



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)114/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

4828 / 4839

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-044-2017-18
दिनांक 27.07.2017 जारी करने की तारीख Date of Issue

16/12/17

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

ग Assistant Commissioner, Div-V, केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं MP/903/Ref/2016
दिनांक: 16/12/2016 से सृजित

Arising out of Order-in-Original No. MP/903/Ref/2016 दिनांक: 16/12/2016 issued by Assistant
Commissioner, Div-V, Ahmedabad-I

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

M/s Mazda Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि नीचे बताए गए सक्षम अधिकारी को
अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a 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, चौधी 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।

(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) 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 अनुसूचि-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 दखिल 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

M/s. Mazda Limited, C/1, A/5, GIDC, Odhav, Ahmedabad- 382 [for short - 'appellant'] has filed this appeal against OIO No. MP/903/Ref/2016 dated 16.12.2016, passed by the Assistant Commissioner, Central Excise, Division V, Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

2. The facts of the case are that the appellant filed a refund claim of Rs. 3,62,909/-, in respect of Central Excise duty paid twice. A show cause notice dated 20.9.2016, was issued to the appellant, asking him to provide documents evidencing payment of duty. The notice further stated that the claimant had failed to submit documentary evidence that the incidence of duty paid twice, was not passed on to the buyers or any other persons and therefore proposed rejection of the said refund claim. Subsequently, vide OIO No. MP/903/Ref/2016 dated 16.12.2016, the adjudicating authority sanctioned the refund claim but credited the amount to the consumer welfare fund on the grounds that they had failed to produce documentary evidence that the incidence of duty was not passed twice to the buyer/any other person.

3. Feeling aggrieved, the appellant has filed this appeal wherein he has raised the following averments:

- [a] that the impugned order is non reasoned and non speaking and in violation of the principles of natural justice;
- [b] the adjudicating authority has accepted the fact that the duty is paid twice;
- [c] that there is no dispute that only one invoice is issued and duty is paid twice' that no person can avail duty without having duty paid invoice or no one will pay in addition to invoice value and hence it is not understood why the appellant is required to prove incidence of duty not passed on;
- [d] that when only one invoice is issued to buyer there cannot be any question of availing duty twice on such document;
- [e] that the entire notice is issued without application of mind; that the order rejecting the refund is not sustainable;
- [f] that the duty was debited at the time of clearance of goods by debit in SHIS license; that the second debit is not duty and hence the provisions of section 11B as well as principles of unjust enrichment is not applicable; that the amount paid by mistake cannot be termed as duty.

4. Personal hearing in the matter was held on 20.7.2017, wherein Shri Nirav Shah, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He further provided copies of case laws reported at Motorola India Private Limited [2006(206) ELT 90], Volkswagen India Private Limited. [2014(312) ELT 278], Castrol India Limited [2007(219) ELT 553], Cipla Limited [2013(295) ELT 696] and Kalpatru Power Transmission Limited [2016(45)STR 454].

5. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing.

6. I find that certain facts that are not in dispute, are:

- [a] that the duty was paid twice;
- [b] that for the first time the duty was paid via debit in SHIS account;
- [c] that for the second time the duty was included in the consolidated duty debit for August 2015 vide entry no. 254 & 255 in the CENVAT credit account, maintained by the claimant;
- [d] that only one invoice was issued to the buyer M/s. Atul Limited.

7. So ideally, the appellant, since he has issued only one invoice could not have passed on the incidence of the amount which was debited through their CENVAT account through mistake as duty for the said consignment. The duty as is already stated was paid earlier via debit in SHIS account.

8. The adjudicating authority has transferred the amount to consumer welfare fund on the grounds that the claimant has failed to substantiate their claim that they had not passed on the incidence of duty paid twice to the buyer/any other person.

9. On going through the case laws relied upon by the appellant, I find that in the case of Motorola India Private Limited [2006(206) ELT 90], the Hon'ble High Court of Karnataka, held that time bar does not apply in case of excess duty payment since it cannot be termed as duty. Further in the case of Volkswagen India Private Limited [2014(312) ELT 278], the Hon'ble Tribunal held that relying on the case of Cipla Limited [2013(295) ELT 696], held that since it is not the department's case that the appellant had recovered duty twice from the customer, the bar of unjust enrichment is not applicable. Further, in the case of Castrol India Limited [2007(219) ELT 553], the Hon'ble Tribunal held as follows :

2. I have heard both sides. This is not a case like other cases where burden of proof that the duty burden has not been passed on to the customers would arise, for the reason that this is a case where duty has been paid second time on the same goods. The fact of payment on two occasions viz. 11-1-02 and 18-1-02 on the same goods is not disputed by the Revenue. In these circumstances, the Commissioner (Appeals) has rightly held that the respondents are entitled to refund. I, therefore, uphold the impugned order and reject the appeal.

Further, in the case of Kalpatru Power Transmission Limited [2016(45)STR 454], the Hon'ble Tribunal held that the appellant is eligible for refund of the amount deposited as it is double payment and it does not relate to tax and also principle of unjust enrichment are not applicable in the instant case; that the appellant is eligible for the said refund.

10. The question of collecting duty the second time simply does not arise since there is nothing on record to show that two invoices were issued to the buyer. Further, it is not the department's case that the amount was collected for the second time through issue of invoices or through some other means. Even section 12B of the Central Excise Act, 1944, which presumes that the incidence of duty has been passed on to the buyer, unless the contrary is proved, talks about the term duty. Since the Hon'ble Tribunals and Courts have held that excess payment cannot be termed as duty, I hold that Section 12B of the Central Excise Act, 1944, is not applicable in this matter. Hence, the order of the adjudicating authority transferring the amount of refund to consumer welfare fund is not a tenable order.

11. In view of the foregoing, the appeal filed by the appellant is allowed with consequential benefit and the impugned OIO is set aside in so far as it transfers the refund amount to Consumer Welfare Fund.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : .07.2017

Attested

Vinod
(Vinod Lalkose)
Superintendent,
Central Tax(Appeals),
Ahmedabad.

By RPAD.

To,
M/s. Mazda Limited,
C-1A/5, GIDC,
ODhav, Ahmedabad 382415.

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 II, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.