



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
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Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(76)61/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-069-2018-19

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. 01/Superintendent/AR-I/Div-IV/2018-19 दिनांक: 25.05.2018
issued by Superintendent, Div-AR-I, Div-IV, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Sameer Metal Industries
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।

... 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 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.

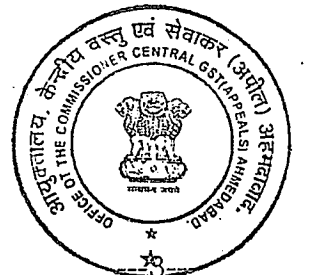
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मेटल 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 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 करों 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।

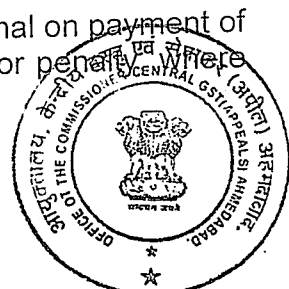
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

Appeal has been filed by M/s Sameer Metal Industries, Plot No., 13, Devang Estate, Opp. Ajmeri Farm, Shahwadi, Behrampura, Ahmedabad-380023 [for short-'appellant'] against OIO No. 01/Superintendent/AR-I/Div-IV/2018-19 issued by the Superintendent AR-I, Div-IV, Ahmedabad South Commissionerate [for short - 'adjudicating authority'].

2. Briefly stated, a show cause notice dated 17.02.2017 was issued to the appellant, inter alia, alleging that: .

[a] Central Excise duty aggregation Rs. 230444/- leviable on the goods manufactured and cleared during the period from March-2016 to December-2016 should not be demanded and recovered under Section 11A(1) of the Central Excise Act, 1944 alongwith interest under Section 11AA of Central Excise Act, 1944 and the Central Excise duty of Rs. 1080000/- paid be adjusted against the demand.

[b] Aluminium Circle cleared by them during the period from March-2016 to December-2016 without paying appropriate Central Excise duty liable for confiscation under Rule 25 of the Central Excise, Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 and also liable for penalty under Rule 25 of Central Excise Rules, 2002 read with para 9 of Notification No. 17/2007-CE dated 01.03.2007 and Section 11A of Central Excise Act, 1944 for contravention of provisions of the said notification.

3. The adjudicating authority vide his impugned OIO dated 25.05.2018, held as follows:

(i) Confirm the demand and adjust the demand towards the differential duty and interest.

(ii) Order for confiscation of aluminium circles cleared by them and also impose penalty.

4. Feeling aggrieved, the appellant, has filed this appeal on the grounds that:

(i) The appellant applied vide his application dated 28.09.2016 for the permission for the special procedure relating to process of Cold Rolling Aluminium for one cold rolling machine as per provisions of Notification No. 17/2007-CE dated 01.03.2007 for twelve calendar months i.e. for the period from 01.11.2015 to 31.10.2016. The said application was not dealt and on contrary, show-cause-notice was issued demanding duty and imposing penalty.

(ii) The show cause notice has been issued for the period from March, 2016 to December, 2016. The clearance value for the relevant period upto December, 2016 (financial year 2016-17) is Rs. 17,62,894/- which is not exceeding Rs. 150 Laksh as per Notification No. 08/2003-CE dated 01.03.2003. Therefore, the appellant is entitled for the exemption under Notification No. 08/2003-CE dated 01.03.2003 and need not pay duty. The aggregate value of clearances of all the excisable goods for home consumption does not exceed Rs. 400 Lakhs in the preceding financial year i.e. 2015-16 as per condition of Notification No. 08/2003-CE dated 01.03.2003. The aggregate clearance value for the preceding financial year i.e. 2015-16 is Rs. 18,23,458/-. The appellant is entitled for the Notification No. 08/2003-CE dated 01.03.201. The appellant has not availed Cenvat Credit on the inputs use in the manufacture of the goods, in such situation, the appellant may be allowed the benefit of exemption upto clearance



value of Rs. 1.5 Crores under the Notification No. 08/2003-CE dated 01.03.2003.

(iii) In the instate case, when there is more than one concession available appellant can adopt the one more beneficial. In this the regard the appellant reply upon the decision in the case of Swatntra Bharat Mills Vs Collector of Central Excise reported in 1993(68) ELT 504 (GOI). The option of exemption under the Notification No. 08/2003-CE dated 01.03.2003 may also be allowed to the appellant with consequential benefit.

(iv) In the case of Raman Boards Ltd Vs Collection of Collection of Central Excise reported in 1988(36) ELT 615 (Tribunal), in which the Tribunal dismissed the appeal filed by the revenue on merits and allowed the appeal of the manufacturer assessee who was allowed to opt any one of two alternate exceptions simultaneously available.

