

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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(72)95/Ahd-I/2016-17 / 948-952
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-055-2017-18
दिनांक 18.08.2017 जारी करने की तारीख Date of Issue 25/9/17

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

ग Assistant Commissioner, Div-III केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं MP/14/AC/2016-17
दिनांक: 18/10/2016 से सृजित

Arising out of Order-in-Original No. MP/14/AC/2016-17 दिनांक: 18/10/2016 issued by Assistant
Commissioner, Div-III, Ahmedabad-I

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

**M/s. Unison Metals 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 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 :

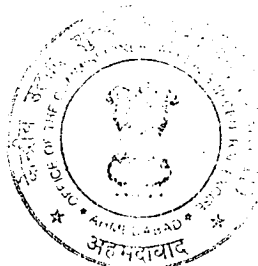
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.

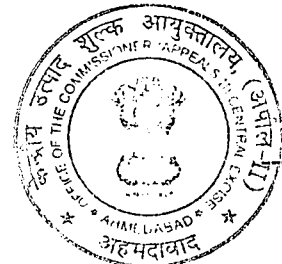
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 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 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

M/s. Unison Metals Limited, Plot No. 5015, Phase-IV, Ramol Char Rasta, GIDC Vatwa, Ahmedabad- 382 445 (for short – ‘appellant’) has filed this appeal against OIO No. MP/14/AC/2016-17 dated 18.10.2016 (for short – “impugned order”), passed by the Asstt. Commissioner, Central Excise, Division-III, Ahmedabad-I Commissionerate (for short – ‘adjudicating authority’).

2. Briefly stated, the facts of the case are that the appellant was working under the compound levy scheme under notification No. 17/2007-CE dated 1.3.2007 and discharging duty as determined under the provisions of the said notification. It was found that the appellant had not paid full duty as per the machines installed in their factory and a show cause notice dated 27.1.2016, was issued to the appellant, proposing demand of duty of Rs. 1,23,600/- on the grounds of non-establishment of dismantling of the three machines during the month of February-2015. This notice, was adjudicated vide the impugned OIO dated 18.10.2016 wherein the adjudicating authority confirmed the demand of duty alongwith penalty of Rs. 12,360/-.

3. Feeling aggrieved, the appellant has filed this appeal, on the following grounds:

- (a) That in the Notification No. 17/2017-C.E. dtd. 01.03.2007, it is nowhere prescribed that for reduction of number of cold rolling machines installed in the factory, the manufacturer is required to completely dismantle the machine and remove the same from the factory premises;
- (b) That it is normal practice that the main operating parts of the cold rolling machines are being detached from the machine so as to make it inoperative;
- (c) That the fact that work roll and motor was removed from three cold rolling machines should be sufficient for treating the said machines in dismantled condition;
- (d) That in number of cases, it has been concluded that the excise duty is on manufacture of goods and consequently, if the machines were not operated during a particular period of time and no manufacturing took place, there cannot be any excise duty liability fastened on the assessee as held in the case of Commissioner of C.Ex., Jaipur-II vs. Jupiter Industries – 2006 (206) ELT-1195 (Raj.);
- (e) That they seek support from the cases of Acme Industries vs. Commissioner of C.Ex., Jaipur-II – 2011 (269) ELT-523 (Tri.-Del) and Commissioner of C.Ex., Hyderabad vs. D.R. Metal Industries – 2007 (219) ELT-239 (Tri.-Bang);
- (f) That if the patten of electricity consumption is observed, it is found that the total power consumption of the appellant during the months when all the machines were operative was more than during the months when less machines were operative;
- (g) That when the demand is not sustainable, no penalty can be imposed;



(h) That dismantling of machine by removing some parts is being followed by all the manufacturers in the industry and there cannot be discrimination between the assessee who are similarly placed and department cannot take a different stand for different assessee as held in following cases:

