



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(84)56/Ahd-South/2019-20/13532 To 13536
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-086-2019-20**
 दिनांक Date : **08-01-2020** जारी करने की तारीख Date of Issue 14/01/2020
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/01/Dem/2019-20** दिनांक: **18.04.2019** , issued by
 superintendent, Div-V AR-V, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Microtech Boilers pvt.ltd
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) केंद्रीय 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.



(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, अपीलो 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 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 Appellant 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 Microtech Boilers Private Ltd, Plot No.105, Road No.7, GIDC, Kathwada, Ahmedabad (Gujarat) [hereinafter referred to as "appellant"] against Order-in-Original No.MP/01/Dem/2019-20 dated 18.04.2019 [hereinafter referred to as "impugned order"] passed by the Superintendent of CGST, AR-V, Division-V, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. The facts of the case, in brief, are that the appellant are engaged in manufacturing of Boilers and parts thereof falling under chapter 84.02 of Central Excise Tariff Act, 1985. During scrutiny of ER-1 return of the appellant, it appeared that they had removed excisable goods without payment of central excise duty totally amounting to Rs.8,12,5000/- by availing Exemption Notification No.12/2012-CE dated 17.03.2012 as well as Notification No.33/2005-CE dated 08.09.2005 during March 2016, May 2016 and October 2016. As the appellant has failed to furnish/establish fulfillment of the conditions/requirements/limitations of the notification under which the duty exemption had been claimed and availed, a show cause notice dated 02.04.2018 was issued to them for denying the benefit of notification supra and recovery of central excise duty of Rs.8,12,500/- along with interest. The said notice also proposes for imposition of penalty under Section 11 AC(1)(a) of Central Excise Act, 1944; confiscation of excisable goods valued at Rs.65,00,000/-; and also imposition of penalty under Rule 25 of Central Excise Rules, 2002.

2.1 The adjudicating authority has confirmed all the allegations and ordered for recovery of duty with interest and imposed penalty of Rs.81,250/- under Section 11 AC(1)(a) of CEA. However, he did not impose any penalty under Rule 25 of CER as the goods were not available for confiscation.

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

- The adjudicating authority has passed the impugned order without following the principle of natural justice and without taking into consideration the submissions made in reply to show cause notice.
- In reply to show cause notice, they submitted that Sr.No.332 of notification No.12/2012-CE exempts goods of any chapter of CETA; that since they cleared the goods falling under chapter 84, there is no dispute that the goods cleared are not covered by the chapter shown in the exemption notification; that the Sr.No.332 is provided to the goods of description 'non-conventional energy devices or systems specified in list 8' and as such question arises as to whether goods cleared are covered under list 8 or not; that since they cleared goods viz, agro waste boiler which is device of agricultural waste conversion, the same is covered under Sr.No.16 of list 8.



- With respect of boiler parts, they supplied the goods under trading activity and goods were not produced by them; that since the goods were not produced, the question of levy of duty does not arise.
- The order passed by the adjudicating authority is nothing but verbatim reproduction of show cause notice and no finding was recorded on the submissions made by them. Therefore, the impugned order confirming the demands with interest and imposition of penalty needs to be quashed and set aside.

4. Personal Hearing in the matter was held on 17.12.2019. Shri P.G.Mehta, Advocate appeared on behalf of the appellant and reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The limited point to be decided in the instant matter is whether the appellant is eligible for duty Exemption Notification No.12/2012-CE dated 17.03.2012, availed by them while clearing excisable goods viz. Agro Waste Boiler and Boiler Parts.

6. I find that the adjudicating authority has denied the exemption notification supra availed by the appellant in respect of goods removed under invoice Nos.100/03.3.2016, 05/04.05.2016 and 20/19.10.2016 on the grounds that [i] the appellant has simultaneously availed the exemption notification No.12/2012-CE dated 17.03.2012 and 33/2005-CE dated 08.09.2005 in respect of goods removed under invoice No.100/03.03.2016 and not followed the fulfillment of the conditions/requirements/limitations of both notifications; and [ii] they also failed to follow the fulfillment of conditions/requirements/limitation of notification No.33/2005-CE in respect of goods removed vide invoice No.05/04.05.2016 and 20/19.10.2016.

