


 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 : 079-26305065	टेलिफैक्स : 079 - 26305136	

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/123/Ahd-I/2017-18
 Stay Appl.No. NA/2017-18

221579
22/12

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-440-2017-18
 दिनांक Date : 23-03-2018 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/2545-2546/AC/2017-Reb दिनांक: 20/9/2017 issued by
 Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Saraf Dyechem Industries
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 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 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.

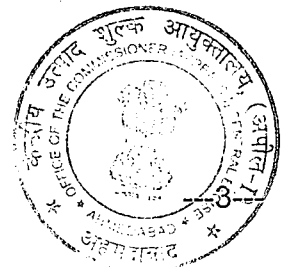
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैनटल हास्पिटल 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 .

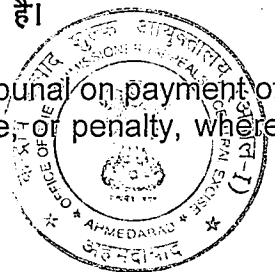
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This appeal has been filed by M/s. Saraf Dyechem Industries, Plot No. C-1/B/382, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred to "as the appellant") against the Order-in-Original number MP/2545-2546/Ac/2017-Reb dated 20.09.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Tax, Division III, Ahmedabad South, (hereinafter referred to as "the adjudicating authority").

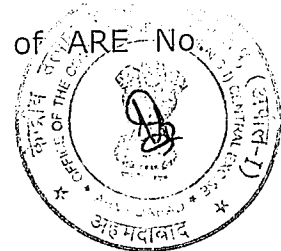
2. The facts of the case, in brief that the appellant is merchant exporter filed refund claims under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 seeking rebate of duty paid on excisable goods ARE-1 wise. The documents were scrutinized and on the basis of some discrepancy Show-Cause have been issued to the appellant. Adjudicating authority rejects the refund claims on the following ground.

2.1 (i) In respect to ARE-1 No. 23/2016-17 dated 13.02.2017, the claimant is merchant exporter and the manufacture is M/s Shivanand Polymers, Vatva. The Goods mentioned in concerned Shipping Bill is not matched with the goods mentioned in said ARE-1. The goods mentioned in the Shipping Bill and Customs invoice is as "Reactive Red ME4BL, whereas in the ARE-1 and Central Excise invoice the goods mentioned as "Reactive Red HE3B".

(ii) The vessels name in the Bills of Lading is different from Customs endorsement on ARE-1 No. 25/2016-17 dated 01.03.2017. The vessel name mentioned in the said ARE-1 endorsed by the Customs is "Hyundai Longbeech" whereas the vessel mentioned in the Bill of Lading is "Hamburg Bay".

(iii) The shipping bill first mentioned in ARE-1 No. 25/01.03.2017 is 4430864 dated 28.02.2017 which has been struck down by another no. 4430932, but there is not initial of the sad customs officer for mentioning another shipping bill no.

(iv) ARE-1 No. 82/16-17 dated 01.03.2017 and 184/16-17 dated 01.03.2017 are mentioned in Shipping bill instead of ARE- No. 25/2016-17 dated 01.03.2017



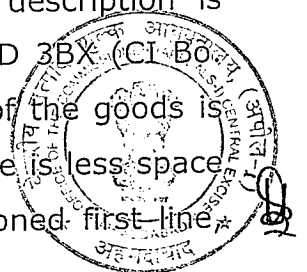
(v) Self sealing permission has been granted by Pipavav Customs to the appellant, the same is for their own two factory premises namely Unit-I and Unit-II at two different location in GIDC, Phase-II Vatva. In the instant case, the manufacturer is M/s Shivanand Polymers and the appellant is a merchant exporter and therefore, they are not covered by the said self-sealing permission. Further, Container sealed in the factory premises of manufacturer as no container number and seal no. mentioned in the C. Ex invoice/ARE-1, nor necessary certificating regarding self stuffing and sealing container has been given as per Notification no. 19/2004-CE(NT) dated 06.09.2004 read with Circular No. 736/52/2003-CX dated 11.08.2003.

