

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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(52)111/Ahd-I/2016-17 / 1112 to 1150
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-075-2017-18
दिनांक 31.08.2017 जारी करने की तारीख Date of Issue 28/9/17

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

ग Assistant Commissioner, Div-IV, Ahmedabad -I द्वारा जारी मूल आदेश सं 380 to 382/ Assistant Commissioner/2016-Rebate दिनांक: 13/12/2016 से सृजित

Arising out of Order-in-Original No. 380 to 382/Assistant Commissioner/2016-Rebate दिनांक: 13/12/2016 issued by Assistant Commissioner, Div-IV, Ahmedabad -I

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

**M/s. Mahalaxmi Fabric Mills
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 :

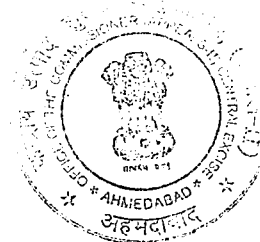
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.

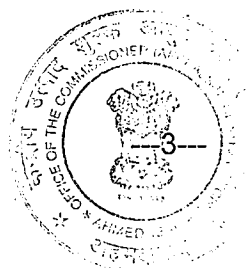
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 यथारिथति 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 यथारिथति 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।

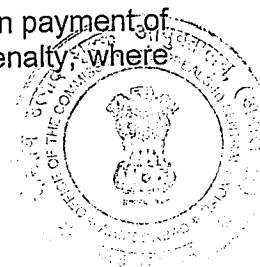
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Mahalaxmi Fabric Mills, Isanpur-Narol Road, Narol, Ahmedabad (hereinafter referred to as appellant), against Order-in-Original No. 380 to 382/Assistant Commissioner/2016-Rebate dated 13.12.2016 passed by the Assistant Commissioner, Central Excise, Division-IV, 5th Floor, Central Excise Bhavan, Nr. Polytechnic, Office Ambavadi, Ahmedabad-15 (herein after referred to as respondent).

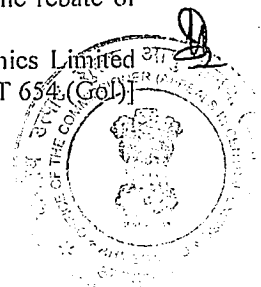
2. The appellant is engaged in manufacturing of excisable goods viz. 100% Cotton Printed Seersucker Bed set Fabric falling under Chapter 52 of the Central Excise Tariff Act, 1985. The appellant is registered with the Central Excise department for the manufacturing of the same.

3. The Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-I issued show cause notice to the appellant asking him to show cause as to why the rebate claim should not be rejected on the ground that the appellant had paid duty by debiting the CENVAT credit taken on account of 4% SAD [under section 3(5) of the Customs Tariff Act, 1975]. This Show Cause notice was adjudicated vide the aforementioned O-I-O wherein the adjudicating authority rejected the rebate claim of Rs. 41,197/- on the grounds that

- (a) on going through the specific list of duties eligible for the purpose of rebate, additional duty leviable under sub-section 5 of section 3 of the Customs Tariff Act, 1975, [commonly known as SAD] does not find a mention therein;
- (b) that JS Review in the case of Vinati Organics Limited [2014(311) ELT 994(GOI)] has stated that SAD is levied on imported goods to counter balance sales tax, VAT, local tax, etc which cannot be considered as duties of excise for being eligible for rebate benefit; that SAD collected under section 3(5) is also not classified as duty in list of duties provided in explanation 1 of notification No. 21/2004-CE(NT) dated 6.9.2004; that therefore such payment of SAD is not eligible for rebate claim;
- (c) that similar view has also been taken in the case of M/s Alpa Laboratories Ltd. reported at 2014 (311) ELT 854 (GOI), which also validates the fact of imposition of 4% SAD and its in-admissibility as rebate.
- (d) that purpose of notifications Nos. 19/2004-CE(NT) and 21/2004-CE(NT) both dated 6.9.2004 is to give incentive of the duty paid on raw materials either directly or by way of accumulation of credit and final payment through it; that explanation I provided under both the said notification provides similar list of specified duties for this purpose.

