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

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रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(84)05/EA-2/Ahd-South/2018-19
Stay Appl.No. /2018-19
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0143-2018-19
दिनांक Date : 18-01-2019 जारी करने की तारीख Date of Issue _____ 13/3/2019.
- श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. MP/12/AC/Div-VIII/2017-18 दिनांक: 21.03.18 issued by Asst. Commissioner, Div-VIII Ahd south, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/S Air Control & Chemical Engineering Co.Ltd
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) 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 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।

(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 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 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 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

This appeal has been filed by the Assistant Commissioner of CGTST & Central Excise, Division-III, Ahmedabad South Commissionerate [hereinafter referred to "the department"] as per Review Order No.01/2018-19 dated 12.06.2018 of the Commissioner of CGST, Ahmedabad South, against Order-in-Original No.Mp/12/AC/Div-III/2017-18 dated 21.03.2018 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST Division-III, Ahmedabad South [hereinafter referred to as "the adjudicating authority"] in respect of M/s Air Control & Chemical Engineering Co.Ltd, Barejadi (Western Railway) Post Nandej, Ahmedabad-382435[hereinafter referred to as "the respondent"].

2. Briefly stated, the fact of the case is that the appellant is engaged in the manufacture and clearing of excisable goods viz Gas Compressors, Industrial Fan, Valves, Fly Wheel etc. During the course of scrutiny of Returns during financial year 2012-13 and 2013-14, it was noticed that the appellant had availed full exemption in respect of goods viz Industrial fan with accessories and parts thereof falling under chapter 84 of CETA under exemption notification No.12/2012-CE dated 17.03.2012, while clearing to M/s BGR Systems Ltd, Maharashtra. On detailed enquiry and statement of Senior Manager & Accounts of the appellant, it appeared that they were not entitled to avail the benefit of the said exemption notification in respect of goods valued @Rs.90,39,625/- involving Central Excise duty amounting to Rs.11,17,298/- cleared to M/s BGR Systems Ltd. Therefore, a show cause notice dated 11.09.2017 was issued to the appellant for demand of Rs.11,17,298 under Section 11A(4) of Central Excise Act, 1944 /- with interest and imposition of penalty under Section 11 AC (1)© CEA. The show cause notice also proposes for confiscation of goods cleared under Rule 25 of Central Excise Rules, 2002. Vide the impugned order, the adjudicating authority has dropped all the proceedings initiated against the said show cause notice.

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

- The description of goods covered under said chapter heading No.9801 and the text of the exemption notification No.12/2012-Cus dated 17.03.2012, it was evident that the said exemption is available to all goods/items, if imported in cluster or bundle for setting up of a specified unit or the substantial expansion of such specified unit. In the instant case, the appellant had just supplied machinery of chapter 84 which by no means can be considered as to constitute the whole bundle of goods/items of machinery etc and hence cannot be classified under chapter 98 of Customs Tariff.
- The appellant had violated provisions of condition No.41 of Sr.No.336 of exemption notification 12/2012-CE; therefore, they are not entitled to avail the benefit of exemption under the said notification.
- They relied on Hon'ble Supreme Court decision in case of M/s Ganesh Metal Processors Industries [2003 (151) ELT 21] wherein it has been held that if any of the condition laid down in the notification is not fulfilled, the party has not entitled to the benefit of that notification.



- The appellant is sub contractor to M/s BGR Systems Ltd; that if goods are supplied by any sub contractor and if they are also eligible for exemption vide the said notification, the supplier of any items who may be sub-contractor to M/s BGR systems Ltd also may avail the exemption under the said notification and there will be no end to it; that if all such sub contractors to the main contractor like the appellant claim the exemption saying that their goods are also against the International Competitive Bidding, there is no meaning to the exemption notification and main purpose and intention of the Government in giving such notification will be completely defeated.
- The department further relied on the decision in case of M/s Bombay Oil Ltd [1997 (91) ELT 538-SC]; M/s Modi Rubber Ltd [2001 (133) ELT 515 -SC]; M/s Toshniwal Industries Pvt [2015 (5) GSTL 179-Tri.Delhi].

4. Personal hearing in the matter was held on 20.11.2018. Shri P.G.Mehta, Advocate appeared for the same and explained the case and submitted further written submission. In the written submissions, he reiterated the grounds under which the adjudicating authority has decided the issue in favour of them by dropping proceedings initiated in the show cause notice.

5. I have carefully gone through the facts of the case and submissions made by the department in the appeal memorandum and submissions made by the respondent. The issue to be decided in the instant appeal is relating to the eligibility of exemption availed by the respondent under Notification No.12/2012-CE dated 17.03.2012.

6. At the outset, I find that respondent availed the benefit of exemption Notification No.12/2012-CE dated 17.03.2012 (Sr.No.336) in respect of goods viz Industrial fan with accessories and parts thereof falling under chapter 84 of, while clearing to M/s BGR Systems Ltd, Maharashtra. The relevant portion of the said notification is as under:

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
336	Any Chapter	All goods supplied against International Competitive Bidding.	Nil	41

The condition No.41 annexed to the above notification states that "If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India." As per above exemption notification, I find that the appellant is eligible to avail the benefit when they supplied the goods falling under any chapter against International Competitive bidding and the goods are exempted from the duties of customs. From the records, I find that the exemption from customs duty is provided under notification No.12/2012-Cus dated 17.03.2012 (S..No.507), which reads as under.