3. Being aggrieved, the appellant have filed the present appeal and requested to set-aside the impugned order and allow the refund claim.

4. Personal hearing in the case was granted on 31.01.2018. Mr. Abhishek Chopra, CA appeared before me and reiterated the grounds of appeal and further an additional submission dated 19.02.2018 has been received.

7. I have carefully gone through the facts of the case on records, impugned OIOs, grounds of appeal in the Appeal Memorandum and oral as well as written submissions made by the appellants. I discussed the issue one by one.

(i) First issue, mismatch the name of the goods from ARE-1 to Shipping Bil: In this regard, the appellant vide their Ground of appeal and additional submission dated 19.02.2018 stated that description of goods mentioned in the Shipping Bill and custom invoice both the description are of the same goods i.e. Red Dyes (ME4BL and HE3B). Further stated that the trade name in Thailand is Reactive Red HE3B 140%. Appellant has submitted a photo copy of the invoice with Round Seal of Custom on which name of the goods mentioned as Reactive Red HE3B" and as per ARE-1 and Central Excise invoice no. 16-17/311A dated 13.02.2017 description is mentioned at Sr. No. 2 as " Reactive Red ME4BL/RED 3BX (CI Bo RED 195A) REACTIVE RED HE3B 140% and quantity of the goods is 7000 kg. Further stated that in shipping bill since there is less space to write item description, therefore they have mentioned first line



while they have mentioned other detail as per invoice.

(ii) Second issue : The vessels name in the Bills of Lading is different from Customs endorsement on ARE-1 No. 25/2016-17 dated 01.03.2017: I agree with the adjudicating authority that there is mismatch of vessel name Shipping Bill, ARE-1 and Bill of Lading. But Vessel No. given in the Shipping Bill may differ from Bill of Lading. Vessel no. is given at the time of the filling of the Shipping Bill. The process of filling of Shipping Bill is far before the goods reach to the port of export. Vessel for shipment may change at the port based on availability of vessels. So, there is possibility of mismatch of vessel no. in the submitted documents by the appellant.

(ii) Third issue: Initial not done by the customs officer on ARE-1 No. 25/01.03.2017 is 4430864 dated 28.02.2017 which has been struck down by another no. 4430932. On going through the said ARE-1, I found the initial has been done by the Customs Officer.

(iv) Fourth issue: ARE-1 No. 82/16-17 dated 01.03.2017 and 184/16-17 dated 01.03.2017 is mentioned in Shipping bill instead of ARE No. 25/2016-17 dated 01.03.2017: In this connection the appellant has submitted the amendment copy of the letter dated 11.09.2017 under Section 149 of Customs Act, 1962. Vide this letter the said mistake of the ARE-1 No. has been rectified.

(v) Fifth issue: Self sealing permission and violation of Notification no. 19/2004-CE(NT) dated 06.09.2004 read with Circular No. 736/52/2003-CX dated 11.08.2003: Regarding "Self sealing", permission has been granted by Pipavav Customs to the appellant. In the said permission, the place of stuffing is Unit-I and Unit-II of the appellant at GIDC, Phase-II Vatva. In the instant case, the manufacturer is M/s Shivanand Polymers and the appellant is a merchant exporter. However the appellant is also a regular manufacturer and exporting the goods. Further, Container sealed in the factory premises of manufacturer as no container number and seal no. mentioned in the C. Ex invoice/ARE-1. These are lapses on the part of the appellant.

