



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



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/129&130/Ahd-I/2016-17/1450 to 1454
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-090&091-2017-18
दिनांक 26.09.2017 जारी करने की तारीख Date of Issue 10/9/17

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

ग Asst. Commissioner, Commissioner, Div-III केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/55&56/DC/2015-16-Ref ST दिनांक: 13/1/2017, से सृजित

Arising out of Order-in-Original No. MP/55&56/DC/2015-16-Ref ST दिनांक: 13/1/2017 issued by
Asst. Commissioner, Commissioner, Div-III Central Excise, Ahmedabad-I

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

**M/s Choksi Organics Pvt Ltd.
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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.

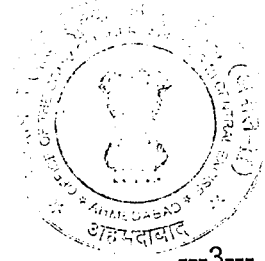
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 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 अनुसूचि-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. Choksi Colours Pvt. Ltd, 603, Satkar, Behind Swastikk Complex, C.G. Road, Ahmedabad-380006 (*hereinafter referred to as the 'appellants'*) have filed the present appeals against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I (*hereinafter referred to as 'adjudicating authority'*);

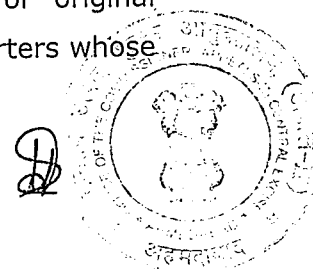
Sr. No.	OIO No.	OIO date	Amount of refund claim (₹)	Amount sanctioned (₹)	Amount rejected (₹)
1	MP/55/AC/15-16 Ref (ST)	13.01.2017	90,827	0	90,827
2	MP/56/AC/15-16 Ref (ST)	13.01.2017	47,398	0	47,398

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of Dyes, Dyes & Intermediates, falling under Chapter 32 of C.E.T.A, 1985. The appellants are registered with the Central Excise department for the manufacture of the same and having Central Excise Registration No. AABCC4629DXM001. The appellants are also holding Service Tax Registration No. AABCC4629DST001.

3. These refund claims had been filed earlier at the relevant time, but the same had been withdrawn by the appellants vide their letter dated 04.02.2016 in view of the clarification given by the board on 'Place of Removal' vide circular No. 988/12/2014-CCX dated 20.10.2014 and Circular No. 999/6/2015-CX dated 28.02.2015. Now, the appellants have re-submitted the above mentioned refund claims with request for reinstatement of the said claim pertaining to earlier period in view of the following two provisions:

(i) Notification No. 01/2016-ST dated 03.02.2016 has been issued seeking an amendment to original Notification No. 41/2012-ST dated 29.06.2012 so as to allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods, and

(ii) Vide clause 157 of the Finance Bill, 2016 retrospective effect has been given to the said amendment from the date of issuance of original notification and a time period of one month is allowed to the exporters whose claims were earlier rejected in absence of such amendment.

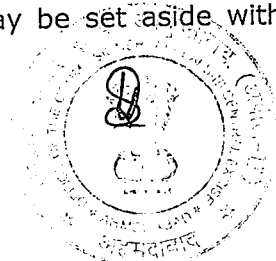


4. The appellants filed (re-submitted with request to reinstate) two refund claims on 13.06.2016 amounting to Rs. 90,827/- & Rs. 47,398/- under Notification number 41/2012-ST, dated 29.06.2012 read with Section 11B of Central Excise Act, 1944 in respect of Service Tax paid on services used for export of goods, which pertained to the exports of excisable goods made for the period from Oct 2014 to Dec 2014 (LEO date), in respect of specified services namely Agency charges, Port services, THC and Transport of Goods by Rail Services classifiable under h, zn, zzb, zzzp of Section 65(105) of the Finance Act, 1944. The appellants claimed refund amount in respect of Service Tax paid on the aforesaid services used in export of excisable goods.

5. On scrutiny of the refund claim the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I found that the recent applications dated 13.06.2016 for the refund claims did not adhere to the provisions prescribed under the clause 157 of the Finance Bill, 2016 and clause 160 of the finance Act, 2016 as their claims were willingly withdrawn, which were not denied any time and hence can not be considered as filed. The adjudicating authority vide the above mentioned impugned orders rejected the refund claims of Rs. 90,827/- & Rs. 47,398/-.

