

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

7516 707520

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(38)35/Ahd-South/2018-19
 Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-086-2018-19
 दिनांक Date : 30-10-2018 जारी करने की तारीख Date of Issue

7/12/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AC/05/Div-II/2017-18 दिनांक: 28.03.2018 issued by Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Harshlaxmi Chemisol
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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।

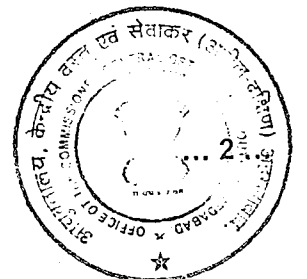
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

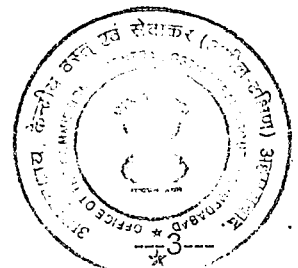
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

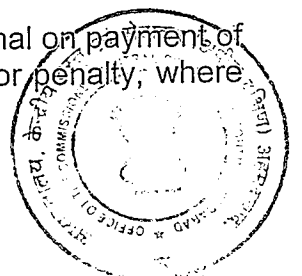
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Harshlaxmi Chemisov, Ahmedabad, (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.AC/05/Div-II/2017-18 dated 28.03.2018 (henceforth, "impugned order") passed by the Assistant Commissioner, Central GST, Division-II, Ahmedabad-South (henceforth, "adjudicating authority").

2. Brief facts of the case are that based on the intelligence that M/s. Laxmi Dye Chem (for short-'M/s Laxmi') & M/s. Harshlaxmi Chemisolve (for short-' M/s Harshlaxmi'), Ahmedabad having Dealer's registration with the department are selling imported/indigenous organic chemicals without bills to their buyers and passing on CENVAT credit without physical supply of the same to different manufacturers/dealers, the officers of Director General of Central Excise Intelligence, Zonal Unit, Ahmedabad ("herein after referred to as "DGCEI") conducted simultaneous searches on 10.09.2014 at their premises. Follow up search was also conducted at the factory premise of M/s Vardhman Chemicals, GIDC, Vatwa, Ahmedabad on 11.11.2014. Investigation revealed that during the period from August 2010 to July 2014, M/s. Laxmi & M/s. Harshlaxmi passed on CENVAT credit of Rs.13,38,729/- & Rs.19,77,888/- respectively on the strength of cenvatable invoices without supply of goods. Show cause notice issued was decided under impugned order disallowing Cenvat total credit Rs.33,16,617/- availed by M/s Vardhman Chemicals alongwith imposition of penalty Rs.3,30,000/- under rule 26(1) of Central Excise Rules, 2002 on the appellant.

3. The appellant preferred this appeal against impugned order contesting *inter alia*, that the investigation was done on the basis of evidences which created doubt and authenticity was challenged, however, it was not appreciated by adjudicating authority; that the adjudicating authority erred in imposed under rule 26(1) whereas the show cause notice penalty was proposed under Rule 26(2) of Central Excise Rules, 2002; that there were no corroborative evidences in the entire case and it is built upon the basis of notebooks, admission statements of the appellant, manufacturer and other dealer; that statement had been retracted and challenged authenticity of diary; that guidelines of issued under CBEC circular 1053/2/2017-CX dated 10.03.2017 is not followed by adjudicating authority ; that validity of the panchnama dated 16.09.2014 not examined; that the investigation has failed to extend the investigation

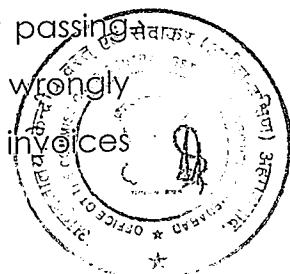


to the alleged actual buyers to whom the appellant had sold the goods in cash and the said cash was returned to the appellant after making certain adjustments; that parties who gave cash to the appellant have not been interrogated; that request for cross examination of Shri Sunil Kothari, proprietor of M/s Vardhman Chemicals was not considered, hence violated principle of natural justice. In this regard they cited case law Lakshman Exports Ltd v/s Collector of C.Ex 2002(143)ELT21 (SC) & Commissioner of Central Excise Ahd-II v/s Gujarat Cypromet Ltd reported in 2017(345) 520(Guj); that rule 26(2) of Central Excise Rules,2002 is applicable only for imposing penalty on biological person only and cannot be imposed on a firm, the word 'he' is used intentionally in the provision for this purpose. Etc.,

4. In the Personal hearing held on 04.10.2018 Shri Anil Gidwani, Tax consultant appeared on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the appeal wherein allegations against the appellant are that they were indulged in selling imported/indigenous organic chemicals without bills to various buyers and passing on CENVAT credit without physical supply of the same to different manufacturers/dealers including M/s Vardhman Chemicals, Ahmedabad under cenvatable invoices.