[Handwritten signature]

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
507.	9801	<p>Goods required for setting up of any Mega Power Project, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power, that is to say,</p> <p>(a) a thermal power plant of a capacity of 700MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or</p> <p>(b) a thermal power plant of a capacity of 1000MW or more, located in States other than those specified in (a); or</p>	Nil	Nil	93

Condition No.93 states that:

India in the Ministry of Power certifies that :-

- (i) the power purchasing State has constituted the Regulatory Commission with full powers to fix tariffs;
- (ii) the power purchasing states shall undertake to carry out distribution reforms as laid down by Ministry of Power.
- (a) in case of imports for a project for which certificate regarding Mega Power Project status issued by an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Power is provisional, the importer furnishes a security in the form of a Fixed deposit Receipt from any Scheduled Bank for a term of thirty six months or more in the name of the President of India for an amount equal to the duty of customs payable on such imports but for this exemption, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation and if the importer fails to furnish the final mega power status certificate within a period of thirty six months from the date of importation, the said security shall be appropriated towards duty of customs payable on such imports but for this exemption.
- (b)
- (c)

7. From a plain reading of both the notification and the conditions laid down against the serial number, I observe that the any goods supplied against International Competitive Bidding will be eligible for exemption under notification 12/2012-CE, if the said goods which required for setting up of any Mega Power

Project, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power are exempted from levy of customs duty.

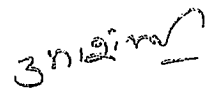
8. The department's contention is that the description of goods covered under chapter 9801 and from the text of exemption notification, it was evident that the said exemption is available to all goods/items, if imported in cluster of bundle for setting up of a specified unit or the substantial expansion of such specified unit; that in the instant case, the respondent had just supplied machinery of chapter 84 of CETA, which by no means can be considered as to constitute the whole bundle of goods /items of machinery, instrument, apparatus etc and hence not classified under heading 9801 of CTA. The department has further contended that neither the appellant had imported the project nor their finished goods were supplied as entire project and also not supplied against International Competitive Bidding. In the instant case, the respondent has stated that they have supplied the goods as a sub-contractor through M/s BGR Systems Ltd, Maharashtra, without payment of duty against Project Authority Certificate dated 14.01.2010 and amended certificate dated 27.03.2012 under notification No.12/2012-CE, against International Competitive Bidding, in terms of condition of the said notification, against the purchase order dated 20.01.2012 of M/s Blue Star Ltd. They were submitted all related documents in support of their above contention.

9. In my view, the grounds of appeal is misconceived and department has not understood the scheme of things under Central Excise Tariff and Customs Tariff. Customs Tariff is not completely aligned with Central Excise Tariff as chapter 98 does not exist under Central Excise Tariff. The purpose of Customs Tariff 98 is to facilitate setting up of "a project". Customs Tariff heading 9801 is all encompassing entry. However, since Central Excise did not have any such Central Excise Tariff Heading, therefore, it was aligned with Customs notification. The notification needs to interpret as language employed. In case of Intas Pharma Ltd. [2016 (332) ELT 680-Guj], the Hon'ble High Court of Gujarat has stated that *"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."*


10. As per description of goods mentioned and conditions prescribed thereof for availing exemption under notification 12/2012-CE, I do not find any merit in the contention of the department that the appellant had violated the provisions of condition No.41 of Sr.No.336 of notification supra. I observe that a Project Authority certificated dated 14.01.2010 was issued by the Maharashtra State Power Generation Co. Ltd in favour of M/s BGR Energy System Ltd, the principal contractor and vide amendment certificate dated 27.03.2012, the name of the appellant was shown as sub-vendor. Further, it has been clarified by the adjudicating authority that as per letter dated 26.10.2010 issued by the Joint

Secretary to the Government of India, the unit No.8 & 9 of 500MW each at Chandrapur Project of MAHAGENCO is an independent power project and not an expansion project of a Mega Power Project. I find that the notification No.12/2012-CE mainly envisages that for availing exemption under the notification, condition No.41 against Sr.No.336 is required to be fulfilled; that the goods are to be exempted from customs and additional duty leviable. The department has not disputed the fact that the goods in question were not exempted from customs and additional duty as stipulated under the said notification. In the circumstances, there is no merit in the argument that the respondent had violated the provisions of said notification. Therefore, the exemption provided under the said notification is admissible to the goods cleared by the appellant and they were correctly availed the same. In view of above findings, I observe that the adjudicating authority has correctly allowed the duty exemption to the appellant and dropped the proceedings initiated in the impugned show cause notice.

11. In view of above discussion, I reject the appeal filed by the department and uphold the impugned order. The appeal stands disposed of accordingly.


(उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : .1.2019

Attested


(Mohanan V.V.)
Superintendent (Appeal),
Central Tax, Ahmedabad.

By RPAD.

To,
M/s Air Control & Chemical Engineering Co.Ltd,
Barejadi (Western Railway) Post Nandej,
Ahmedabad-382435

The Assistant Commissioner,
CGST, Division-III, Ahmedabad South

Copy to:-

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