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

7729 to 7733

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(72)114/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-125-2018-19**
दिनाँक Date : **17-12-2018** जारी करने की तारीख Date of Issue 28/12/2018

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

ग Arising out of Order-in-Original No. **AC/08/Div-II/2018-19** दिनाँक: **27.07.2018** issued by Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Super Steel Industries
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 पूवोक्त 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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.

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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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 रू.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 in 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 अपीलो 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. Super Steel Industries, Plot No. 51/1, Phase-I, GIDC, Vatva, Ahmedabad-382445 (herein after referred to as the appellant) has filed this appeal against OIO No. AC/08/Div-II/2018-19 dated 27.07.2018 (herein after referred to as the impugned order), passed by the Assistant Commissioner, Div-II, Central GST, Ahmedabad (South) (for short - 'adjudicating authority').

2. The facts in brief are that the appellants were engaged in manufacture of excisable goods and had opted for 'special procedure for payment of duty' i.e. compounded levy scheme for manufacture of stainless steel pattis/ pattas manufactured on cold rolling machines as provided under Rule 15 of the Central Excise Rules, 2002 (hereinafter CER, 2002) read with the Notification No. 17/2007-CE dtd. 01.03.2007 as amended. The appellants were granted permission for 03 numbers of Cold Rolling Machines for the period of twelve consecutive calendar months for first machine starting from 01.03.2015 to 28.02.2016 & from 01.03.2016 to 28.02.2017 & from 01.03.2017 to 28.03.2018 and separate 2 Nos. numbers of Cold Rolling Machines for the period of twelve consecutive Calendar months starting from 01.02.2017 to 31.01.2018. The appellant inform the department that they would dismantle the machines and therefore there would be no production of excisable good. Therefore, the appellant did not pay the duty for the month December-2015 and June-2016 and for the month December-2016 (from 01.12.2016 to 14.12.2016). A show cause notice dated 09.11.2017 was issued to the appellant, proposing *inter alia* recovery of central excise duty of Rs. 2,54,190/- short paid along with interest and proposed imposition of penalty. This show cause notice was adjudicated vide the impugned order wherein the then adjudicating authority confirmed duty demand and recovery thereof along with interest and further imposed penalty of Rs. 25,419/- on the appellants.

3. Feeling aggrieved, the appellants have filed this appeal raising the following averments:

(a) that no central excise duty is leviable on manufacture of excisable goods machines are dismantled. They place reliance on the case law of Commissioner of Central Excise, Jaipur-II vs. Jupiter Industries – 2006 (206) ELT-1195 (Raj.), Sarthi Rubber Industries (P) Ltd Vs Commr. Ex & ST, Alwar [2017(358) ELT 370(TRI-DEL)], Manoj Steel Industries Vs Commr. Of Central Excise, Delhi-I [2017(346)E.L.T. 150(TRI-DEL.)] etc.

(b) that no excise duty liability arises on their part for one cold rolling machine which was not functional as held in the case of M/s Commr. Of C.Ex. V. D.r. Metal Industries [2007(219) ELT 239 (TRI-BANG)]

(c) that appellant's reliance on the decision given by Hon'ble Rajasthan High Court in the cae of Collector of Central Excise, Jaipur II Vs Jupiter 2006 (206) ELT-1195 (Raj.) has been rejected by the adjudicating authority.

(d) that the interpretation taken by the impugned order is defeating the purpose of central Excise Act, 1944 as Central Excise duty is leviable only on manufacture of goods and when there was no manufacture of goods from the three dismantled machines, the question to pay central excise duty does not arise at all as held in the case of M/s Acme Industries vs. Commissioner of Central Excise, Jaipur-II- (2011 (269) ELT-523 (Tri.-Del.).

(e) that adjudicating authority has placed reliance on the decision given by the Hon'ble CESTAT in the case of Sethi Metal Industries Vs. C.Ex., Ahmedabad [2013(294) E.L.T. 603 (Tri-Ahmd)] but this judgment is not applicable because the same were pertaining to erstwhile Rules 96ZA to 96ZZG and erstwhile notification no. 34/2001-CE dated 28.06.2011 and not applicable to notification no. 17/2007.

