
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(72)103/Ahd-South/2018-19
~~Stay Appl.No. /2018-19~~

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0148-2018-19
 दिनांक Date : 30-11-2018 जारी करने की तारीख Date of Issue

13/13/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AC/06/DIV-II/2018-19 दिनांक: 25.07.2018 issued by Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

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

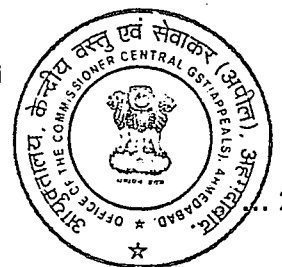
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 हों।

(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.

(i) 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.

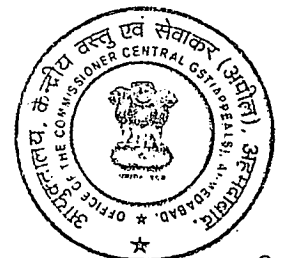
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैटल हॉस्पिटल कम्पाउण्ड, मेघानी 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(Appel) 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।

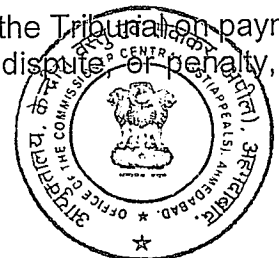
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."



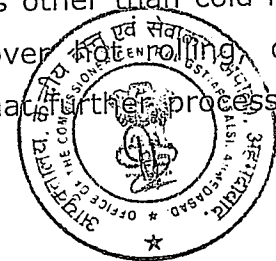
ORDER-IN-APPEAL

M/s Abhinay Steel, Plot No.615, Phase-IV, GIDC, Vatva, Ahmedabad [hereinafter referred to as "appellant"] has filed this appeal against Order-in-Original Np.AC/06/Div-II/2018-19 dated 25.07.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Divison-II, Ahmedabad-South [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were clearing S.S.Cold Rolled Patta Patti on payment of Central Excise duty at the appropriate rate and also clearing S.S.Hot Rolled Patta Patti under exemption of duty as per notification No.03/2005 dated 24.02.2005 (S.No.62), superseded by Notification No.12/2012-CE dated 17.03.2012 (S.No.203). They were paying amount equivalent to 10%/5%/6%, as the case may be, of the value of Hot Rolled Patta Patti under the provisions of Rule 6(3) of the CENVAT credit Rules, 2004. As per the said notification, nil rate of duty is applicable subject to condition that "Pattis and Pattas when subjected to any process other than cold rolling". As it appeared that the appellant has manufactured Hot Rolled SS Patta Patti from the inputs viz S.S.Flats is not subjected to any process at any stage and cleared at Nil rate of duty by availing benefit exemption notification supra, show cause notice dated 28.04.2016 for demanding Rs.25,28,687/- for the period of April 2015 to December 2015 and show cause notice dated 22.01.2018 for demanding Rs.47,90,562/- for the period of January 2016 to November 2016 was issued to the appellant. The said show cause notices also proposes recovery of interest and imposition of penalty. Vide impugned order, the adjudicating authority has confirmed the demands with interest and imposed penalty of Rs.7,31,924/- being 10% of duty demanded for the relevant periods.

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

- They purchased S.S.Flat which are hot rolled on payment of duty and such flats are then cut breath-wise and are subjected to process of cutting, annealing by put it into Bhatti and thereafter hot rolling process in Hot Rolling Mill by job worker; that the said product being carried out, a product called S.S.Hot rolled Patta Patti comes into existence and thereafter, hot rolled Patta Patti are being received in their factory for further process of Cold Rolled products with the help of Cold Rolled Machines.
- The S.S.Flat originally purchased cannot be cold rolled but it has to be converted into Hotrolled patta pattis and before such process, the same cannot be a cold rolled.
- The entry No.203 of the notification No.12/2012-CE clearly described the products "Patta Pattis" when subject to any process other than cold rolling; that prior to cold rolling, the process would cover cutting annealing etc; that the department's contention that further process other



than cold rolling should be carried out on hot rolled patta pattis before clearing from factory is not correct and there is no such commodity i.e hot rolled patta pattis available in the market on which further process other than cold rolling is to be carried out.

- They relied on Circular No.B/31/8/94-TRU dated 04.05.1994 as well as various case laws in support of their arguments.

4. Personal hearing in the matter was held on 11.10.2018. Shri Harshad Patel, Advocate appeared for the same and reiterated the grounds of appeal.

5. I have gone through the records of the case and submission made by the appellant. The moot issue to be decided in the instant appeal is as to whether the appellant is eligible for exemption from payment of central excise duty under notification No.12/2012-CE dated 17.03.2012 on clearance of "hot rolled patta pattis" without further process or chargeable to duty as held by the adjudicating authority.

6. Sr.No.203 of notification No.12/2012-CE dated 17.03.2012, under which the exemption availed by the appellant on clearance of hot rolled patta pattis reads as under:

S No	Chapter or heading or sub heading of tariff item	Description of goods	Rate of duty
203	7219 or 7220	Pattis or Pattas when subjected to any process other than cold rolling.	Nil

7. I find from the manufacturing process that the appellant purchases input viz S.S.Flat on payment of duty which are then cut breath-wise and undergo the process of cutting, annealing hot rolling process in Hot Rolling Mill by job workers; that the said product being carried out, a product called S.S.Hot rolled Patta Patti comes into existence and thereafter, hot rolled Patta Patti are being received in their factory for further process of Cold Rolled products with the help of Cold Rolled Machines.

