
 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
☎ : 079-26305065		टेलिफैक्स : 079 - 26305136

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रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(54)153to155/Ahd-South/2018-19
Stay Appl.No. /2018-19
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0149to0151-2018-19
दिनांक Date : 08-02-2019 जारी करने की तारीख Date of Issue 14/3/2019
श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 23to25/ADDL. COMMR/2001 दिनांक: 14.02.2001 issued by
Addl. Commissioner, Div-AHD-I, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Nitdip Textile Processors Pvt. 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) 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।



(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 दिनोंक 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.

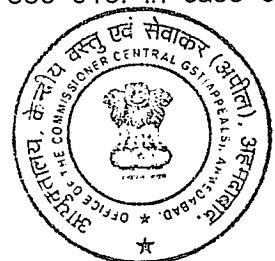
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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(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।

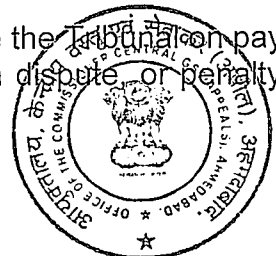
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



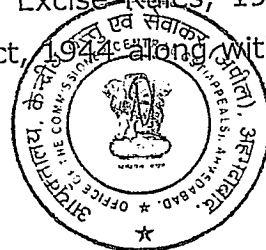
ORDER IN APPEAL

This order arises on account of an appeal filed by M/s. Nitdip Processors Pvt. Ltd., 1001, Capstone, Opp. Chirag Motors, Seth Mangaldas Road, Ellisbridge, Ahmedabad (hereinafter referred to as the 'the appellants' for sake of brevity) against the following Orders-in-Original (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the then Additional Commissioner of erstwhile Central Excise, Ahmedabad-I (hereinafter referred to as the 'adjudicating authority' for the sake of brevity);

Sr. No.	OIO No.	OIO date	Amount of duty confirmed (₹)	Period involved
1	23/ADDL COMMR/2001	14.02.2001	2,50,000	September 2000
2	24/ADDL COMMR/2001	14.02.2001	6,00,000	October 2000
3	25/ADDL COMMR/2001	14.02.2001	6,00,000	August 2000

2. The facts of the case, in brief, are that the appellants were engaged in the processing of fabrics falling under Chapter 52, 54 and 55 of the erstwhile Central Excise Tariff Act, 1985 and were also having Hot Air Stenter installed and functioning in their factory. The appellants, at that time, were governed by the provisions of Section 3A of the erstwhile Central Excise Act, 1944 read with erstwhile Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998 (hereinafter referred to as 'the said Rules'). On the basis of declaration filed by the appellants, Annual Production Capacity (APC) and pro-rata duty liability was determined by the Assistant Commissioner of the erstwhile Central Excise, Division-IV, Ahmedabad-I and communicated to the appellants. Accordingly, the appellant's Central Excise duty liability was fixed at ₹6,00,000/- on monthly pro-rate basis.

3. On scrutiny of their RT-12 returns for the months of September, October and August 2000, it was noticed that the appellants had paid only ₹3,50,000/- against their duty liability of ₹6,00,000/-. Thus, it was found that the appellants had short paid the Central Excise duty of ₹2,50,000/- for the month of September 2000. Therefore, show cause notices, dated 20.12.2000, were issued to the appellants charging contravention of the provisions of Rule 96ZQ(3) of the erstwhile Central Excise Rules, 1944. The adjudicating authority confirmed the demand of ₹2,50,000/- for the month of September and ₹6,00,000/- for the months of August and October 2000 under Rule 96 ZQ 5 of the erstwhile Central Excise Rules, 1944 read with Section 11A of the erstwhile Central Excise Act, 1944 along with appropriate



interest and penalty in terms of Rule 96 ZQ 5 of the erstwhile Central Excise Rules, 1944.