6. Being aggrieved with the impugned order, the appellant has filed the present appeal on 27.03.2017 followed with written submission on the grounds which are interalia mentioned that -

- the adjudicating authority has erred in correctly/logically analyzing the essence of the terms 'Denied' vs. 'Withdrawal'. Assuming either of the situation, no claim can be rejected taking base of the exact and only wordings mentioned in the law; without considering the purpose of the notification.
- the claims had been withdrawn by the appellants vide their letter dated 04.02.2016 in view of the clarification given by the board on 'Place of Removal' vide circular No. 988/12/2014-CCX dated 20.10.2014 and Circular No. 999/6/2015-CX dated 28.02.2015 and on orally pressurizing them to withdraw the same.
- Notification No. 01/2016-ST dated 03.02.2016 has been issued seeking an amendment to original Notification No. 41/2012-ST dated 29.06.2012 so as to allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods, and
- Vide clause 157 of the Finance Bill, 2016 retrospective effect has been given to the said amendment from the date of issuance of original notification and a time period of one month is allowed to the exporters whose claims were earlier rejected in absence of such amendment.
- Impugned orders rejecting the refund claims may be set aside with consequential relief.



7. Personal hearing was conducted on 13.09.2017, wherein Shrimati Richa A. Gandhi, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. She also submitted that the appellants were pressurized by the subordinate office of the department to withdraw the claims.

8. 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 appellants at the time of personal hearing. Before dwelling on to the dispute, I would like to reproduce the clause 157 of the Finance Bill, 2016, which has been converted now to clause 160 of the finance Act, 2016:

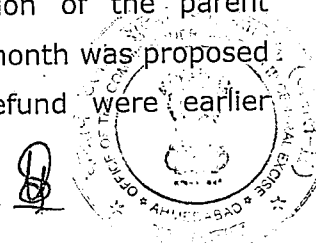
"160. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(E), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly, any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times.

(2) Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016."

9. Further, Notification No. 41/2012-ST dated 29.06.2012 has been amended vide Notification No. 1/2016-ST dated 03.02.2016 so as to, inter alia, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods.

10. Thus, from the above provisions, it is clear that Notification No. 1/2016-ST dated 03.02.2016 allowed refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. As per the clause 157 of the Finance Act it is seen that the said amendment has been given retrospective effect from the date of application of the parent notification i.e. from 01.07.2012 and time period of one month was proposed to be allowed to the exporters whose claims of refund were earlier



rejected/denied in absence of amendment carried out vide notification No. 01/2016-ST dated 03.02.2016.

11. I find that the appellants filed (re-submitted with request to reinstate) the refund claims on 13.06.2016 for the period from Oct 2014 to Dec 2014. As it can be seen from the contents of the appellants letter dated 04.02.2016 (the adjudicating authority in para 13 of impugned order has reproduced the contents of the appellants letter dated 04.02.2016), that the appellants had voluntarily withdrawn their refund claims in view of the clarification given by the board on 'Place of Removal' vide circular No. 988/12/2014-CCX dated 20.10.2014 and Circular No. 999/6/2015-CX dated 28.02.2015. Hence, the appellants claim that they were pressurized by the subordinate office of the department to withdraw the claims, is not sustainable without any material evidence.

12. In view of the facts and discussion herein above, I find that the benefit of Notification No. 41/2012-ST dated 29.06.2012 as amended by Notification No. 1/2016-ST dated 03.02.2016 can not be extended to the appellants as their earlier refund applications were not rejected/denied any time by the department. Further, the appellants filed the refund claims on 13.06.2016 under Notification number 41/2012-ST dated 29.06.2012 for the period from Oct 2014 to Dec 2014 (LEO date). I find that the refund claims filed on 13.06.2016 are hit by time bar as per para 3(g) of Notification number 41/2012-ST, dated 29.06.2012 as amended by Notification No. 1/2016-ST dated 03.02.2016.

13. In view of the above, the appeals filed by the appellants are rejected.

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

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

उमाशंकर

(उमा शंकर)
आयुक्त (अपील्स)

Attested

(Signature)

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



BY SPEED POST TO:

M/s. Choksi Colours Pvt. Ltd, 603,
Satkar, Behind Swastikk Complex,
C.G. Road, Ahmedabad-380006.

Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Ahmedabad South.
- (3) The Assistant Commissioner, Central Tax Division-III, Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)
- ~~(5)~~ Guard file

