



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(90)/09/EA2/Ahd-I/2016-17/hgs to 1469
Stay Appl.No. NA/2016-17
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-089-2017-18
दिनांक 26.09.2017 जारी करने की तारीख Date of Issue 10-10-17

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

- ग Asst. Commissioner, Div-IV केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
95/Asst.Commissioner/2016.Reb दिनांक: 29/07/2016, से सृजित

Arising out of Order-in-Original No. 95/Asst.Commissioner/2016.Reb dated: 29/07/2016
issued by Asst. Commissioner, Div-IV Central Excise, Ahmedabad-I

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

**M/s Shailesh Surgical.
Ahmedabad**

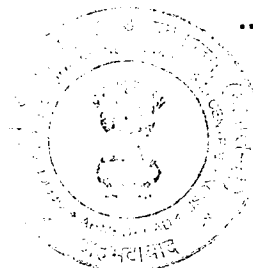
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को
अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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 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.

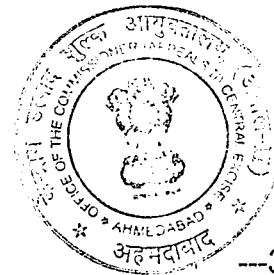
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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.



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 पढ़ी 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 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 ::

The Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-I (*hereinafter referred to as 'appellant'*) has filed the present appeal against the Orders-in-Original No. 95/Assistant Commissioner/2016-Reb dated 11.08.2016 (*hereinafter referred to as 'impugned orders'*) passed in the matter of refund/rebate claim filed by M/s. Shailesh Surgical, 368, Nr. Avtar Hotel, Narol- Naroda Highway, Isanpur, Ahmedabad (*hereinafter referred to as 'respondent'*);

2. The facts of the case, in brief, are that the Respondents has filed rebate claim, under rule 18 of central Excise Rules, 2002 along with the documents in respect of Central Excise duty was paid on the specified goods used for export of goods.

3. During the scrutiny of the above claims, it was noticed that the said respondent was claiming rebate claim under Rule 18 of Central Excise Rules, 2002 as well as drawback through his merchant exporter M/S. Golbal Medikit Ltd, under schedule "A" as shown in the shipping bill. Both amounts cannot be availed simultaneously as per Rule 18 of the Central Excise Rules, 2002 read with the provisions of Customs and Central Excise DBK rules. In this regard the Show Cause Notice was issued to the respondent which was adjudicated by the adjudication authority vide above mentioned impugned order & sanctioned an amount of Rs.76780/- and rejected an amount of Rs.43513/-. The amount of Rs. 76780/- was sanctioned because the merchant exporter of the respondent i.e. M/s Global Medikit Ltd., deposited Rs. 57112/- along with interest into the government exchequer. The amount of Rs. 43,513/- are not eligible for claiming Rebate claim, as they claimed Rebate claim as well as drawback under Schedule "A" for this shipping bill.

4. The impugned order was reviewed by the Principal Commissioner of Central Excise, Ahmedabad-I and issued review order No. 09/2016 dated 28.12.2016 for filing an appeal under sub section (2) of Section 35E of the Central Excise Act, 1944 on the ground that the respondent has contravened the provisions of Rule 18 of Central Excise Rules,2002. The above impugned order is neither legal nor proper. The adjudication authority in the subject impugned order has stated that the said claimant i.e. M/s. Shailesh Surgical has contravened the provisions of Rule 18 of the Central Excise Rules,2002 in as much as they are not eligible for claiming Rebate Claim amounting to Rs. 43515/- as well as Drawaback under Schedule"A" as shown in the Shipping bill through their merchant exporter i.e. M/s Care laboratories Medical Supplies, vide shipping bill No. 4589366 dated 25.08.2014. But, at the same time, in para 14 of the said impugned order, the adjudication authority has dropped imposition of penalty under Rule 27 of the Central Excise rules, 2002 on the said claimant i.e. M/s. Shailesh Surgical, Ahmedabad, stating that, the claimant submitted documents/Challan in support of their claim and consequently requires to be quashed and the respondent needs to be impose the penalty under rule 27 of central excise rules,2002. The approach of the adjudicating authority is erroneous which has resulted into incorrect and uncalled for conclusions, reasoning and findings; apart from drawing unwarranted inferences, factually/legally and needs to be set aside so far imposition of penalty is concerned.

5. Personal hearing in the matter was granted and held on 18.08.2017. Mr. Ankit Parikh , Partner appeared before me and explained his view and submitted written documents in the favour of the respondent.



6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the respondents at the time of personal hearing.

7. The issue pertains to the receiving of excess drawback by the respondents only. In this regard, I find that the reviewing authority has not considered the issue that the merchant exporter has deposited Rs.57,112/- alongwith interest in the government account as mentioned in paragraph 9 of the impugned order. In view of the above, it is very much clear that the respondent has corrected his mistake and has become eligible for the rebate of the said amount .

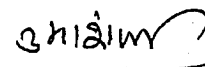
8. I further find that the impugned order has dropped the penalty under rule 27 of CER,2002. The adjudicating authority has noted that he has verified all the documents produced by the respondents and he was satisfied with it. The impugned order also states that the respondents had submitted all relevant documents. Thus, in my view penalty should not be imposed on the respondent.

9. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation. Further, the respondent has submitted that in case of rebate claim, department can sanction or reject (Wholly or partially) the rebate claim. As such question of imposition of penalty does not arise. In as much as filing of a rebate claim, even if wrongly, cannot be construed as contravention of Central Excise Rules. In rule 18 of CER 2002, no legal responsibility is cast on the assessee for filing the claim. Rule 18 is just procedural rule which gives right to assessee to file the claim of duty already paid in case of export of duty paid goods. I am in complete agreement with the Respondent in this regard and I hold that penalty u/s 27 is not imposable. *In light of decision in case of Hindustan Steel Ltd. Vs. State of Orissa reported at AIR 1970 253 (ELT 1977 A-43) as there is nothing on record to show that they had contravened any provisions of law.*

10. In view of the facts and discussions hereinabove, I reject the appeal filed by the Department and uphold the impugned order.

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

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


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(S. DUTTA) 06/10/17

SUPERINTENDENT (APPEALS),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Shailesh Surgical, 368, Nr. Avtar Hotel, Narol- Naroda Highway,
Isanpur, Ahmedabad

Copy to:

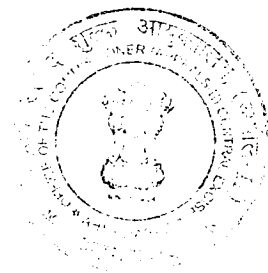
The Chief Commissioner, Central Tax, Ahmedabad.

The Commissioner, Ahmedabad South.

The Addl. Commissioner, Ahmedabad South..

The Dy./Asst. Commissioner, Division-IV, Ahmedabad South.

Guard File.



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