

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

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)25/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-062-2018-19
दिनांक Date : 14-09-2018 जारी करने की तारीख Date of Issue 23/10/2018

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

ग Arising out of Order-in-Original No. MP/02/REB/2018 दिनांक: 02.04.2018 issued by Assistant
Commissioner, Div-V, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Mehta Cad Cam Systems Pvt. Ltd. (U-01)
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।

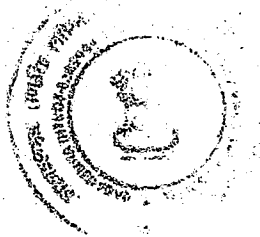
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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



(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 हैं।

(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.

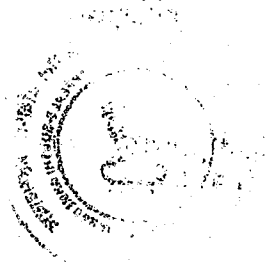
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैटल 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.



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 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।

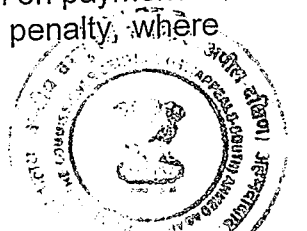
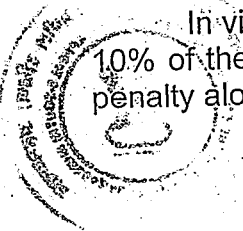
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

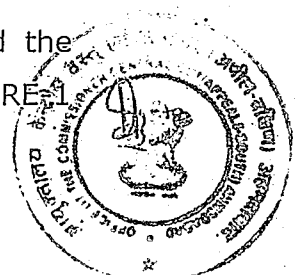
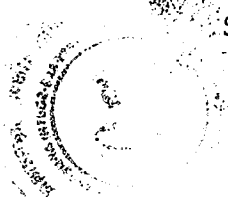
This appeal has been filed by M/s. Mehta Cad Cam Systems Pvt. Ltd.,(Unit-01) Plot No. 188, Road No. 3, Kathwada GIDC, Kathwada, Ahmedabad-382430(hereinafter referred to as "the appellant") against the Order-in-Original number MP/02/REB/2018 dated 02.04.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST CX, Division-V, Ahmedabad South(hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellant had filed a rebate claim of Rs. 2,36,421/- on 03.01.2018 before the adjudicating authority with supporting documents for Cenvat duty paid on goods re-export made under Shipping Bill No. DBK/10/2017 dated 04.01.2017 and goods cleared under ARE-1 no. 05/16-17 dated 05.01.2017. The adjudicating authority verified the rebate claim documents and found discrepancies on ARE-1 05/16-17 dated 05.01.2017 that the appellant declared on ARE-1 that No rebate claim will be filed. The said re-export under LUT and the JRS has been remark on ARE-1(In triplicate copy) "No rebate claim admissible".

In view of the above, being in disagreement with the appellant's contention of claiming rebate under rule 18 of Central Excise Rules, 2002, a show cause notice, dated 07.03.2017, was issued to the appellant. The said show cause notice was adjudicated by the adjudicating authority vide impugned order wherein rejected the rebate claim of Rs. 2,36,421/- in respect of ARE-1 No. 05 dated 05.01.2017, under erstwhile Rule 18 of the Central Excise Rule 2002 read with erstwhile Section 11B of the Central Excise Act, 1944 and Section 142 of CGST 2017.

3. The appellant has filed the present appeal invoking the following grounds of appeal:

- 1) It is not clear and not at all certain from the impugned order as to why and how or on what basis the notice issuing and adjudicating authority is the improper authority. The adjudicating authority has not returned the application of rebate. Hence, the authority can safely be assumed as the proper authority.
- 2) On the grounds of violation of principles of natural justice and not following the judicial discipline, the impugned order deserves to be quashed altogether.
- 3) The impugned order travelling beyond the grounds in the SCN and bears an element of illegality. Being a case of self removal, post removal the Range Superintendent was approached for verification and endorsement of duty payment in the Triplicate ARE1 copy and the Superintendent also, inadvertently, inscribed in the Triplicate ARE



copy his remarks: on the front side of the ARE-1 reading : 'No rebate claim admissible' and on the back side : 'Re-export. No Rebate claim admissible' though knowing well that in fact the removal was on payment of duty and not under bond and that rebate is allowed in case of removal as such for export.