(f) that the Hon'ble Rajasthan High Court has held that central excise duty is not leviable on the machines that were not operated as no manufacture of excisable goods was done. Therefore, the revenue authority are bound to follow the decision rendered by the Hon'ble on the said issue by another High Court and no appeal has been filed against the said decision rendered by the Hon'ble Supreme Court.

(g) that no ingredients for the penalty under Rule 25 are present in the case.

(h) that power consumption in the month of December-2015, June 2016 and Deceber-2016 is much lower than the other month when other machines are also operational.

4. Personal hearing in the appeal was held on 20.11.2018 wherein Shri Pradeep Jain, CA, appeared for the appellants and reiterated the grounds of appeal and submits compilation of citations.

5. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing.

6. I find that the issue is related to the Notification No. 17/2007 which prescribes payment of central excise duty based on the production capacity.

For better understanding of the provisions of the notification, I reproduce the relevant portion of the notification:

> *"the Central Government hereby specifies the excisable goods that is stainless steel pattis/pattas, falling under Chapter 72, or aluminium circles falling under Chapter 76 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) subjected to the process of cold rolling with the aid of cold rolling machine in respect of which an assessee shall have an option to pay the duty of excise* ***on the basis of cold rolling machine installed*** *for cold rolling of these goods, and fixes the following rate of duty per cold rolling machine, per month:-"* (emphasis supplied)

The wordings of the notification clearly lay down the situation and the method of payment of duty. This notification gives an option to pay duty based on per machine installed and it clearly stipulates that the duty is to be calculated on the basis of number of machines and it shall be proportionate to that. I find no force in the arguments of the appellants that they have paid the duty per machine which were operational during the relevant period because on plain reading of the notification wordings, it is quite clear that the duty is to be paid on the basis of installed machines.

7. The adjudicating authority has, in para 7 of the impugned order, discussed the manner in which the appellants were required to calculate the duty liability. For ease of understanding, I reproduce the relevant part of the said notification herein below:

> *3.* ***Discharge of duty liability on payment of certain sum.*** *- (1) A manufacturer whose application has been granted under paragraph 2* ***shall pay a sum calculated at the rate specified in this notification****, subject to the conditions herein laid down, and such payment shall be in full discharge of his liability for duty leviable on his production of such cold re-rolled stainless pattas/pattis, or aluminium circles during the period for which the said sum has been paid :*
>
> *Provided that if there is revision in the rate of duty, the sum payable shall be recalculated on the basis of the revised rate, from the date of revision and liability for duty leviable on the production of stainless steel pattis/pattas, or aluminium circles from that date shall not be discharged unless the differential duty is paid and in case the amount of duty so recalculated is less than the sum paid, the balance shall be refunded to the manufacturer :*
>
> *Provided further that when a manufacturer makes an application for the first time under paragraph 2 for availing of the procedure contained in this notification, the duty liability for the month in which the application is granted shall be calculated pro-rata on the basis of the total number of days in that month and the*

number of days remaining in the month from the date of such grant.

(2) The sum payable under sub-paragraph (1) shall be calculated by application of the appropriate rate to the maximum number of cold rolling machines installed by or on behalf of such manufacturer in one or more premises at any time ***during three*** *calendar months immediately preceding the calendar month in which the application under paragraph 2 is made.*

6. Provisions regarding new factories and closed factories resuming production. - (1) In the case of a manufacturer who commences production for the first time or who recommences production after having ceased production for a continuous period of not less than three months, and who has been permitted by the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, under paragraph 2 to avail of the procedure, the amount payable by him for the first month or part thereof, as the case may be, shall be provisionally calculated on the basis of his declaration of the maximum number of cold rolling machines that are or are likely to be installed by him or on his behalf during such period.

