



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
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रजिस्टर्ड टाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)109 to111/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ग अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-108to110-2018-19  
दिनांक Date : 20-11-2018 जारी करने की तारीख Date of Issue \_\_\_\_\_ 11/1/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AC/SKL/19to21/Div-II/2018-19 दिनांक: 15.06.2018 issued by  
Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

ग अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Gujarat Marketing  
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 issued under the Central Excise Act 1944, 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 :

(i) केंद्रीय 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 अर्थात् राशिय, 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, 4<sup>th</sup> 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।



(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 मेटल हॉस्पिटल 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) उन 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)

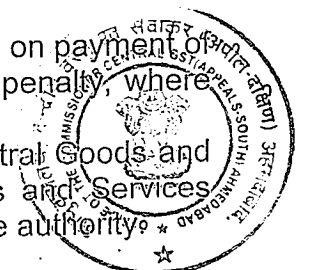
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

यदि 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority



ORDER-IN-APPEAL

Following three appeals have been filed by M/s Gujarat Marketing, Plot No.G-87, Rudraksh Complex, Trikampura Patiya, GIDC, Vatva, Ahmedabad-45 [hereinafter referred to as "the appellant"] under Section 107 of Central Goods and Service Tax Act, 2017 [for short-the Act] against Orders-in-Original [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of Central GST, Division-II, Ahmedabad South [hereinafter after referred to as the "adjudicating authority"]. The details are as under:

S No	Appeals No	Orders-in-Original	Amount involved
1	2	3	4
1	109/18-19	AC/SKL/20/DIV-II/2018-19 15.06.2018	dated Rs.1,23,554/-
2	110/18-19	AC/SKL/19/DIV-II/2018-19 15.06.2018	dated Rs.62,286/-
3	111/18-19	AC/SKL/21/DIV-II/2018-19 15.06.2018	dated Rs.1,17,650/-

2. Briefly stated, the fact of the case is that the appellant has filed refund claims of amount mentioned at column No. 4 of above table in respect of supplies made of SEZ Unit/SEZ Developer (with payment of tax) for the month of October 2017 on 27.02.2018/21.03.2018. A deficiency memo dated 23.04.2018 was issued to the appellant as they have not submitted required documents along with the refund claim. As the appellant has failed to submit the said required documents, a show cause notice dated 04.06.2018 was also issued. Vide the impugned order mentioned at column No.3 of above table, the adjudicating authority has rejected the claims of refund on the grounds as alleged in the show cause notice.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The appellant had filed the claim on 27.02.2018 before State GST authority and from there it was handed over to Central GST on 21.03.2018. The deficiency memo was raised on 23.01.2018 which after 30 days from the date of filing of claim; that as per Rule 90 (2) and (3) of CGST Rule, 2017, deficiency memo is required to be issued within fifteen days on receipt of the claim.
- All the documents and declarations which were required to be submitted are available with the authority.
- They pray to restore the application and process the claim.

4. A personal hearing in the matter was held on 23.10.2018 and Shri Mrudang Vakil appeared for the same. He reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The issue to be decided in the instant case is regarding eligibility of refund claim on tax paid goods supplied to SEZ unit/SEZ developer.



6. At the outset, I observe that the adjudicating authority has not rejected the case on merits but rejected on the grounds that required documents with respect to the refund claim in question has not been filed by the appellant before him, though he has issued deficiency memo and show cause notice. On other hand, the appellant has contended that the deficiency memo is required to be raised within fifteen days on receipt of the claim, as per Rule 90 (2) and (3) of CGST Rule, 2017 and failure to do so make a situation that there was no deficiency in filing of the said claim.

7. Rule 90 (2) and (3) of CGST Rules, 2017 stipulates that:

*"(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rules (2), (3) and (4) of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.*

*(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.*

8. It is a fact that as per provisions of Rule *supra*, the concerned authority is required to be issued a deficiency memo within fifteen days in form GST RFD 03. As per the contention of the appellant, they had filed the refund claim before the Authority on 21.03.2018 and the deficiency memo was issued on 23.04.2018, hence, the authority has violated the provisions of the Rule *supra*. I find on records that the refund application in question was received by the concerned jurisauthority on 10.04.2018 and the factual position to the effect was also communicated to the appellant in the deficiency memo. The authority has pointed out to the appellant that *"the said refund application has been received by AC,CGST, Div-III, Ahmedabad South from A.C. State GST Office, Ghatak 21, Ahmedabad vide letter F No.ACST/U-21/GST REFUND/2017-18/B dated 21.03.2018. However, your unit has been allotted to Centre and falls under the jurisdiction of Div-II, CGST, Ahmedabad South and the said application is received by this office on 10.04.2018. Hence, the claim is being dealt with this office."*

9. From the above, it is clearly evident that the refund application in question was received by the jurisdictional authority on 10.04.2018 and issued deficiency memo on 23.04.2018 which is within the time limit prescribed under the Rule 90 (2) & (3) *supra*. I also find that in spite of the fact that the jurisdictional authority has informed the factual position of the refund application received by him, the appellant has neither bothered to reply the deficiency memo dated 23.04.2018 nor replied to show cause notice dated 04.06.2016 and also not attended personal hearing granted on 12.06.2018/14.06.2018/15.06.2018 before the adjudicating authority.



10. Section 54 (4) of the Act stipulates that the refund application shall be accompanied by such (a) documentary evidence as may be prescribed to establish that a refund is due to the applicant; and (b) documentary or other evidence (including the documents referred to in section (33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person. Further, the adjudicating authority has contended that the invoice furnished by the appellant does not bear endorsement as required under Rule 89 of CGST Rule 2017. In absence of such documents as prescribed, the refund claim in question could not be decided by the authority on merits. In the circumstances, I find that the adjudicating authority has rightly rejected the claims and I up hold the same.

11. In view of above discussion, I do not find any merit to interfere the order passed by the adjudicating authority. Accordingly, I reject all the three appeals filed by the appellant.

उमा शंकर  
(उमा शंकर)  
आयुक्त (अपील)  
Date : .11.2018



Attested

*Mohan V.V.*  
(Mohan V.V)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.

By RPAD.

To,  
M/s Gujarat Marketing,  
Plot No.G-87, Rudraksh Complex,  
Trikampura Patiya, GIDC, Vatva,  
Ahmedabad-45

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad-South.
3. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
4. The Assistant Commissioner, CGST, Div-II, Ahmedabad South
5. Guard File.
6. P.A.