4. Being aggrieved with the impugned order, the appellants preferred appeals before the then Commissioner (Appeals-II) of the erstwhile Central Excise, Ahmedabad. The then Commissioner (Appeals-II), vide OIA number 125 to 127/2005(Ahd-I)CE/Comr(A-II) dated 27.07.2005, rejected the appeal of the appellants on the ground of non-compliance of Stay Order number 125-127/2013 dated 19.06.2003. The appellants, subsequently, filed appeals before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad. The Hon'ble Tribunal, vide Order number A/10142-10144/2016 dated 29.02.2016, remanded back to the Commissioner (Appeals) to decide the cases on merit. As the Hon'ble CESTAT has remanded the above case to me, I take up the case on merit.

5. Personal hearing in the matter was granted and held on 16.01.2019. Shri Pravin Dhandharia, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. He made Additional submissions and proof of challan. Regarding the payment of short paid total duty amount of ₹ 14,50,000/-, the appellants stated that they have paid Central Excise duty of ₹ 8,00,000/- vide Challans number 08/2000-2001, 09/2000-2001, 10/2000-2001, 11/2000-2001 and 12/2000-2001. Regarding the remaining amount of ₹ 6,50,000/-, the appellants have paid the same on 16.01.2019 vide challan number 63905041601201900061.

6. Now, before I start discussing the issue of payment of interest and penalty, I would like to imprint, below, a table, submitted by the appellants, showing the status of total duty paid and the amount demanded;

CESTAT, West Zonal Bench, Ahmedabad						
Sl. No.	Particulars	Amount Demanded	Amount Paid	Balance	Remarks	Reference
1	Short Paid Duty	1450000	800000	650000		
2	Short Paid Duty	1450000	800000	650000		
3	Short Paid Duty	1450000	800000	650000		
4	Short Paid Duty	1450000	800000	650000		
5	Short Paid Duty	1450000	800000	650000		
6	Short Paid Duty	1450000	800000	650000		
7	Short Paid Duty	1450000	800000	650000		
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10	Short Paid Duty	1450000	800000	650000		
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160	Short Paid Duty	1450000	800000	650000		
161	Short Paid Duty	1450000	800			

From the above, I find that presently, there is no pending due, in terms of Central Excise duty, on the part of the appellants.

7. Now comes the issue as to whether the adjudicating authority has rightly imposed interest and penalty, or otherwise, as mentioned in the impugned order. In this regard, I would like to highlight the view of the Hon'ble Supreme Court in the case of Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise as reported in 2015(326)ELT 209(SC). I again produce below the observation of the Hon'ble Supreme Court, verbatim, for more clarity, from the concerned paragraph of the judgment;

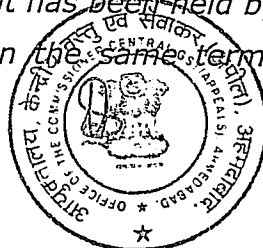
"32. We now come to the other appeals which concern themselves with penalties that are leviable under Rules 96ZO, 96ZP and 96ZQ. Since the lead judgment is a detailed judgment by a Division Bench of the Gujarat High Court reported in Krishna Processors v. Union of India, 2012 (280) E.L.T. 186 (Guj.) and followed by other High Courts, we will refer only to this decision.

33. On the facts before the Gujarat High Court, there were three civil applications each of which challenged the constitutional validity of the aforesaid rules insofar as they prescribed the imposition of a penalty equal to the amount of duty outstanding without any discretion to reduce the same depending upon the time taken to deposit the duty. The Gujarat High Court struck down the aforesaid Rules on the basis that not only were they ultra vires the Act but they were arbitrary and unreasonable and therefore, violative of Articles 14 and 19(1)(g) of the Constitution."