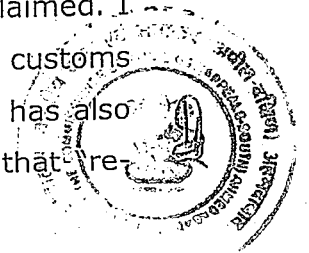
4) Appellants rely upon the following decisions in the case:

- (i) 2001(131) E.L.T 726(GOI) in Krishna Filaments Ltd.,
- (ii) 2011(271) E.L.T 449(GOI) in Re: Garg Tex-O-Fab Pvt. Ltd.,
- (iii) 2014(314) E.L.T 981(GOI) In Re: Gujrat Organics Ltd.,
- (iv) 2015(320) E.L.T667(GOI) in Re: Tricon Enterprises Pvt.Ltd.,
- (v) 2015(321) E.L.T 148(GOI) in Re: United Phosphorus Ltd.,
- (vi) 2015(322) E.L.T 50 (Bom.) in Commissioner of Central Excise Vs. Jubilant Organosys Ltd.,
- (vii) 2015(323) E.L.T 104(Bom.) Union of India Vs Farheen Texturisers maintained in 2015(323)ELT A23 (Supreme Court) Relied in 2017(47) STR 195(Tribunal Chandigarh),

4. Personal hearing in the matter was held on 24/08/2018. Ms. Pooja M. Shah, CA, appeared on behalf of the appellant and reiterated the submissions made in the grounds of appeal.

5. I have gone through the facts of the case and submissions made in the appeal memorandum. The limited point to be decided is whether the appellant is eligible for the Rebate claim that has been rejected by the adjudicating authority in the impugned order on the ground that that the said re-export under LUT and the JRS has been remark on ARE-1(In triplicate copy) "No rebate claim admissible". The adjudicating authority has further held in para 8.2 of impugned order that the exports were made under the claim for Duty Drawback under Customs & Central Excise Duty Drawback Rules, 1995. As per rule 2(a) of Re-export of Imported Goods (Drawback of Custom Duties) Rules, 1995 the "drawback", in relation to any goods exported out of India, means the rebate of duty paid on importation of such goods in terms of Section 74 of the Customs Act. Accordingly, I proceed to decide the case on merits.

6. I find that the subject rebate claim is filed under Rule 18 of the Central Excise Rules, 2002. Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18ibid provides for conditions and procedure for claiming rebate. I find that there is series of lapses by the appellant as stated in the impugned order. However, the main issue revolves around is proof of duty payment of the exported goods. It is very vital element for sanction of rebate claimed. I find that the appellant has initially import the goods on payment of customs duty then removed as such for re-export. I find that the appellant has also declared on the Shipping Bill No. DBK/10/2017 dated 04.01.2017 that re-

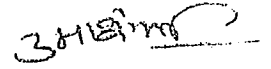


export of imported goods u/s 74/CA, 1962 (98% Drawback of Custom Duty). It is a fact that imported goods have been re-exported. So the provision of Section 74 of Customs Act, 1962 are applicable. In this case, equal amount of Cenvat credit, which was availed at the time of import of goods, was reversed by the appellant at the time of re-export and said reversal of Cenvat credit cannot be treated as payment of duty for the purpose of Rule 18 of Central Excise Rules, 2002. I have carefully gone through this case laws relied upon by the appellant. I find that circumstances and facts of the case are altogether different and hence not applicable in the present appeal. I find that the issue involved in this case was already settled by the Department of Revenue-Revisionary Authority in the case 2014(311) E.L.T. 936 (G.O.I) of SGS Inida Pvt. Ltd.

7. In view of the above discussion and findings, I reject the appeal filed by the appellant and uphold the impugned order.

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


8. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED



(Vinod Lukose)
Superintendent,
Central Tax (Appeals), Ahmedabad.

BY R.P.A.D

To,

M/s. Mehta Cad Cam Systems Pvt. Ltd.,(Unit-01)

Plot No. 188, Road No. 3, Kathwada GIDC,

Kathwada, Ahmedabad, Gujarat-382430

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-South.
3. The Dy./Asstt. Commissioner, CGST, Division-V, Ahmedabad-South.
4. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad-South.
5. Guard file.
6. P.A file.