8. It is contended by the appellant that S S flat originally purchased cannot be cold rolled and it has to be converted into pata patti first and else it cannot be cold rolled. The adjudicating authority has contended that the further process other than cold rolling should be carried out on hot rolled patta patti before the same were cleared from the factory. In other words, patta patti should be subjected to any process other than cold rolling.

9. Looking into the process of manufacturing, I find that the interpretation of the adjudicating authority would render the entry No.203 of the notification supra redundant as there is no 'hot rolled patta patti' available in the market on which



further process other than cold rolling is to be carried out, as contended by the appellant. I find that the meaning of entry No.203 covers patta patti which subjected to any process other than cold rolling is that it would cover semi processed patta patti which are yet to be subjected to cold rolling and it would not cover those patta patti which are subjected to cold rolling . Further, it is fact that there is no patta pattis in the market which are subjected to cold rolling after patta pattis in fully manufactured.

10. Earlier, patta-patti when subjected to any process other than cold-rolling was classified under chapter heading 7220.30 attracting nil rate of duty and the department has challenged the said classification under 7219.10 inasmuch as patta pati are flat rolled product, not further worked than hot rolled. In the case of M/s Metweld Industries, the Hon'ble Tribunal, Ahmedabad [2009 (247)ELT 388 has decided the issue by referring Commissioner (Appeals) order-in-appeal No. 232 to 236/2005 (232 to 236-A-II) CE/DK/Commr (A), dt. 21-12-2005. The relevant portion of the decision is as under:

8. Our attention has also been drawn to various decisions of adjudicating authority holding classification of Patta patti as falling under Chapter Heading 7220.30. The said decisions stand accepted by the Revenue and no appeal has been filed there against. For better appreciation, we reproduce relevant part from one of the order-in-appeal No. 232 to 236/2005 (232 to 236-A-II) CE/DK/Commr (A), dt. 21-12-2005.

"I find that the tariff sub heading 7220.30 referred to in the Central Excise Tariff do not find a place in the HSN. This was created to specifically accommodate the existence of the product recognized in Indian market as Patta/Paths. It is, therefore, not possible to rely on the "Explanatory Notes to HSN to classify the product of heading 72.20 of CET inasmuch as there is no entry for Patta patti vin HSN as is the case in the Indian tariff. I find that tariff sub heading 7220.30 exclude the process cold rolling from the general process stated therein; that if the exclusion was not there, cold rolling would have been considered as other process described under the said tariff. Inasmuch as cold rolling is primary/essential process for manufacture of patta patties. Thus, other process described in sub heading 7220.30 clearly refers to primary process employed to manufacture patta patties. There is no evidence produced on record which show; that there is any product like processed patta pattie known to the market. It is therefore difficult to comprehend an interpretation that tariff sub heading 7220.30 seeks to classify patta patties which are subsequently processed. As the tariff sub heading 7220.30 of CET cannot be interpreted to apply to non existence goods, the only logical conclusion that can be derived for classification of product under tariff sub heading 7220.30 which covers patta patties which subjected to any process other than cold rolling" is that it would covers those semi processed patta patties which are yet to be subjected to cold rolling to manufacture finished patta patties. It would not cover those patta patties which are subjected to cold rolling as appears from the plain reading of tariff sub heading 7220.20 of CET. As there is no patta pattis in the market which are subjected to cold rolling after patta pattis in fully manufactured. Any other interpretation would make the entry redundant. The appellants have subjected the duty paid flat to the process of cutting, annealing and hot rolling, they have manufactured "SS patta pattis hot rolled". In order to complete the process of manufacture of SS patta pattis it has to be only cold rolled i.e. the appellants have manufactured semi finished SS patta pattis which has to be cold rolled to complete, the process of manufacture of patta pattis. I, therefore, feel that appellant's contention that their product falls under sub heading 7220.30 of CET appears to be correct.

Further, there is no chapter notes under Chapter 72 of CET, 1985, which could specify any process not amount to manufacture. In light of the Hon'ble Tribunal decision quoted by the appellants, I find that even activities like polishing or machining or even drilling holes amounts to further worked. I find that in the present case, the appellants are carrying on the activity of cutting and annealing before hot rolling. Thus, cutting and annealing would qualify as "further worked" as per the aforesaid decisions and hence the product which have been subjected to process of cutting and annealing cannot be classified even as per the language of tariff sub heading 7220.10 as flat rolled product not further worked than hot rolled.

In view of the above, I hold that appellants have rightly classified their product "SS patta pattis hot rolled" under sub heading 7220.30 of CETA, 1985. I, therefore, set aside the classification of the product under sub heading No. 7220.10 of CET, 1985 and duty demand there under as mentioned in above table."

11. From the above, it is clear that that prior to cold rolling, the process would cover hot rolling, cutting annealing etc and the department's contention that further process other than cold rolling should be carried out on hot rolled patta pattis



before clearing from factory, is not correct. In the circumstances, the exemption availed by the appellant under notification *supra* is correct.

12. In view of above discussion, I do not find any merit in the impugned order and accordingly I set aside the impugned order and allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

उमाशंकर

(उमा शंकर)
आयुक्त (अपील्स)
Date : .11 .2018

Attested

(Mohan V.V) 13/11/18
Superintendent (Appeal),
Central Tax, Ahmedabad,



By RPAD.

To,
M/s Abhinay Steel,
Plot No.615, Phase-IV, GIDC,
Vatva, Ahmedabad

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.