8. But we cannot ignore other related things which indicate that the goods have been exported and foreign exchange for the same has been

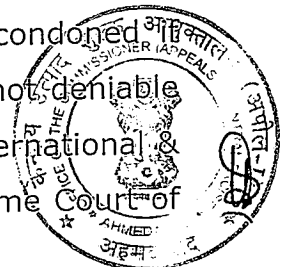


received. The commercial invoices No. & date, container no. and Shipping Bills no. reflected in Bills of Lading. Tax Invoice number reflected in concern ARE-1, Commercial invoice no, ARE-1 no. reflected in Shipping Bill. The description and quantity of the goods shown in the Tax invoice, Commercial invoice, ARE-1 also matched with description and quantity of the goods shown in the concerned Shipping Bill. The commercial invoices No. & date, container no. and Shipping Bills no. reflected in Bills of Lading. The same Shipping Bill Number reflects in the BRC.

9. Appellant has submitted a photo copy of the invoice no. 16-17/311A dated 13.02.2017 with Custom Seal endorsed on it the same invoice reflects in the Shipping Bill. Name of the goods mentioned in the said invoice at Sr. No. 1 as "Reactive Red ME4BL/RED 3BX (CI NO. RED 195A) REACTIVE RED JTZ CRUDE and quantity of the goods is 5000 kg. Description of the goods written on the commercial invoice no. 16-17/311A dated 13.02.2017 Reactive Red ME4BL/RED 3BX (C I No. RED 195A) Reactive read JTZ and description written on Shipping Bill No. 4100565 dated 14.02.2017 is "Reactive Red ME4BL/RED 3BX (C I No. RED 195A)". Lot No. 1701147 written on ARE-I No. 23 dated 13.02.2017 also matched with the same invoice no. 16-17/311A dated 13.02.2017. Name of the goods written at Sr. No. 5 of the attached sheet of Bill of Lading No. PGSM-NSP-CHS-31177 is "Reactive Read JTZ Crude. Invoice No. 16-17/311A dated 13.02.2017 also mentioned on said Bill of Lading. On going through the Cenvat Account Register submitted by the appellant, it is observed that duty has been paid through Cenvat Entry No. 596 dated 13.02.2017, and the same entry no. has been endorsed on said ARE-I.

10. The adjudicating authority, nowhere in the impugned order, has denied the fact that the goods have been exported. His entire argument is based on the procedural lapse committed on the part of the appellant and mismatch of vessels name only. I am of the view that once export procedure has been completed, consecutive benefits arising out of the said export should not be denied to the appellant.

12. I agree with the view of the appellant given in the grounds of appeal that "That Joint Secretary, Government of India, Department of Revenue, in the case Cotfab Export, 2006(2005) ELT1027 (GOI) in para 6 has said that the procedural infraction of notification/circulars to be condoned if export has taken place-settled law is that substantive benefit not deniable for procedural lapses. In Case of Union of India Vs. Suksha International & Nutan Gems and other -1989 (39) ELT 503, the Hon'ble Supreme Court of



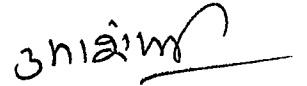
India has held that an interpretation unduly restricting the scope of beneficial provisions is to be avoided so that it may not take away with one hand what the policy given the other."

8 The basic concept of the granting the refund of duty is that, the same goods should be exported on which the duty has been paid. The goods were exported and also the payment for the same has been received in convertible foreign exchange and BRC for the same has been received.

10. In view of the above, I remand the case back to verify the facts in fresh in the light of documents produced by the appellant as discussed above and also directed to scrutinize the refund claim and ensure that the right of the claimant is not denied unless revenue is adversely affected. The appellant is also hereby directed to present all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back

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


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



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

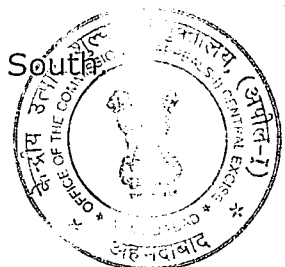

(S. DUTTA)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Saraf Dyechem Industries,
Plot No. C-1/B/382, GIDC,
Vatva, Ahmedabad-382445

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, South.
3. The Dy. / Asstt. Commissioner, Central Tax, Division-III, Ahmedabad-South.
4. The Addl./Joint Commissioner, (Systems), Central Tax, South.
5. Guard file.



6. P.A file.