8. Provision regarding factories ceasing to work or reverting to the normal procedure. - Notwithstanding anything contained in this notification, where a manufacturer who had availed himself of the procedure contained in this notification ceases to work or reverts to the normal procedure, the duty payable by him in the month during which he has availed himself of the procedure shall be calculated on the basis of the maximum number of cold rolling machines installed during the last month in the manner prescribed in paragraph 6 and the amount already paid for the month in accordance with paragraph 3 shall be adjusted towards the duty so calculated and on such adjustment if there is any excess payment it shall be refunded to the manufacturer and any deficiency in duty shall be recovered from the manufacturer.

Explanation. - A manufacturer, who ceases to work his factory for one or two shifts only, shall not be deemed to have ceased to work within the meaning of this notification.

On careful perusal of the provisions of the said notification, I find that the sub para (1) of para 3 speaks about the sum which is required to be paid in discharge of the assessee's duty liability and sub para (2) specifies the method of calculating the sum mentioned in sub para (1) to be paid on the basis of three calendar months immediately preceding the calendar month in which the application under paragraph 2 is made. It is evident from these provisions that this method is to be applied the time of discharging the duty liability. In view of these specific provisions of the notification, I find that the method of calculation of the sum for discharging the duty liability is unambiguous and leaves no doubt and accordingly I hold that the duty liability has not been correctly discharged by the appellants.

8. I find support from the case law of Sethi Metal Industries Vs. Commissioner Of C. Ex., Ahmedabad cited at 2013 (294) E.L.T. 603 (Tri. - Ahmd.) wherein it is clearly held and I quote the relevant part thereof:

> *"**3.** It is observed that the Appellate Authority in para 7 of the Order-in-Appeal dated 6-2-2012 has reproduced the provisions of Notification No. 17/2007-C.E., dated 1-3-2007. It has been rightly rejected by the Commissioner (A), as per para-8 of the Order-in-Appeal, that the judgments relied upon by the appellants are not applicable because the same were pertaining to the erstwhile Rules 96ZA to 96ZGG of the Central Excise Rules, 1944 where a separate procedure was prescribed. In para-8 of Special Compounded Levy Procedure, prescribed under Notification No. 17/2007-C.E., dated 1-3-2007, the refund or demand of duty can be worked out only if the unit availing special compounded levy procedure ceases to work or reverses to the normal duty payment procedure. In the instant case, that is not the situation and there is no provision in the prescribed special procedure to ask for rebate of duty paid under compounded levy scheme."*

The above decision makes it amply clear that the parallels drawn by the appellants between the erstwhile rules and the scheme prescribed under the notification No. 17/2007-CE are not correct and both are different schemes operating in different provisions. In view of this, I find that the appeal made by the appellants is required to be rejected and the impugned order is upheld. In this regard, I find support from the case law of M/s Intas Pharma vs. Union of India - 2016 (332) E.L.T. 680 (Guj.) wherein it has been very clearly held and I quote:

> *" **8.** It is by now well settled that in a taxing statute there is no scope of any intendment and the same has to be construed in terms of the language employed in the statute and that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the rules and the notification..."*

In view of the above, I hold that the appellants' contentions cannot be accepted and is therefore rejected and the impugned order does not warrant any interference. The case laws cited by the appellants in their support are not relevant here in view of the fact that they were for erstwhile Chapter E-VI under which rules from 96ZA to 96ZGG were specified.

I have also gone through the case laws cited by the appellant in their favour. That judgment such as Hon'ble Rajasthan High Court in case of CCE Jaipur Industries reported in 2006 (206)ELT1195 (Raj) (ii) ACME Industries V/s Commissioner of C. Ex. Jaipur reported in 2011 (269) ELt 523 (Tri-Del.) etc are not squarely applicable to the facts of the present case.

In view of these findings, I find no reason to interfere with the impugned order and uphold the same. The appeal filed by the appellant is disallowed

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

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

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)
अहमदाबाद

सत्यापित

दिनांक:

(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By RPAD.

To,
M/s. Super Steel Industries,
Plot No. 51/1, Phase-I, GIDC,
Vatva, Ahmedabad-382445

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Dy/Asst Commissioner, Central Tax, Division II, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South.
5. Guard File.
6. P.A.