



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

Ambavadi, Ahmedabad-380015

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(74)66/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-071-2018-19  
दिनांक Date : 14-09-2018 जारी करने की तारीख Date of Issue

24/10/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 06/AC/SKL/REF/2018 दिनांक: 13.06.2018 issued by Assistant  
COMmissioner, Div-II, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Subhash 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, 4<sup>th</sup> 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।

Subhash

22/11/18

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(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.

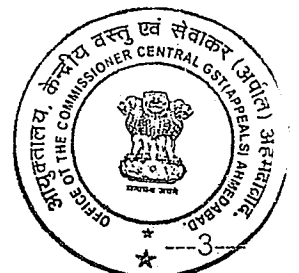
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलों 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(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. Subhash Metal Industries, Plot No. A/1/3, Phase-1, GIDC Vatwa, Ahmedabad 382 445 [for short – ‘appellant’] against OIO No. 6/AC/SKL/Ref/2018 dated 13.6.2018, passed by the Assistant Commissioner, CGST, Division II, Ahmedabad South Commissionerate [for short- ‘adjudicating authority’].

2. The facts in brief is that a case was booked against the appellant and a show cause notice dated 29.3.2000 was issued *inter alia* alleging that the appellant had cleared excisable goods without payment of central excise duty. This notice was adjudicated vide OIO No. 68/ADC/2001 dated 22.3.2001, wherein the adjudicating authority confirmed the demand and imposed penalties on the appellant and others. The appellant and others, approached the then Commissioner(Appeals) who vide her OIA No. 63-69/2011 dated 16.8.2011, upheld major portion of the OIO dated 22.3.2001, while setting aside [a]penalty on certain persons and [b]confiscation of tempo. Aggrieved, the appellant and others, approached the Hon’ble Tribunal, who vide its Order No. A/10100-10102/2018 dated 12.1.2018 held as follows:

*“7.....In these facts and circumstances of this case and judicial pronouncements on similarly based issue, I find that the impugned order is unsustainable and liable to be set aside.*

*8. The impugned order to the extent contested by the appellants herein is set aside and other appeals are allowed with consequential relief if any. “*

On the basis of the aforementioned order of the Hon’ble Tribunal, the appellant filed a refund claim. The adjudicating authority, vide his impugned OIO dated 13.6.2018, sanctioned the appellant refund of Rs. 9.75 lacs. However, he adjusted Rs. 2,83,680/- from the said refund towards confirmed demand and ordered payment of the remaining amount of Rs. 6,85,000/- by cheque, to the appellant.

3. Feeling aggrieved, the appellant has filed this appeal against the impugned OIO dated 12.6.2018, raising the following contentions:

- that the appellant had deposited a total sum of Rs. 9.75 lacs towards pre deposit;
- that the Hon’ble Tribunal, had set aside the appellate order & therefore the confiscation of Rs. 1.30 lacs adjusted from the refund towards redemption fine is without jurisdiction and illegal;
- that the appellant had challenged before the Appellant Tribunal the seizure and confiscation of copper rods/bars; that since the Tribunal had allowed the appellant’s appeal to the extent contested, it was clear that the impugned order of the Appellant Commissioner in respect of confiscation and appropriation of redemption fine qua copper rods/bar was set aside;
- that the letter dated 25.5.2018, submitted by the appellant would not operate as an estoppel against the appellant in contesting illegal retention of the appellant’s money by the Revenue; that there is no estoppels in law as regards a citizen’s right against the State;
- that they are eligible for interest since the refund claim was lodged on 22.2.2018.

4. Personal hearing in the matter was held on 12.9.2018, wherein Ms. Shilpa Dave, Advocate, appeared on behalf of the appellant and reiterated the grounds of appeal. The learned Advocate, also submitted an additional written submission, depicting the chronology of events in respect of the said case/appeal.

5. I have gone through the facts of the case, the ground of appeal and the oral averments raised during the course of personal hearing. The question to be decided is whether the appellant is eligible for refund as claimed by him or otherwise.

6. The appellant has in his grounds, stated that the letter dated 25.5.2018, to the adjudicating authority seeking waiver of show cause notice and further stating that the refund amount decided by the department will be acceptable to them and that they will not file any appeal against the refund order in any forum, would not act as an estoppel. The appellant has further stated that a right conferred upon an appellant by a statute is not a contractual matter between two parties which could be waived by one of the parties to such a contract. I find that this argument has merit. Therefore, it is held that the letter dated 25.5.2018, would not debar an appellant from approaching the appellate authority, in this case the Commissioner(A), in case he is aggrieved against the impugned OIO.

7. On going through para 7.2 of the impugned OIO, I find that the adjudicating authority has held that in respect of fixed deposit of Rs. 70,000/- + Rs. 60,000/-, it is reported that the then Superintendent had appropriated the amount. Towards which demand the amount was adjusted is not forthcoming from the impugned OIO. If it was adjusted towards the demand, which has been set aside by the Hon'ble Tribunal vide its order dated 12.1.2018, there is merit in the claim of the appellant that they are eligible for the refund. This aspect needs to be verified by the adjudicating authority and grant refund, if any.

8. Further in para 7.4 of the impugned OIO, certain amounts are mentioned/adjusted on the grounds that these were not contested by the appellants. In this connection, the operative part of the Tribunal's order dated 12.1.2018, is already mentioned in para 2, above. The findings of the adjudicating authority in para 7.4, appears to be untenable because of the following:

- In para (1) of the grounds of the appeal filed before the Hon'ble Tribunal, the appellant submits as follows:

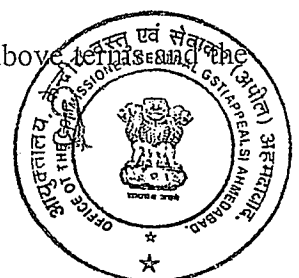
*"1. Impugned O-I-A passed by Ld. Commissioner(Appeals) is bad in law, not sustainable and contrary to facts & the law and hence, the same requires to be set aside forthwith. It is submitted that O-I-A is not tenable under the relied upon provision of Central Excise Act and the Rules made there under."*

- Under the prayers after the grounds of appeal filed before the Hon'ble Tribunal, the appellant further submits as follows

*"1. Set aside the impugned 63 to 69/2011(AHD-I)CE/MM/COMMR(A)/AHD issued on 16-05-2011 by Commissioner, Central Excise, Ahmedabad-I and/or..."*

The appellant had before the Hon'ble Tribunal pleaded that the entire impugned OIA dated 13.5.2011, be set aside. The Tribunal in para 7 of its order dated 12.1.2018, had held that the impugned order is unsustainable and liable to be set aside further adding in para 8 that the impugned Order to the extent contested by the appellants herein was set aside. Going by the wordings in the grounds of appeal and the prayer made before the Hon'ble Tribunal since the appellant had contested the order in its entirety, the amount adjusted on the grounds that the same were not contested is not correct and is therefore set aside.

9. In view of the foregoing, the impugned order is modified in above and the appeal is allowed with consequential relief.



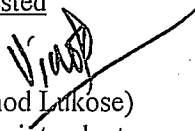
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
10. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : .09.2018

Attested

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

By RPAD.

To,

M/s. Subhash Metal Industries,  
Plot No. A/1/3,  
Phase-1,  
GIDC Vatwa,  
Ahmedabad 382 445

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division II, Ahmedabad South Commissionerate.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.