2. Feeling aggrieved, the appellant has filed this appeal against the rejection of rebate, on the grounds that:

- (a) the rebate claim is of duty of excise paid on goods exported in terms of Rule 18 of the Central Excise Rules, 2002 on the finished goods exported and not on the inputs used in the manufacture of finished goods which were exported;
- (b) the duty of excise was paid by the appellant on the finished goods exported under the provisions of Central Excise Act, 1944; there is no reason to deny the rebate of duty of excise;
- (c) the reliance of the adjudicating authority on the case of Vinati Organics Limited [2014(311) ELT 994(GOI)] and Alpa Laboratories Limited [2014(311) ELT 654(GOI)] is mis-conceived;



(d) that the notifications Nos. 19/2004-CE(NT) and 21/2004-CE(NT) both dated 6.9.2004 are different and have been issued for different purpose and therefore the provisions of one cannot be applied to another and vice versa;

3. Personal hearing was conducted on 18/08/2017, Shri Archit Kotwal, Consultant appeared on behalf of the appellant and reiterated the contents of appeal memorandum.

4. 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 whether the duty of excise paid (on goods exported in terms of Rule 18 of the Central Excise Rules, 2002) by debiting the Cenvat Credit taken on account of 4% Special Additional Duty (under Sec. 3(5) of the Custom Tariff Act, 1975) was eligible for rebate under notification No. 19/2004-CE(NT) dated 6.9.2004.

5. I have already decided the issue vide my OIA No. AHM-EXCUS-001-APP-079 to 081-2016-17 dated 03.04.2017 in the case of M/s. Fumo Chem Pvt. Ltd, Ahmedabad. Since the issue is same, the operative part is reproduced below:

"4. Before dwelling on to the dispute, I would like to reproduce the following for ease of reference:

CENVAT CREDIT RULES, 2004

RULE 3. CENVAT credit. — (1) A manufacturer or producer of final products or a [provider of output service] shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act :

[Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;]

(ii) to (via)

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) [, (vi) and (via)]:

[(viii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act

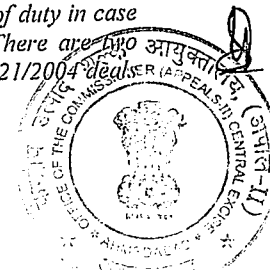
[emphasis added]

CENTRAL EXCISE RULES, 2002

RULE 18. Rebate of duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

[Explanation. - For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.]

From Rule 18 it is very clear that rebate of duty is allowed in situation (i) rebate of duty in case of export of goods (ii) rebate of duty on materials used in the manufacture. There are two governing Notification No. 19/2004 deals with first situation and Notification No. 21/2004 deals with second situation.



NOTIFICATION NO. 19/2004-CE(NT) [relevant extracts]

Rebate of duty for exports to countries other than Nepal and Bhutan — Procedure — Notification No. 40/2001-C.E. (N.T.) partially superseded

In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter, -

Explanation I. - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely :

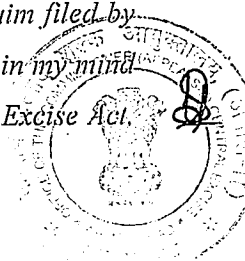
- (a) the Central Excise Act, 1944 (1 of 1944);
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);
- (e) special excise duty collected under a Finance Act;
- (f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);
- (g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004.

[emphasis added]

The rebate of excise duty on exported goods is granted under rule 18 of the Central Excise Rules, 2002. The procedure has been prescribed in notification No. 19/2004-CE(NT) dated 6.9.2004 in case of exports to countries other than Nepal. Now the notification, *ibid*, the relevant extracts of which is quoted above, clearly states that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985, exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified therein. The notification further vide its explanation I defines what "duty" would be for the purpose of rebate.

5. On examining the rebate claims in this back drop I find that [a] the appellant has filed the rebate under notification No. 19/2004-CE(NT) dated 6.9.2004; [b] the appellant has exported the goods on payment of duty from their CENVAT account. There appears to be no dispute as far as other conditions & limitations, laid down in the notification, except that the appellant discharged the duty before exporting the goods by debiting from CENVAT credit, the amount which was lying in the credit on account of 4% SAD. The adjudicating authority held that the claims could not be sanctioned primarily because the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act did not find a mention in the explanation I of the notifications.

6. Explanation I [reproduced above], clearly lists the duty on which rebate will be granted. The adjudicating authority has nowhere stated that the rebate claim filed by the appellant is in respect of 4% SAD paid by the appellant. There is no doubt in my mind that the rebate claims are in respect of duties of excise paid under the Central Excise Act.



