mainly submitted that:

(a) ER-1 returns for the period April 2012 to August 2013 have been filed subsequently and it is not disputed by the Department in the SCN itself. Therefore, the penalty is not imposable.

(b) The required details have been furnished properly in the prescribed returns and there is no allegation that the said return is not filed with an intention to avoid necessary information to the department. Therefore, the penalty is not imposable.

(c) The appellant's unit is located in remote area and nobody has given guidelines with regards to filing of the said return. Therefore, in absence of any awareness of formality in Central Excise Law, penalty is unwanted.

(d) It is a procedural lapse and may be condoned being first time.

4. Further, They have contended that as per rule 27 of Central Excise Rules 2002, the appellant is liable to a penalty which may be extended to five thousand rupees only and requested relief citing the case law of Anil Products Ltd. Vs CCE, Ahmedabad [2011(274) E.L.T.431, CESTAT-Ahmd.] and O-I-A No-AHM-EXCUS-003-APP-004 to 005-14-15 of the Commissioner(Appeal-III) Central Excise Ahmedabad.

5. Personal hearing was conducted on 20.07.2017. Sri Naimesh K. Oza Advocate authorised representative, appeared before me and reiterated the

contents of appeal memorandum. He also submitted a copy of case law in r/o Anil Products Ltd. Vs CCE, Ahmedabad [2011(274) E.L.T.431, CESTAT-Ahmd.].

6. I have carefully gone through the records of the case and the submissions given in the grounds of appeal and citation referred in the appeal. The question to be decided by me is what is the maximum penalty which can be imposed under Section 27 of the Central Excise Rules, 2002.

7. I find that the appellant was required to file monthly return electronically (in prescribed Form ER-1) under the Rule 12 of the Central Excise Rules, 2002 within ten days after the close of the month to which the return relates. But the appellant has late filed all the ER-1 returns for the period April 2012 to August 2013 consecutively, which shows that the appellant was negligent and habitual late filer of Central Excise returns. If they had any difficulty regarding filing of the return, they could have approached the jurisdictional authority. I find that they did not approach jurisdictional authority for guidance in the matter. Further, the appellant has pleaded that it is a procedural lapse. It is apparent that they have filled the returns subsequently on 16.06.2012 and 19.09.2013. Had the appellant been serious about their mandatory obligation to file the said returns they could have filed the return on time even after first late filing of return on 16.06.2012. Therefore, it cannot be said that it was a procedural lapse. The discussion above shows that they have contravened the provision of Rule 12 of the Central Excise Rules, 2002 and liable for penalty under Section 27 of the Central Excise Rules, 2002.

8. Further, the appellant has requested relief citing the case law of Anil Products Ltd. Vs CCE, Ahmedabad [2011(274) E.L.T.431, CESTAT-Ahmd.] and O-I-A No-AHM-EXCUS-003-APP-004 to 005-14-15 of the Commissioner(Appeal-III) Central Excise Ahmedabad. I have gone through the case law and the O-I-A. The relevant extract of the judgement in the case law cited above is reproduced below:

"3. AS is seen, the appellate authority, after rightly observing on the interpretation of the provisions of Rule 27, has proceeded to impose penalty of Rs. 5,000/- (Rupees Five Thousands only) in respect of each contravention. On the other hand, the appellants contention is that the Rule 27 refers to - A breach of these rules shall. i.e. the Rules, which is a plural term and not Rule. As such, contravention of any number of rules would invite penal action under Rule 27 to the extent of Rs. 5,000/- (Rupees Five Thousands only). I find favour with the above contention of the Id. Advocate. Admittedly, reference under Rule 27 is to the terms Rules and not Rule. As such, separate penalty of Rs. 5,000/- (Rupees Five Thousands only) cannot be imposed for contravention of each and every Rule. As long as there is only one Show Cause Notice invoking Rule 27, maximum penalty to the extent of Rs. 5,000/- (Rupees Five Thousands only) is imposable. Accordingly, I reduce the penalty from Rs. 15,000/- (Rupees Fifteen Thousands only)"

9. The appellant have relied on the CESTAT decision in the case of Anil Products Ltd. Vs CCE, Ahmedabad, supra. However I find that this order of the Tribunal has not appreciated the exact legal position as contained in Rule 27, ibid. This rule starts with the words: "A breach of these rules shall...."; it means that a single breach of these rules(or rule) will invite a penalty of upto Rs. 5000/-. In Tribunal's order the emphasis has been applied on the word "these rules", while overlooking the first two words "A breach". It simply means that every single breach (mentioned in Rule 27 as "A breach....") of these rules(violation of one or more than one rules) will invite a penalty of upto Rs. 5000/- meaning thereby a single breach of one or more rules will invite a penalty of upto Rs. 5000/-. But more than single breach (A breach) will certainly not invite a penalty of only (upto Rs. 5000/-). Therefore, I find that the Hon'ble Tribunal's interpretation of rule 27 is not proper and hence can't be followed.

10. In view of my above findings, the appeal filed by the appellant stands rejected and the impugned order is upheld.

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

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

Attested

Sule

(SIGNATURE V. 7)

अधीक्षक / SUPERINTENDENT (APPEAL)
केन्द्रीय उत्पाद शुल्क एवं सेवा कर, अहमदाबाद दक्षिण
CENTRAL EXCISE & SERVICE TAX, AHMEDABAD SOUTH

BY SPEED POST TO:

M/s Huzlem Dyechem Industries,
242, M. K. Compound, Chipa Kuj,
Nr. Prabhu Ice Factory, Danilimda, Ahmedabad.

Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Ahmedabad South.
- (3) The Assistant Commissioner, Central Tax Division-IV, Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.

(for uploading the OIA on website)

- (5) Guard file
- (6) P.A. file.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date 27-7-17