

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(10)/161,162&163/Ahd-I/2017-18 . Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-444 to 446 -2017-18 दिनाँक Date : 22-03-2018 जारी करने की तारीख Date of Issue

<u>श्री उमा शकर</u> आयुक्त (अपील) द्वारा पारित Passed by Shri. Uma Shanker, Commissioner (Appeals)

- ग Arising out of Order-in-Original Nos. 08/Div-I/Ref./2017-18 दिनॉक: 9/10/2017, 08/Div-I/Ref./2017-18 दिनॉक: 9/10/2017 & 10/Div-I/Ref./2017-18 दिनॉक: 9/10/2017 issued by Asst. Commissioner, Central Tax, Ahmedabad-South
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent Shirpur Gold Refinery Ltd 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 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, 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।



(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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः— Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35—बी/35—इ के अंतर्गतः—

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 <u>(सिस्टेट)</u> की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल 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.



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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. Registar 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 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 ओदश 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 हैं।

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 not withstanding the fact that the one appeal to the Appellant 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 रू.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 in 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 अपीलो के मामले में कर्त्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है I(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 Tribunation payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where a penalty alone is in dispute."

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ORDER IN APPEAL

M/s Shirpur Gold Refinery Ltd., 41/ Shiv Anand Bunglow, Opp Raf Camp, Ring Road, Vastral Ring Road, ahmedabad, Pin 382 418, (C. Ex.Reg. No. AAAC A4896K XM002) (hereinafter referred to as 'appellants') have filed the following **three appeals** against the following three Order-in-Original No. (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, Div-I, CGST Ahmedabad- South, Ahmedabad (hereinafter referred to as 'adjudicating authority'). Along with the condonation of delay of 17 days in filing following first two appeals.

Appeal No. and	Against No.OIO	A. Period covered
date of filing.		B. [claim rejected]
V2(10)161/Ahd-	08/div-I/Ref/	A.4/16 to 6/16
I/17-18 , dated	2017-18 dt.	B.[115771/-]
22.01.2018	09.10.17	Filed on 19.04.17
V2(10)162/Ahd-	09/div-I/Ref/	A.7/16 to 9/16
I/17-18 , dated	2017-18 dt.	В. [323226/-]
22.01.2018	13.10.17	Filed on 19.04.17
V2(10)163/Ahd-	10/div-I/Ref/	A.10/16 to 12/16
I/17-18 , dated	2017-18 dt.	B. [1059740/]
22.01.2018	13.10.17	Filed on 19.04.17

First two claims were first submitted consolidatedely for half year 4/16 to 9/16 (Rs. 466919/-) which were returned on 22.11.16 by department to file bifurcate claim on quarterly basis and bifurcated claims as shown in first two row of above table were received back in office on 19.04.17.

2. The facts of the case, in brief are that, the Appellant used to buy standard Gold Bar without payment of duty from Nominated Bank By submitting Bank Guarantee and used to manufacture jewelry which was subsequently exported. Appellant was availing input of General Insurance service and Banking Service and taking CENVAT credit which remained un-utilized as appellant was exporting 100% of manufactured jewelry. Appellant had filed above three claims under Notification No. 27/2012-CE (NT) dated 18.06.2012 issued Rule 5 of CCR, 2004 in respect of accumulated credit.

3. All three claims were rejected by adjudicating authority with impugned OIO's on following ground-

V2(10)161 TO 163/AHD-I/2017-18 [3 FILES COMMON OIA]

Documents of Insurance service as well as of Banking & i. Financial services provided does not bear the name and address of appellant address of Ahmedabad, and that of service provider, does not shows the duty payment particulars , Registration No., name and address of service provider along with registration No. of receiver. Therefore documents are ineligible for taking CENVAT credit in terms of Rule 4A of Service Tax Rules, 1993 r/w rule 4(7), Rule 9(2) of CCR, 2004.