6. I observe that the appeal filed by M/s Vardhman Chemicals against the impugned order has already been decided under OIA NO. AHM-EXCUS-001-APP-073-2018-19 dated 01.10.2018 upholding the finding of the adjudicating authority confirming demand of CENVAT Credit of Rs.33,16,647/- alongwith interest and penalty. It was observed in said appeal that the appellant, without supply of goods, supplied only invoices to M/s Vardhman Chemicals so as to enable them to avail CENVAT credit fraudulently; that ample evidences were gathered by investigating agency against M/s. Laxmi and M/s. Harshlaxmi suggesting that they received various types of imported/indigenous organic chemicals, sold the same to buyers based at Delhi, Panipat, Sonipat, etc under commercial invoices and issued cenvatable invoices against same goods to the manufacturers based at Vapi, Ankleshwar and Ahmedabad for passing on Cenvat credit without supply of goods; that M/s Vardhman wrongly availed Cenvat credit to the tune of Rs. Rs.33,16,617/- based on invoices

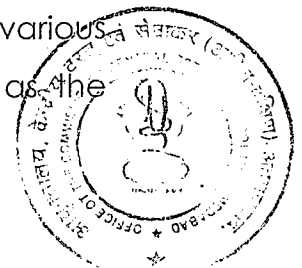


issued by the appellant & M/s. Laxmi without accompanying the goods; that Shri Sunil Kothari, proprietor and Shri Birendra Pandey, Supervisor of the appellant firm have categorically stated in their statement that 'phenol' is never used by them during last five years and the same is used in the manufacture of 'Sinton Di' only which they are not manufacturing; that admission of fraudulently availment of Cenvat credit is also made by Shri Sunil Kothari, proprietor of M/s Vardhman Chemicals, etc.

7. It is a fact that all the allegations involved in the instant case was admitted by the authorized persons of the appellant and M/s Vardhman in their statements recorded by DGCEI. Further, I also observe that the other manufacturers who have availed Cenvat credit on the basis of invoices supplied by the appellant have also admitted the fact that they had not received any goods from the appellant, instead only invoices were received so as to avail Cenvat credit fraudulently. Since the appellant themselves have admitted that they had not delivered the goods to their customers and also non-receipt of the goods by the appellant is duly supported by the statements of manufactures, in my opinion, the allegations mentioned above is sufficient to prove the case against the appellant that they did not supply the goods.

8. The appellant argued that the concerned authorized persons were retracted their statement later on. The proceeding under Section 14 of CEA is a judicial proceeding and if any retraction of the confession has to be made, the same should be made before the same authority who originally recorded the statement immediately. In *Zaki Ishrati v. Commissioner of Customs & Central Excise, Kanpur* [2013 (291) E.L.T. 161 (All.)], the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given. Such belated retractions made later on cannot take away the evidentiary value of their original statements.

9. The other contention of the appellant that there were no corroborative evidence in the instant case. I observe that all these contentions are vague in nature, looking into the facts and evidence brought out by the investigating authority as mentioned at para above. I find that in the instant case, the DGCEI has conducted searches in various locations and recorded statements of authorized persons such as the



appellant, M/s Vardhman and other manufacturers and on the basis of valid documents withdrawn from the premises of the appellant and also from other manufacturing units during the course of investigation, they worked out the amount of CENVAT credit wrongly taken by M/s Vardhman on the basis of invoice supplied by the appellant. Thus, from the evidence narrated by the investigating authority, it is clear that the availment of credit Rs.19,77,888/- by M/s Vardhman is only on account of invoices issued by the appellant without actual supply of the goods.

10. In view of the above discussion, I do not find any merit in the above mentioned contention of the appellant. Accordingly, I uphold the order of the adjudicating authority with regard to imposition of penalty as the entire activity was vitiated by fraud coupled with misstatement and suppression of facts with intent to evade payment of duty. The act being fraudulent, imposition of penalty also does not suffer from any illegality, particularly, in view of the systematic manner in which the fraud was committed. Therefore, looking into the apt of the case, I do not find any merit to interfere in the quantum of penalty imposed by the adjudicating authority.

11. In view of aforesaid discussion, I reject the appeal.

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

The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

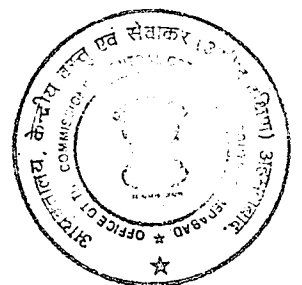
Attested

(D.A. Parmar)
Superintendent, Central Tax (Appeals)
Ahmedabad.

By R.P.A.D.

To,

M/s. Harshlaxmi Chemisov,
16, Prernatirth bunglow-1, B/h. Prernatirth Mandir,
Jodhpur Gam, Satellite, Ahmedabad.



Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-south.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-south.
4. The Asstt./Deputy Commissioner, Central Tax, Division-II, Ahmedabad-south.
5. ~~Guard File.~~
6. P.A.