Danodar J Malpani vs. CCE – 2002 (146) ELT 483 (SC),
 Mallur Siddesware Spinning Mills vs. CCE – 2004 (166) ELT 154 (SC),
 Quinn India Ltd. vs. CCE – 2006 (198) ELT 326 (SC),
 SPL Siddharta Ltd. vs. CCE – 2006 (204) ELT 135 (SC),
 Jayaswals Neco Ltd. vs. CCE – 2006 (195) ELT 142 (SC),
 Fitwell Fastner (India) vs. CC – 1993 (68) ELT 50 (Cal.),
 CCE vs. Amar Bitumen & Allied Products Pvt. Ltd. – 2006 (202) ELT 213 (SC),

4. Personal hearing was held on 18.08.2017. Shri Pradeep Jain, Chartered Accountant, appeared on behalf of the appellant and reiterated the grounds of appeal. He also submitted copy of judgement in the case of Jupiter Industries - 2006 (206) ELT-1195 (Raj.).

5. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. The primary issue to be decided in this appeal is whether there is short payment of duty on part of the appellant due to non-dismantling of machines as alleged by the deptt.

6. As is already mentioned, the appellant was working under *compounded levy scheme* in terms of notification No. 17/2007-CE dated 1.3.2007, which grants an option to an assessee to pay duty of excise, on the basis of cold rolling machines installed for cold rolling of goods, and fixes the rate of duty per cold rolling machine.

7. The issue of the dispute is no longer *res integra*. I find that the jurisdictional Tribunal in the case of Hon'ble Rajasthan High Court in the case of CCE, Jaipur-II v. Jupiter Industries (supra). it has been held that no duty would be payable in respect of the dismantled machines. In this regard para 23 of the judgment is reproduced below :-

"23. It goes without saying that, if in any particular month, no machine is operated and no production had taken place, there cannot be any levy of excise Duty. The manufacture of goods is condition precedent for charging of excise duty without which no levy can be made. Therefore, the rule cannot be made to go beyond the scope of charging provision, on the undisputed premises that no production had taken place from the cold rolling machine which has been removed on 29th May, 1998. In other words, no production has been taken place in respect of cold rolling machine which ceased to operate before the first July, 1996, no review could have been allowed in respect of estimated production in that machine. This is the simple logic which prevailed within the Tribunal and in our opinion rightly. No contrary view can be taken from the reading of the Rules also. We are, therefore, of the opinion that the conclusion reached by the Tribunal was valid".

8. Further, I also find support from the case of Acme Industries Vs Commissioner Of C. Ex., Jaipur-II - 2011 (269) E.L.T. 523 (Tri. - Del.), it has been held that Production capacity based duty - Compounded levy scheme - Cold Rolling Machines - Dismantling of - For period when machine is not operated or has been dismantled, it is not in existence -



Since there is no production, there is no question of charging any Central Excise Duty in respect of that machine. Implication of paras 3(1) and 4(1) of Notification ibid that for dismantled machines, duty has to be paid for preceding three months as it was linked with maximum number of machines installed during that period, found to be immaterial as first para thereof prescribes payment of duty on basis of installed machines.

9. From the documents and case records and correspondence between the appellant and the department, I find that during the relevant period, the three machines were lying unutilized due to removal of various important parts of the machines though they were installed in the factory.

10. In view of the foregoing discussion and findings, the appeal is allowed.

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

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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 14/8/2017

Attested



(B. Upadhyaya)
Superintendent (Appeals).
Central GST, Ahmedabad.
BY RPAD.

To,

M/s. Unison Metals Limited,
Plot No. 5015. Phase-IV.
Ramol Char Rasta,
GIDC Vatwa,
Ahmedabad- 382 445

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad (South).
- (3) The Assistant Commissioner, CGST, Div-III, Ahmedabad (South)
- (4) The Assistant Commissioner, Systems, CGST, Ahmedabad (South)
- (5) Guard File.
- (6) P.A. File.