6.1 On other hand, the appellant has contended that they availed only benefit of exemption notification 12/2012-CE supra in respect of goods removed vide invoice No.100/03.03.2016 which was shown in their ER-1 return and in respect of invoice No.05/04.05.2016 and 20/19.10.2016, they have cleared goods only "as such removal" of goods purchased, hence no central excise duty was required to pay and application any exemption notification does not arise.

7. I have perused all the three invoices in question. First, I take the issue involved in respect of goods cleared under invoice No.100/03.03.2016. It is observed that the appellant has removed goods viz. "AIRE PRE-HATER FOR 12 TPH BOILER" and "MDC FOR TPH CAPACITY BOILER", attracting Central Excise duty @12.5% amounting to Rs.2,50,000/-. It does not mention any Exemption Notification. Hence, it is very much clear that at the time of clearance, the appellant has not availed benefit of exemption notification supra. However, in reply to show



cause notice vide their letter dated 17.11.2016, the appellant has specifically clarified that they availed benefit of Sr.No.332 of exemption notification No.12/2012-CE (Sr.No.16 of list 8) in respect of goods in question removed and accordingly, they had filed the ER-1 return for the relevant month. This shows that the appellant has claimed the benefit of exemption notification after removal of goods. Sr.No.332 of the Notification No.12/2012-CE dated 17.03.2012 reads as under:

No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
332	Any Chapter	Non-conventional energy devices or systems specified in List 8	Nil	-

LIST 8

" (16) Agricultural, forestry, agro- industrial, industrial, municipal and urban waste conversion device producing energy

8. The Notification No.12/2012-CE supra clearly stipulate that the goods viz. Non-conventional energy devices or systems specified in List 8 is exempted from payment of central excise duty without any condition. The adjudicating authority has contended that the goods cleared vide invoice No.100/03.03.2016 were only accessories of steam boiler and not a whole device or system as specified in list 8 of the notification. In para 11.4 to 11.7 of the impugned order, he has elaborately discussed that the goods supplied by the appellant were only accessories of boilers to preheat the combustion air and not a device or system as whole and exemption has been restricted only to system or device specified in the list 8 of the notification. In the submission, the appellant has submitted that vide invoice No.100/03.03.2016, they cleared agro waste boiler, which is a device of agriculture and agro industrial waste conversion and the said good is covered under Sr.No.16 of list 8 to the notification supra. They further contended that the whole boiler or system device cannot be transported through one vehicle; that the whole boiler consists of various components/parts which were supplied in different vehicles and issued invoices accordingly.

9. In the instant case, it is observed that the appellant is engaged in the manufacture of "Boiler" and "Parts". Vide Invoice No.100/04.03.2016, the appellant had cleared goods "AIRE PRE-HATER FOR 12 TPH BOILER" and "MDC FOR TPH CAPACITY BOILER, by mentioning commodity description as "Boiler Parts" and other particulars including applicable Central Excise duty. An invoice is the document under cover of which the excisable goods are to be cleared by the manufacturer. When a manufacturer clears their finished goods, they should have mentioned the description of the said manufactured goods, quantity and assessable value and other particulars in the invoices. In the instant case, if the goods cleared by the appellant under the disputed invoice were "Boiler", all the