Further, in the same case, the Hon'ble Supreme Court, in paragraph 44 of its judgment, has concluded that the interest and penalty provisions under the Rules 96ZO, ZP, and ZQ of the Central Excise Rules, 1994 are invalid. I reproduce below, verbatim, the said paragraph for better understanding;

"44. Conclusion

We have declared in this judgment that the interest and penalty provisions under the Rules 96ZO, ZP, and ZQ of the Central Excise Rules, 1994 are invalid for the reasons assigned in the judgment. Accordingly, the appeals filed by the Revenue are dismissed and the appeals filed by the assesseees are allowed to the extent indicated above. It may be noted that in an appeal from a judgment of the Allahabad High Court dated 8-11-2012 in SLP (C) No. 9796/2013, it has been held that the levy of penalty under the aforesaid provisions is mandatory in character. In view of what has been held by us today, this appeal will also have to be allowed in the same terms as the other



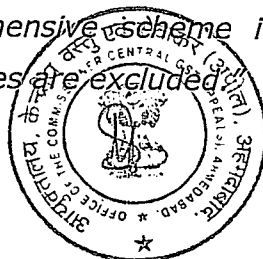
assessee's appeals which have been allowed. All the aforesaid appeals are disposed of accordingly."

Thus, it is quite clear from the above, that the Hon'ble Supreme Court too has considered that imposition of equal penalty is illogical and unconstitutional. Thus, I disagree with the verdict of the adjudicating authority to the extent of imposing penalty amounting to ₹5,00,000/- and ₹6,00,000/- respectively under Rule 96 ZQ5 (ii).

7.1. Regarding the demand of interest, I find that the Hon'ble Supreme Court, in the case of Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise, had viewed that since Section 3A of the erstwhile Central Excise Act, 1944 does not itself provide for the levying of interest, Rule 96ZO, 96ZP and 96ZQ cannot do so. I reproduce the concerned part of the said judgment below;

31. Applying the Constitution Bench decision stated above, it will have to be declared that since Section 3A which provides for a separate scheme for availing facilities under a compound levy scheme does not itself provide for the levying of interest, Rules 96ZO, 96ZP and 96ZQ cannot do so and therefore, on this ground the appellant in Shree Bhagwati Steel Rolling Mills has to succeed. On this ground alone therefore, the impugned judgment is set aside. That none of the other provisions of the Central Excise Act can come to the aid of the Revenue in cases like these has been laid down by this Court in Hans Steel Rolling Mill v. CCE, (2011) 3 SCC 748 = 2011 (265) E.L.T. 321 (S.C.) as follows :

"13. On going through the records it is clearly established that the appellants are availing the facilities under the compound levy scheme, which they themselves opted for and filed declarations furnishing details about the annual capacity of production and duty payable on such capacity of production. It has to be taken into consideration that the compounded levy scheme for collection of duty based on annual capacity of production under Section 3 of the Act and the 1997 Rules is a separate scheme from the normal scheme for collection of Central excise duty on goods manufactured in the country. Under the same, Rule 96-ZP of the Central Excise Rules stipulate the method of payment and Rule 96-ZP contains detailed provision regarding time and manner of payment and it also contains provisions relating to payment of interest and penalty in event of delay in payment or non-payment of dues. Thus, this is a comprehensive scheme in itself and general provisions in the Act and the Rules are excluded"



Thus, looking above, I consider that no interest should be leviable on the appellants and proclaim that the department has wrongly demanded interest for the outstanding period on the duty short paid.

8. Therefore, in view of the discussion held above, I set aside the impugned order, to the extent of demanding interest in terms of Rule 96 ZQ 5 (i) and penalty under 96 ZQ 5(ii) of the Central Excise Rules, 1944 in view of Hon'ble Supreme Court's decision quoted supra.

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

11. The appeal filed by the appellants stands disposed off in above terms.

Attested

30/01/19
ABYASACHI DUTTA
 SUPERINTENDENT
 ज. सेक्टर (अपील), अहमदाबाद.
 IST(APPEALS), AHMEDABAD.

3/1/2019

(उमा शंकर)

CENTRAL TAX (Appeals),
 AHMEDABAD.



To,
 M/s. Nitdip Processors Pvt. Ltd.,
 1001, Capstone, Opp. Chirag Motors,
 Seth Mangaldas Road, Ellisbridge,
 Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Asst. Commissioner, Central Tax, Division-III, Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad (South).
- 5) Guard File.
- 6) P. A. File.