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- The claimant failed to produce the documentary to co-relate the ii. credit taken of service tax paid on commission of Bank Guarantee, were pertains to export.
- Further insurance is for transit of gold bar and jewelry in India iii. for whole continuous period of one year for estimated sales turnover but appellant failed provide documentary evidence to substantiate that said insurance policy is for appellant address and business.
- Input service utilized for exportation after manufacturing can be iv. claimed refund vide Notification No. 41/2007-ST provided said input services are specified therein. Insurance service as well as of Banking & Financial services are specified services of Notification No. 41/2007-ST dated 06.10.2007.In terms of clause 1(f) of Notification No. 41/2007-ST dated 06.10.2007 exemption or refund of service tax paid on specified services used for export of said goods shall not be claimed except under notification (i.e. 41/2007-ST). Therefore appellant was required to file claim under Notification No. 41/2007-ST instead of under Notification No. 27/2012- CE(NT). Further time period of filing claim under Notification No. 41/2007-ST is two months, which is expired, therefore refund under 41/2007-ST is also not given.

Being aggrieved with the above three impugned OIO's, the 4. appellants preferred three separate appeal on 22.01.2018 before the Commissioner Appeals, CGST, GST Bhavan, Ambawadi, Ahmadabad wherein it is contended that. All three appeals being of same appellant and of same issue but of different period are taken up simultaneously under present proceedings before me.

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Personal hearing in the all three cases was granted 5. 23.03.2018. Shree Dinesh More, Export Manager of appeared before me and reiterated the grounds of appeal.

DISUSSION AND FINDINGS

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants. Delay of 17 days in filing appeal is condoned.

7. Regarding para 3(i), I find that all three claims are rejected on grounds that Banking service documents and Insurance service documents were not in name and address of appellant but in name and address of Mumbai office and further appellant could not prove before adjudicating authority by submitting related documents to prove that said services were received and utilized at registered premises in manufacturing of jewelry and in subsequent export. Further adjudicating authority has held that documents submitted were lacking vital details stated above para 3(i), therefore inadmissible for taking credit in terms of Rule 4A of Service Tax Rules, 1993 r/w rule 4(7), Rule 9(2) of CCR, 2004. I agree with the adjudicating authority and hold that refund is not admissible on inadmissible documents.

8. In appeal memo, regarding above para 3(ii) and 3(iii), no any evidence has been produced to substantiate that credit taken of service tax paid on commission of Bank Guarantee and on insurance service, were pertains to manufacture and subsequent export thereof. Therefore claim is not admissible on this ground also.

9. Bank Guarantee and Insurance covers the period right from purchase of gold bar, its conversion to jewelry and subsequent export till it is handed over to customs for exportation. Said specified service in notification 41/2007-ST are utilized after manufacturing and utilized in part for exportation, therefore notification 41/2007-ST is applicable as it is specifically mentioned at clause 1(f) of Notification No. 41/2007-ST dated 06.10.2007 that exemption or refund of service tax paid on specified services used for export of said goods shall not be claimed except under notification (i.e. 41/2007-ST). time period of sixty days prescribed in said notification has expired before find claim, therefore refund under 41/2007-ST also can not be given.

अहमदाबाद

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10. In view of above, all three appeals filed by the appellants are rejected and all three impugned OIO's are upheld.

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

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

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(उमा शंकर) केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s Shirpur Gold Refinery Ltd.,
41/ Shiv Anand Bunglow,
Opp Raf Camp, Ring Road,
Vastral Ring Road,
Amedabad, Pin 382 418

Copy to:

1) The Chief Commissioner, Central Tax, Ahmedabad South .

2) The Commissioner Central Tax, CGST, Ahmedabad South.

3) The Asst. Commissioner, Central Tax, Div-I, Ahmedabad South

The Asst. Commissioner(System), Hq, Ahmedabad South.

5)-Guard File.

6) P.A. File.



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