



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय



Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(72)32/Ahd-South/2019-20 / 12636-40
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-048-2019-20
दिनांक Date : 11-10-2019 जारी करने की तारीख Date of Issue 18-10-2019
- श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri Gopi Nath, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. AC/20/Div-II/2018-19 दिनांक: 27.02.2019 , issued by
Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Mahedra & CO
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 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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.

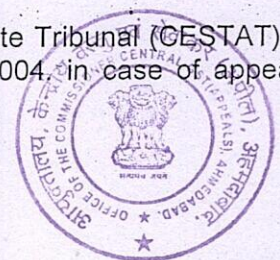
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004 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 यथारिथति 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 यथारिथति 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।

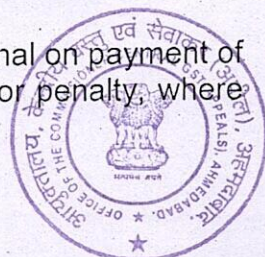
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



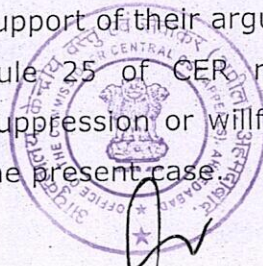
ORDR-IN-APPEAL

This appeal has been filed by M/s Mahendra & Co., Plot No.55/1/B, GIDC Estate, Vatva, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.AC/20/Div-II/2018-19 dated 27.02.2019 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of CGST, Division-II, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. Facts of the case are that the appellant is engaged in the manufacture of Stainless Steel Pattis/Pattas on Cold Rolling Machines as provided under Rule 15 of Central Excise Rules, 2002 (CER) read with Notification No.17/2007-CE dated 01.03.2007, as amended. They were permitted to avail special procedure for payment of duty for three numbers of Cold Rolling Machine for the period of twelve consecutive calendar months from 04.08.2016 to 03.08.2017 and one number of Cold Rolling Machine for the period of twelve consecutive months from 04.02.2016 to 03.02.2017 and from 04.02.2017 to 03.02.2018. Accordingly, they were paying duty in terms of Notification No.17/2017-CE. During the intermittent periods of said calendar months as stated above, after intimating the department, the appellant has dismantled three CR Machines in December 2016 and one CR Machine in January 2017 and February 2017 and paid duty only for working CR Machines. Therefore, a show cause notice dated 05.07.2018 was issued to the appellant for recovery of short payment of Rs.2,00,000/- in terms of Notification No.17/2017 supra with interest and imposition of penalty under Rule 25 of CER. The adjudicating authority has confirmed the demand with interest and imposed penalty of Rs.20,000/-.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- The machine was dismantled for maintenance and repair works; that they were under bonafide belief that once the machine has been dismantled, there is no question of payment of duty, as there is no production from that machine.
- The show cause notice has been issued, considering para 8 of notification 17/2007-CE which is contrary to the fact of the present case; that in the present case, they have dismantled machine only and not ceased to production or closed the factory and duty can be charged only on the basis of actual number of machines installed and in a particular month some CR Machines have been dismantled, in subsequent month duty, duty cannot be charged in respect of dismantled machine.
- They relied on various case laws in support of their arguments.
- No penalty is imposable under Rule 25 of CER read with Notification 17/2007-CE as no ingredients like suppression or willful mis-statement with intention to evade duty involved in the present case.



4. Hearing in the matter was held on 11.09.2019. Shri Harshad Patel, Advocate appeared for the same and reiterated the submissions of appeal memo for consideration.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is relating to admissibility of abatement of duty in respect of closed CR Machines

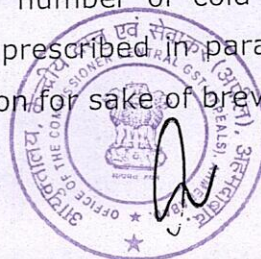
6. I find that the appellant is a registered manufacturers of excisable goods viz. Stainless Steel Patta/Pattis and opted for payment of excise duty liability as per special procedure scheme formulated under Notification No. 17/2007-C.E., dated 01-03-2007. The said scheme envisages payment of excise duty based on number of cold rolling machines installed in the factory i.e in the instant case, four CR Machines. Notification No. 17/2007-C.E dated 01.03.2017 is a comprehensive exemption notification which contained the procedures in detail. The notification itself contemplates various situations, covering the details from application to discharging of duty liability. I find that during December 2016 the appellant did not pay any Central Excise duty in respect of three CR Machine and in January 2017, February 2017, they did not pay duty in respect of one CR Machine because of dismantling the said CR Machines. The adjudicating authority has demanded duty on such dismantled machined as the notification supra does not provide any exemption from payment of duty due to closure/dismantling of CR Machine.

7. I have gone through the Notification No. 17/2007-CE dated 01.03.2007. Para 8 of the Notification are produced below:

8. Provision regarding factories ceasing to work or reverting to the normal procedure-Notwithstanding anything contained in this notification, where a manufacturer who had availed himself of the procedure contained in this notification ceases to work or reverts to the normal procedure, the duty payable by him in the month during which he has availed himself of the procedure shall be calculated on the basis of the maximum number of cold rolling machines installed during the last month in the manner prescribed in paragraph 6 and the amount already paid for the month in accordance with paragraph 3 shall be adjusted towards the duty so calculated and on such adjustment if there is any excess payment it shall be refunded to the manufacturer and any deficiency in duty shall be recovered from the manufacturer.

