



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन, 7<sup>th</sup> Floor, GST Building,  
सातवीं मंजिल, पोलिटिकनिक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015  
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)79/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-096-2018-19  
दिनांक Date : 02-11-2018 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. MP/01/AC/Div-III/2018-19 दिनांक: 11.06.2018 issued by  
Assistant Commissioner, Div-III, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Angiplast Pvt Ltd  
Ahmedabad

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



(अ) 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.

आंशिक 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.

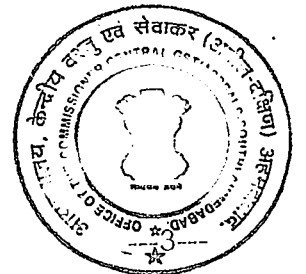
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैन्टल 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 और 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 रोन्वैट क्रेडिट की राशि;
- (iii) रोन्वैट 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।

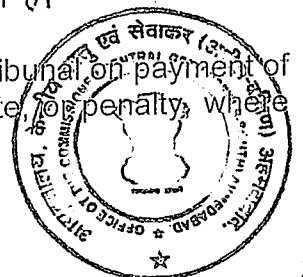
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Angiplast Private Limited, 4803, Phase-IV, GIDC Vatva, Ahmedabad – 382445 [for short - 'appellant'] has filed this appeal against OIO No. MP/01/AC/Diiv-III/2018-19 dated 11.06.2018, passed by the Assistant Commissioner, Central Tax, Division – III, Ahmedabad – South [for short - 'adjudicating authority'].

2. Briefly stated, a show cause notice dated 05.04.2017, was issued to the appellant for the period, October 2011 to 17.09.2012 for the payment of Service Tax on the services provided by the Service Providers outside of India under the category of "Business and Auxiliary Services" falling under Section 65(105)(zzb) of the Finance Act, 1994 and other than the services of the negative list listed under Section 66D of the Finance Act, 1994 for the period from 01.07.2012. The notice, *inter alia* proposed recovery of Service Tax evaded amounting to Rs. 13,661/- for the period October 2011 to 17.09.2012, as the appellant had violated the conditions mentioned in the Notification No. 31/2012 – ST dated 20.06.2012 & Notification No. 42/2012 – ST dated 29.06.2012 to avail benefit. The appellant had filed the EXP-3 return only on 17.09.2012, making them ineligible to avail exemption as per the above notification till 17.09.2012. Further, the scrutiny of EXP – 4 return filed by the appellant for the six months ending on 30.09.2012, revealed that the goods on which exemption of service tax on sales commission was availed, were exported by them during October 2011 to September 2012 i.e. prior to the eligibility for availing exemption from payment of service tax. The notice further demanded interest on the said Service Tax and proposed penalty under Section 77 and Section 78 of the Finance Act, 1994 respectively.

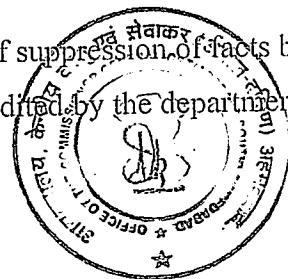
3. This notice was adjudicated vide the impugned OIO dated 11.06.2018, wherein the adjudicating authority confirmed the charges proposed in the notice along with interest and further imposed penalty on the appellant.

4. The main grounds of appeal, in very brief, are as follows –

4.1 The appellant states that they had filed EXP3 return instead of EXP-1 and EXP-3 as per the Notification No. 42/2012ST. Therefore, the ground taken by the adjudicating authority that the appellant has not followed the procedure is not proper.

4.2 The appellant states that they had filed EXP-4 return under the Service Tax which was scrutinized by the department was filed on 17.09.2012 and therefore, the appellant were not eligible for exemption prior to period 17.09.2012 i.e. October 2011 to September 2012 is not correct and being the procedural lapse this may be condoned and regularized the matter.

4.3 The appellant states that the notice mentioned the allegation of suppression of facts by the appellant but this is not sustainable because the appellant unit was audited by the department and



the appellant has provided all details to the department including audited balance sheets. In view of this the present demand is time barred. The appellant took reliance on 2015 (322) ELT 891(SC), 2016 (337) ELT 482 and 2017 (349) ELT 137.

4.4 The appellant contends the imposition of the penalty as the SCN was time barred.

5. In the personal hearing held on 12.09.2018, Shri. Naimesh K. Oza, Advocate appeared on behalf of the appellant and reiterated the submissions advanced in the grounds of appeal and also stated that the EXP return filed late but before audit.