particulars should have been related to "Boiler". However, the invoice under dispute clearly shows that they had cleared goods viz. "Boiler Parts" only and not "Boiler". Therefore, their contention that since the whole boiler consists of various components/parts which were supplied in different vehicles and issued invoices accordingly does not have any merits. The adjudicating authority, in his finding at para 11.4 to 11.7 of impugned order, has clearly described the functions of the goods cleared by the appellant under invoice No.100/03.03.2016 which is not disputed by the appellant. As per description of goods given by the adjudicating authority, the goods viz. Air Pre Heater for boiler are provided in boilers to preheat the combustion air which increases the thermal efficiency of the boiler and Mechanical Dust Collector (MDC) are provided for reducing the particulate emission as per pollution regulation. In the circumstances, it is apparent from the facts that the goods cleared by the appellant under dispute were not Agro Waste Boiler as contended by the appellant but only Boiler parts. Further, it is to mention here that at the time of removal goods, the appellant had not availed any benefit of exemption notification and removed with an intent to pay applicable central excise duty by considering the goods as parts/accessories. It appears that it was an afterthought act on the part of the appellant to avail the exemption notification at the time of filing of ER-1 return describing the goods as boiler. Looking into the above facts, I do not find any merit in the contention of the appellant and therefore, no interference is required in the impugned order in this regard.

9.1 In view of above discussion, I hold that the goods removed by the appellant vide invoice No.100/04.03.2016 is not eligible for exemption notification No.12/2012-CE supra.

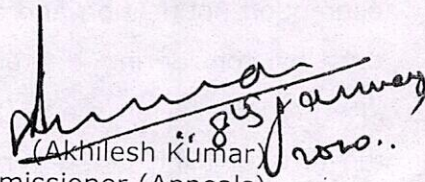
10. Now, I take the issue involved in respect of goods cleared under Invoice Nos. 05/04.05.2016 and 20/19.10.2016. It is observed that in the invoices under reference, the appellant has removed Boiler parts to M/s De Vee Power. It is the contention of the adjudicating authority that the appellant had removed the goods by availing benefit of Exemption Notification No.33/2005-CE dated 08.09.2005 which is not admissible to them as they have not fulfilled the conditions/requirements/limitations spelt out in the notification; hence applicable duty is required to be recovered. The appellant has submitted that they issued the invoices in question under trading activity; that they removed bought out goods by mentioning in the invoice as "As such removal" and accordingly the goods were not liable for central excise duty. The appellant has also submitted copies of supporting invoices, under which the goods were received and removed. On perusal of the invoices and supporting documents, I find merit in the contention of the appellant. From the documents furnished by the appellant, it is observed that they had removed the goods in question "as such" and such goods were received by them from their vendor without charging any central excise duty. In the circumstances, while removing the goods as such, the question of paying central excise duty does



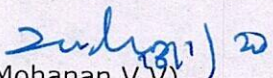
not arise. When the goods in question removed were not attracting any central excise duty, applicability of conditions of notification does not arise, even though the notification number is mentioned in the invoices. I find that the adjudicating authority has demanded the excise duty without looking into these facts and only discussed the applicability of conditions of the notification No.33/2005-CE supra mentioned in the invoices, which is not correct. Therefore, I do not find any merit in the contention of the adjudicating authority in respect of duty demanded towards invoices Nos.05/04.05.2016 and 20/19.10.2016. Accordingly, I set aside the demand in this context.

11. In view of above discussion, I uphold the demand along with interest confirmed by the adjudicating in respect of Invoice No.100/04.03.2016 and set aside the demand confirmed in respect of Invoice Nos.04/04.05.2016 and 20/19.10.2016. Since the demand confirmed by the adjudicating authority is modified, the penalty imposed under Section 11 AC (1)(a) of CEA may be re-determined accordingly.

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


(Akhilesh Kumar)
Commissioner (Appeals)
/01/2020

ATTESTED


(Mohanan V.V)
Superintendent
CGST (Appeals) Ahmedabad



By R.P.A.D/Speed Post.

To,
M/s Microtech Boilers Private Ltd,
Plot No.105, Road No.7, GIDC,
Kathwada, Ahmedabad (Gujarat)

Copy to:

- 1) The Principal Chief Commissioner, CGST , Ahmedabad Zone.
- 2) The Principal Commissioner, CGST, Ahmedabad South.
- 3) The Dy./Asst. Commissioner, CGST, Div-V, Ahmedabad South
- 4) The Asst. Commissioner (System), CGST, Ahmedabad South.
- 5) The Superintendent, AR-I, Div-V, Ahmedabad South.
- 6) Guard File.
- 7) P. A. File.