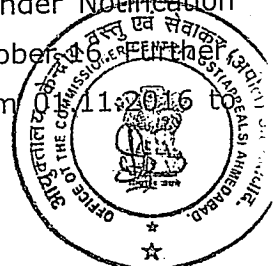
(v) In the present case Rule 25 is not at all applicable as the applicability of Rule 25 is subject to Section 11AC. The ingredients of said Section 11AC are not present in the instant case as everything was well within the knowledge of the department. In this the regard the appellant rely upon the decision of Hon'ble Gujarat High Court in case of Saurashtra Cement Ltd, 2010 (3600 ELT 71 (Guj.). The appellant regularly paid Rs. 1,08,000/-. Hence, there is no contravention of the provision of the Rule 25 of CER, 2002 and the provision of Notification No. 17/20007-CE by reason of fraud, collusion or any wilful mis-statement or suppression of facts with intend to evade payment of duty. Penalty is quasi criminal in nature, it cannot be imposed merely on assumption and presumption. The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the landmark case of M/s. Hindustan Steel Ltd. reported at 1978(2)ELT(1159) (wherein the Honble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so.

(vi) The appellant has prayed that the impugned order confirming demand of duty with interest and imposing penalty on the appellant may be set aside with consequential relief/benefit.

5. Personal hearing was held on 12.09.20018 wherein Shri Amir Khan Pathan, Manager of M/s Sameer Metal Industries appeared on behalf of the appellant. He reiterated the grounds of appeal and further submitted that tax and interest was paid although tax has not been ordered in OIO. Since tax and interest was paid before SCN, he stated that penalty should not be imposed in view of circumstances.

6.1 The appellant has submitted during the personal hearing that tax and interest was paid before SCN. As per para 12 of OIO, it is stated by the adjudicating authority that appellant submitted vide letter dated 16.05.2018, Cheque No. 096757 dated 16.05.2018 for Rs. 1,53,608/- (differential duty Rs. 1,22,444/- +interest Rs. 31,164/-). However, as the SCN was issued on 17.02.2017, the claim of the appellant is not correct.

6.2 As per para 3 of the OIO, the appellant applied for availing of special procedure under Rule 15 of Central Excise Rules, as provided under Notification No. 17/2007-CE dated 01.03.2007 for the period March 16 to October 16, 2016. Further the appellant applied for 12 calendar months for the period from 11.11.2016 to



31.10.2017 vide their application dated 22.09.2016 without making payment of duty alongwith application, as provided under Para 3(3) of the Notification No. 17/2007-CE. I find that, the said permission is not granted as appellant did not make payment of duty at the time of application. However, as per table given in para 6 of the OIO, I find the appellant has paid the duty for the respective months in advance.

6.3 Both the paras are contradictory to each other. I have also observed in para 15 of the OIO, the adjudicating authority has simply discussed that the appellant applied but was not granted permission for the availment of the special procedure under Rule 15 of the Central Excise Rules, 2002 under Notification No. 17/2007-CE dated 01.03.2007. But he has not discussed about the reasons behind it. Further, it is observed in para 16 of the OIO, the adjudicating authority has discussed that the appellant has not applied for the renewal. But, it is not forthcoming from OIO, whether permission was granted or not. If permission was not granted for any reason, the requirement for renewal does not arise. I find the adjudicating authority has not discussed this matter in said OIO.

6.4 The entitlement for the exemption under Notification No. 08/2003-CE dated 01.03.2003 also needs to be verified by the adjudicating authority. Whether, the appellant is eligible for the same or not in this circumstances, needs examination.

7. In view of the above, I remand the case to the original adjudicating authority for passing a comprehensive order giving his findings on all the claims made by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: .9.2018

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeals),
CGST, Ahmedabad.

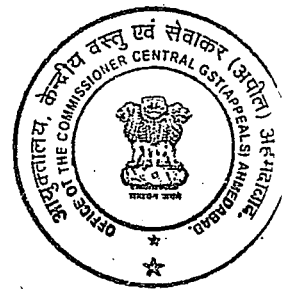
By RPAD.

To,

M/s Sameer Metal Industries,
Plot No., 13, Devang Estate,
Opp. Ajmeri Farm, Shahwadi, Behrampur,
Ahmedabad-380023

Copy to:-

1. The Chief Commissioner, CGST Ahmedabad Zone .



2. The Principal Commissioner, CGST Ahmedabad South.
3. The Deputy/Assistant Commissioner, CGST Division-IV, Ahmedabad South.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.