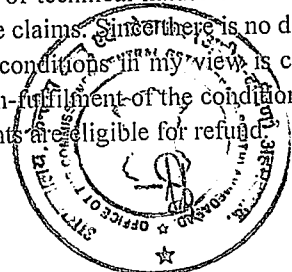
6. I have carefully gone through the appeal and I find the following facts to the present appeal.

6.1 I find that the judgement of the Cestat Regional Bench, Chandigarh in the case of Radiant Textiles Ltd. vs. Commissioner of C.Ex. Chandigarh - II, as reported in 2017 (47) S.T.R. 195 clearly states that the substantive benefits cannot be denied on account of technical lapses. The relevant portion of the order is reproduced below:

“The facts of the case are not disputed that the appellant is receiving service of overseas commission agent and paying commission to the said agent. The benefit of notification has been denied due to reason that the appellant has not produce BRC and have not filed original copy of invoices and the return form the EXP-1 and EXP-2. In fact, the basic of requirement of notification has not been disputed by the Revenue, therefore, substantive benefit cannot be denied on account of technical lapses has held by the Hon’ble High Court of Bombay in the case of *Union of India v. Farheen Texturisers* (supra). Further by the Hon’ble High Court of Allahabad in the case of *J.S. Gupta & Sons* (supra) the payment made to the overseas commission agent not in disputed. The appellant has filed all the shipping bills and copy of invoices issued by the overseas agent. These fact has not been disputed by the Revenue. In that circumstance, I hold that the appellant has complied with the condition of the notification. Further, I observed that the Commissioner paid to the overseas commission agent is less than 1% of the FOB value of the exported goods. Therefore, the appellant is entitled for benefit under Notification No. 18/2009-S.T. Consequently, no Service Tax can be demanded under the category of ‘Business Auxiliary Services’ under reverse charge mechanism.”

Further I find the judgement of the Cestat Regional Bench, Hyderabad in the case of Coromandel Stampings & Stones Ltd. vs. Commissioner of C.Ex. Hyderabad - II, as reported in 2016 (43) S.T.R. 221 while drawing a distinction between procedural condition of a technical nature and substantive condition, procedural conditions of technical nature can be condoned. The relevant portion of the order is reproduced below:

“5. It is submitted by the learned Consultant appearing for the appellant, that all the conditions, except the condition that the appellant has to intimate the concerned Asst./Dy. Commissioner by filing Form-EXP-1 was not complied. So also, appellant failed to submit the return in Form EXP-2 as stipulated in sub-clause (c) of the conditions stated in the Notification. Needless to say that exemption/refund/rebate etc. are export oriented schemes. If the fact of export has been established, refund is not to be denied on merely technical interpretation of procedures. In *Suksha International v. UOI - 1989 (39) E.L.T. 503* (S.C.) the Hon’ble Apex Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided, so that it may not take a way with one hand, what the policy gives with the other. The Hon’ble Apex Court in *Mangalore Chemicals and Fertilisers Ltd. v. Dy. Commissioner, 1991 (55) E.L.T. 437* (S.C.) while drawing a distinction between procedural condition of a technical nature and substantive condition, held that procedural conditions of technical nature can be condoned. The procedures prescribed in the notification are to facilitate verification of the claims. Since there is no dispute with regard to the export made or the service tax paid, the non-fulfilment of the conditions in my view is condonable. Following the judgments laid in the above cases, I am of the view that the non-fulfilment of the conditions is only a procedural lapse and can be condoned. In view thereof, I hold that the appellants are eligible for refund.



6.2 I find that the facts of the case are not disputed that appellant had availed exemption of service tax on sales commission for the goods they had exported; the only issue is that the appellant had not filed the EXP-1 and EXP-3 returns on time i.e before availing the exemption benefit. In the light of the above judgements, I am of the view that the non-fulfilment of these conditions is procedural lapse on the part of the appellant can be condoned.

7. In view of the foregoing, I allow the present appeal with consequential relief.

*उमा शंकर*  
(उमा शंकर)  
आयुक्त (अपील्स)

Date : 2.11.2018

Attested

*Vinod*  
(Vinod Lukose)  
Superintendent (Appeal-I),  
Central Excise,  
Ahmedabad.



BY R.P.A.D.

To,

M/s. Angiplast Private Limited  
Plot No. 4803, Phase-IV  
GIDC, Vatva,  
Ahmedabad - 382445

Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone .
2. The Commissioner, GST & Central Excise, Ahmedabad-South.
3. The Deputy/Assistant Commissioner, GST & Central Excise, Division-III, Ahmedabad-South.
4. The Assistant Commissioner, System, GST & Central Excise, Ahmedabad-South
5. ~~Guard File.~~
6. P.A.