

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

रजिस्टर्ड डाक ए.डी. द्वारा

6537 + 0 6541

क फाइल संख्या : File No : V2(84)4/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-057-2018-19
दिनांक Date : 11-09-2018 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा प्रारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

29/9/2018

ग Arising out of Order-in-Original No. MP/11/Dem./2017-18 दिनांक: 06.07.2017 issued by Assistant Commissioner, Div-V, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Doshion Water solution 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।

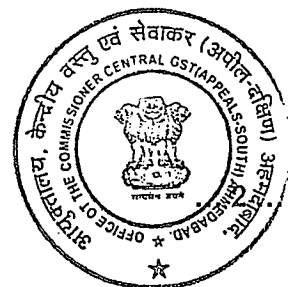
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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 मैनटल 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 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 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 आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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 alone is in dispute."

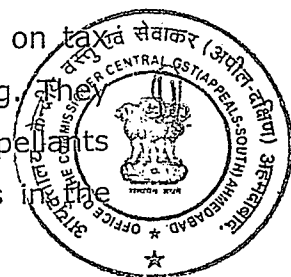


ORDER-IN-APPEAL

M/s. Doshion Water Solution Pvt. Ltd., Plot No. 110, Phase-1, GIDC, Kathwada, Ahmedabad (hereinafter referred to as '*the appellants*') have filed an appeal against the Order-in-Original number MP/11/Dem/2017-18 dated 06.07.2017 (hereinafter referred to as '*impugned order*') passed by the then Assistant Commissioner, Central Excise, Division-V, Ahmedabad-I (hereinafter referred to as '*adjudicating authority*').

2. The facts of the case, in brief, are that the appellants were holding Central Excise Registration number AACCD8958MXM001 and are engaged in the manufacture of Water Treatment Equipments & Parts thereof falling under Chapter 84.21 of the then Central Excise Tariff Act, 1985 and were availing the credit of Central Excise duty on inputs. During the scrutiny of their ER-1 return, for the month of June 2015, it was observed that they had made home clearance of excisable goods at 'Nil' rate of duty claiming and availing Central Excise duty exemption against entry number 337 under Notification number 12/2012-CE dated 17.03.2012. On verification of the concerned invoices and other relevant documents, it was revealed that the duty exemption was actually claimed by the appellants under serial number 239A of the Notification number 12/2012-CE dated 17.03.2012. Thus, it was understood that the appellants had claimed duty exemption to the same set of goods against two different serial numbers of the Notification number 12/2012-CE dated 17.03.2012. In the ER-1 return, the exemption was claimed under serial number 337 under Notification number 12/2012-CE dated 17.03.2012 whereas, in the clearance invoices, duty exemption was claimed under serial number 239A under Notification number 12/2012-CE dated 17.03.2012. On being asked, the appellants could not establish that they had fulfilled all the conditions under which the duty exemption had been claimed. Thus, it was presumed that the appellants had violated the provisions of Rule 4 of the Central Excise Rules, 2002 inasmuch as they removed the excisable goods without payment of Central Excise duty. After completion of investigation, a show cause notice dated 17.06.2016 had been issued to the appellants. Said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority had passed the order by confirming the demand of Central Excise duty of ₹57,575/- under Section 11A of the Central Excise Act, 1944. The adjudicating authority further ordered to recover interest under the provisions of Section 11AA of the Central Excise Act, 1944 and imposed penalty of ₹57,575/- on the appellants under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal. The appellants argued that they had not manufactured any goods, which were cleared under the said exemption notification. In fact, these items i.e. Membrane RO Spiral BW 30-400 DOW, were bought out items purchased on tax invoice on which VAT was charged and sold out as such by way of trading. They also accepted the fact that the said Membrane RO is also their input. The appellants further informed that they had mistakenly shown the sale of such goods in the



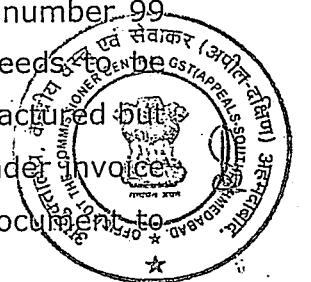
Central Excise return and since no duty was payable, they had shown it as exempted under Notification number 12/2012-CE dated 17.03.2012.

4. Personal hearing in the matter was conducted on 26.06.2018 wherein Shri R. Subramanya, Advocate, appeared before me and reiterated the grounds of appeal. Shri Subramanya stated that the appellants had earlier submitted the same appeal on 09.10.2017, wherein it was delayed by 5 days. The said appeal was returned back by this office due to certain deficiency. Now they have filed the appeal, in complete form, after fulfilling all the conditions. Further, he contended that the appellants had not manufactured the goods and the exemption was claimed erroneously.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum and oral submission made at the time of personal hearing. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellants and oral submission made at the time of personal hearing.

6. At the onset, I find that there has been a delay of 5 days in filing the appeal. The appellants have requested for condonation of the delay stating that the delay has occurred because of non-availability of the authorized person for signing the appeal. Their request sounds genuine to me and accordingly, I condone the delay and proceed to decide the case on the basis of merit.

7. Now, going through the grounds of appeal of the appellants, I find that it has been contended that the goods were not manufactured by the appellants, but procured from outside and hence do not draw Central Excise duty. The appellants further, argued that they had mentioned the exemption notification by mistake. The appellants are active in the market since 1972 with more than 200 technologies and access to over 2500 patents. Their in-house production of Ion Exchange resins and performance enhancement products can be considered as one of the best in the present market. So, I am not willing to accept the allegation that the intention of the appellants was mala fide. It seems that the indication of exemption under serial number 337 of the Notification number 12/2012-CE dated 17.03.2012 could have been genuine mistake on their part. They have submitted copies of invoices pertaining to purchase of membranes from the trader. The said invoices are showing payment of VAT @ 4% and Additional VAT @ 1%. I find that 19 units of Membrane RO Spiral BW30-400 has been purchased by them from M/s. Fivebro International Pvt. Ltd. vide invoices number 1071/2014-15 dated 08.12.2014 (4 units) and 1190/2014-15 dated 07.01.2015 (15 units). Out of the above, 10 units had been sold by the appellants to M/s. Trident Ltd.-PCD vide invoice number 99 dated 17.01.2015. The said transaction seems to be genuine and needs to be spared from payment of Central Excise duty as the goods are not manufactured but bought and sold. For rest of the transactions, as claimed to be sold under invoice number 105 dated 17.06.2015, the appellants could not submit any document to



support their claim that the transactions were pure trading devoid of Central Excise duty.

8. In view of discussions held above, I do not find any reason to interfere with the impugned order except for the transaction involving 10 units of Membrane RO Spiral BW30-400 sold by the appellants vide invoice number 99 dated 17.01.2015 being traded goods. Accordingly, Central Excise duty demanded to that extent is waived.

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

9. The appeals filed by both the appellants stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

S. DUTTA
(S. DUTTA) 157018

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,

M/s. Doshion Water Solution Pvt. Ltd.,

Plot No. 110, Phase-1,

GIDC, Kathwada,

Ahmedabad.

Copy to:-

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-South.
- 3) The Dy./Asst. Commissioner, Central Tax, Div-V, Ahmedabad-South.
- 4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad-South.
- 5) Guard File.
- 6) P. A. File.