Explanation - A manufacturer, who ceases to work his factory for one or two shifts only, shall not be deemed to have ceased to work within the meaning of this notification.

From the above referred provisions, I find that the duty payable by the appellant in the month during which they had availed themselves of the procedure shall be calculated on the basis of maximum number of cold rolling machines installed during the last month in the manner prescribed in paragraph 6 of notification. I reproduce paragraph 6 of the notification for sake of brevity.



6. Provisions regarding new factories and closed factories resuming production.
 (1) In the case of a manufacturer who commences production for the first time or who recommences production after having ceased production for a **continuous period of not less than three months**, and who has been permitted by the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, under paragraph 2 to avail of the procedure, the amount payable by him for the first month or the part thereof, as the case may be, shall be provisionally calculated on the basis of his declaration of the maximum number of cold rolling machines that are likely to be installed by him or on his behalf during such period.

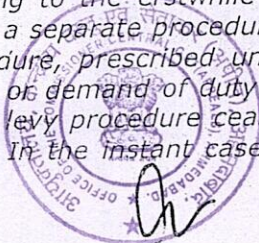
(2) At the expiry of the period, the amount payable shall be recalculated on the basis of the maximum number of cold rolling machines actually installed and if the initial payment falls short of the total liability so determined, the deficiency shall be recovered from the manufacturer and where the total liability is less than the initial deposit, the balance shall be refunded to the manufacturer.

Thus, as per para 6 above, there is a provision with regard to ceasing of production but the period of ceasing of production has to be at least three months and in any other case, the appellant has to pay the duty on the maximum number of CR Machine installed by him at any time during three calendar months immediately preceding the calendar months. In the instant case, the closure of machines installed in the factory was for the period of less than three months. In the circumstances, I find that the notification indeed does not provide for abatement of duty on account of closure of any machines less than three months. Therefore, the contention of the appellant for abatement of duty is not correct and not sustainable.

8. I have gone through the case law relied upon by the appellant of Hon'ble Tribunal in the case of M/s. Jupiter Industries V/s. Central Excise, Jaipur reported in 2001(137)1018 and other case laws. I find that the same is not applicable to the present case as it is pertaining to prior period the notification No.17/2007-Ce dated 01.03.2007 and governed under some other provisions. The Notification No. 17/2007-CE is self contained provision. Since, it is issued under Central Excise Rules, it needs to be read in conjunction with the provisions of Central Excise Act, 1944 and Rules made there under. Therefore, I find that facts and circumstance of the said case is not applicable to the present case. Further, I rely upon the decision M/s Shethi Metal Industries [2013 (294) ELT 603-Tri-Ahmedabad]. The said decision deals with an identical matter in the context of notification No.17/2007-CE and it applies squarely in the present case. Para 3 of the said decision reads as under:

"2. Heard Id. AR who argued that there is no provision under Notification No. 17/2007-C.E., dated 1-3-2007 for giving abatement from payment of duty with respect to rolling mill closed for the months of June and July, 2010.

3. It is observed that the Appellate Authority in para 7 of the Order-in-Appeal dated 6-2-2012 has reproduced the provisions of Notification No. 17/2007-C.E., dated 1-3-2007. It has been rightly rejected by the Commissioner (A), as per para-8 of the Order-in-Appeal, that the judgments relied upon by the appellants are not applicable because the same were pertaining to the erstwhile Rules 96ZA to 96ZGG of the Central Excise Rules, 1944 where a separate procedure was prescribed. In para-8 of Special Compounded Levy Procedure, prescribed under Notification No. 17/2007-C.E., dated 1-3-2007, the refund of demand of duty can be worked out only if the unit availing special compounded levy procedure ceases to work or reverses to the normal duty payment procedure. In the instant case, that is not the situation and



there is no provision in the prescribed special procedure to ask for rebate of duty paid under compounded levy scheme."

The Hon'ble Tribunal supra has rejected the assessee's appeal by holding that there is no provision under notification No.17/2007-CE for giving abatement of duty when the rolling mill remained closed for two months. Therefore, since the notification does not provide a situation where two rolling mills closed for less than three months, the appellant is liable to pay applicable duty along with interest as confirmed by the adjudicating authority.

9. With regard to penalty imposed under Rule 25 of CER, the appellant has contended that there is no *mens rea* on their part and therefore, no penalty is imposable under Rule 25 of CER read with provisions of Section 11AC of CEA. I find that as per provision 9 of the notification supra, if any manufacturer contravenes any provision of this notification shall be liable to penalty under rule 25 of the Central Excise Rules, 2002. In the circumstances, the penalty imposed by the adjudicating authority is reasonable and no interference required.

10. In view of foregoing discussion, I reject the appeal filed by the appellant and uphold the impugned order.

(Gopi Nath)
Commissioner (Appeals)
Date: /10/2019

Attested

(Mohanani V.V.)
Superintendent (Appeals),
CGST, Ahmedabad.

BY R.P.A.D

To,
M/s Mahendra & Co.,
Plot No.55/1/B, GIDC Estate,
Vatva, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad South
4. The Assistant Commissioner, Division II, Ahmedabad South.
5. Guard file.