1944, before export of goods under rebate. This payment of duty of excise under Central Excise Act, 1944, clearly finds mention in (a) under Explanation I [extracts provided supra].

7. Now coming to the second grounds on which rebate was rejected that is utilization of amount standing to the CENVAT credit under 4% SAD towards payment of Central Excise duty. Neither the notification nor the concerned central excise rule, put any bar in so far as utilization of CENVAT credit lying to the credit of 4% SAD is concerned. Though not directly relevant, I have reproduced the relevant extract of Rule 3 of the CENVAT Credit Rules, 2004 to primarily see whether the CENVAT credit availed in respect of duty paid in respect of 4% SAD was eligible as credit to the appellant. The relevant extracts, clearly shows that the availment of CENVAT credit by the appellant was correct. There is no bar on availment of CENVAT credit in respect of amount paid towards 4% SAD and there is also no bar towards utilization of the said CENVAT credit towards payment of duty for home clearance under the Central Excise Act, 1944. Then it is understood how duty paid towards clearance for the export should be treated differently? Therefore the claim of rebate for exports, the rejection of rebate claim by the adjudicating authority appears to be not tenable.

8. Now I would like to deal with the last contention of the adjudicating authority, in so far as reliance on the case laws of Vinati Organics Limited [2014(311) ELT 994(GoI)] and Alpa Laboratories Limited [2014(311) ELT 654 (GoI)] is concerned, I find that in both the cases the rebates were filed under notification No. 21/2004-CE(NT) dated 6.9.2004. The relevant text of the notification *ibid*, is reproduced below of ease of reference:

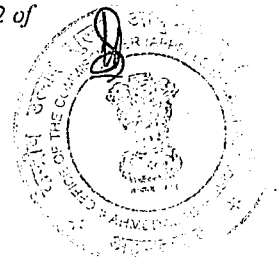
NOTIFICATION NO. 21/2004-CE(NT) [relevant extracts]

Rebate of duty on excisable goods used in manufacture/ processing of export goods — Procedure — Notification No. 41/2001-C.E. (N.T.) superseded

In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 41/2001-Central Excise (N.T.), dated the 26th June, 2001 [G.S.R. 470(E) dated the 26th June, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter :-

Explanation. - "duty" means for the purposes of this notification, duties of excise collected under the following enactment, namely :-

- (a) the Central Excise Act, 1944 (1 of 1944);
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) and further amended by Section 3 of the Finance Act, 2004 (13 of 2004);
- (e) special excise duty collected under a Finance Act;
- (f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);



(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004.

As is evident notification no. 21/2004, grants rebate of whole of the duty paid on excisable goods used referred in the Notification as "materials", in manufacture/processing of export goods. The notification thereafter defines duty under explanation. There is a clear distinction between both the notifications issued under Rule 18 of the Central Excise Rules, 2002 and both are different purpose. While notification No. 19/2004-CE(NT) dated 6.9.2004 grants rebate on export of excisable goods (i.e. final goods/finished goods), notification no. 21/2004, ibid, grants rebate on duty paid on excisable goods used in the manufacture/processing of export goods (i.e. materials or inputs used). Under notification No. 21/2004, no rebate can be claimed on materials used, in respect of 4% SAD, since the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, does not find a mention in the list of duties under explanation to the notification. Now to stretch this logic to notification No. 19/2004-CE(NT) dated 6.9.2004, when it clearly speaks of rebate of excise duty on exports of excisable goods on payment of duty under the Central Excise Act, 1944, is not a valid argument. Hence, the reliance of the adjudicating authority on the aforementioned two case laws is not tenable since they are not at all relevant to the present dispute."

6. Following the stand taken in my earlier OIA, the appeal filed by the appellant is allowed.

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

31.08.17

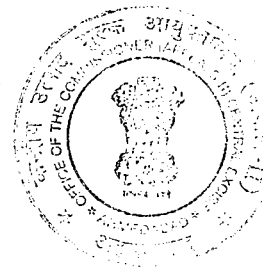
Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

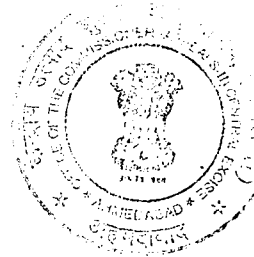
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- (3) The Assistant Commissioner, Central Tax Division-IV, Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)
- (5) Guard file



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