



आयुक्त(अपील)का कार्यालय,  
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
07926305065 - टेलिफैक्स 07926305136



DIN : 20230464SW0000444A47

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/CEXP/359/2022 /610-b1k
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-04/2023-24.  
दिनांक Date : 19-04-2023 जारी करने की तारीख Date of Issue 24.04.2023
- आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. MP/9/AC/Div-III/2022-23 दिनांक: 28.04.2022 passed by Assistant  
Commissioner, CGST, Division-III, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Kiri Dyes & Chemicals Ltd  
(Now Kiri Industries Ltd.)  
Plot No. 299/1/A, Near Water Tank,  
Phase II, GIDC, Vatva,  
Ahmedabad - 382445

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 हानिकार खाने 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो 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.

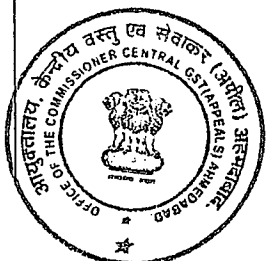
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

16ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- इण लिया गलत सेनवैट क्रेडिट की राशि;
- बण 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:

- (cxlv) amount determined under Section 11 D;
- (cxlvi) amount of erroneous Cenvat Credit taken;
- (cxlvii) 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



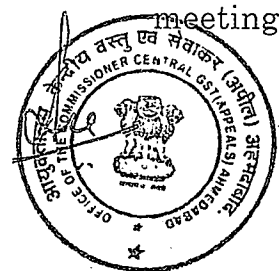
## ORDER IN APPEAL

The present appeal has been filed by M/s. Kiri Dyes & Chemicals Ltd. (Now Kiri Industries Ltd.), Plot No. 299/1/A, Near Water Tank, Phase II, GIDC, Vatva, Ahmedabad- 382 445 (hereinafter referred to as the "appellant") against Order in Original No. MP/9/AC/Div-III/2022-23 dated 28.04.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division-III, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Central Excise Registration No.AAACK9025CXM004. The appellant were also holding License under Section 58 of the Customs Act, 1962 for Private Bonded Warehouse as Export Oriented Unit (EOU). The appellant were issued Letter of Permission (LOP) No. KASEZ/100%EOU/II/48/2002-03 dated 28.10.2002 and were permitted to manufacture Reactive Dyes. The said LOP was amended to S.O. Dyes vide Letter No. KASEZ/100%EOU/II/48/2002-03 dated 24.03.2005. The unit of the appellant was debonded with effect from 16.11.2010. The appellant had filed B-17 Bond for procurement of raw materials, capital goods and clearance of goods under bond for export etc. The appellant were importing raw materials viz. Cyanuric Chloride and other inputs without payment of duty under Notification No. 52/2003-Cus dated 31.03.2003 and were also procuring goods indigenously, without payment of duty under Notification No. 22/2003-CE dated 31.03.2003.

2.1 The appellant had cleared Reactive Dyes in the Domestic Tariff Area (DTA) on payment of concessional rate of duty in terms of Notification No. 23/2003-CE dated 31.03.2003. As per para 6.8(a) of the FTP 2009-14, an EOU is entitled for clearance of their products to the DTA upto 90% of the FOB value of exports, subject to fulfilment of positive NFE, on payment of concessional rate of duty. Within entitlement of DTA sale, the EOU may sell in DTA its products similar to goods which are exported or expected to be exported.

2.2 The issue related to sale of similar goods in DTA was discussed in the meeting of the Board of Approval (BOA) on 15.12.2009 on a representation



made by KASEZ. The BOA decided that the goods from such industries may appear to be similar on account of Tariff Classification. However, the SION norms prescribed by DGFT clearly indicated that the constituent raw materials which go into the making of a finished product are different. Hence, the goods are not same/similar. Thus, the BOA had ratified the view taken by the CBIC in Circular No. 7/2006-Cus dated 13.01.2006 that similar goods means goods which is although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods which have been exported or expected to be exported having regard to the quality, reputation and the existence of trade mark and produced in the same unit by the same person who produced the export goods.

2.3 It appeared that during the period from 01.04.2010 to 15.11.2010, the appellant had manufactured and cleared various types of Reactive Dyes to the DTA on payment of duty or for export or for both purposes. The appellant had vide their letter dated 23.03.2009 forwarded the input output norms in respect of 16 products for approval. From the data submitted by the appellant in respect of the DTA and export clearances, it appeared that the appellant had not sought approval of the Development Commissioner in respect of all other Dyes manufactured and cleared by them for exports and in DTA. It further appeared that though they had sought permission in respect of 16 products (dyes), no permission appeared to have been given by the Development Commissioner or by the Norms Committee. It, therefore, appeared that the appellant had violated the provisions of Para 6.8(a) and 6.8(e) of the FTP 2004-09 and 2009-14 in as much as they had cleared the goods which are not similar, in excess of 90% of the export value for F.Y. 2009-10, at concessional rate of duty as per Notification No. 23/2002-CE dated 31.03.2003 as they had also not obtained permission of the Development Commissioner or the Norms Committee for the input output norms.

2.4 It appeared that the appellant had cleared various Reactive Dyes to DTA which were totally valued at Rs. 2,19,70,355/- in excess of their permissible limit and in respect of which they are not entitled to concessional rate of duty.

It further appeared that the appellant had not correctly calculated the duty payable by them in respect of their clearances to DTA which resulted in short



payment of central excise duty amounting to Rs. 21,40,434/- during F.Y. 2010-11.

3. Therefore, the appellant were issued Show Cause Notice bearing No.V.32/15-03/Kri/OA-I/2011-12 dated 18.04.2011 wherein it was proposed to :

- a) Recover the central excise duty amounting to Rs. 21,40,434/- under Section 11A(1) of the Central Excise Act, 1944 along with interest under Section 11AB of the Central Excise Act, 1944.
- b) Hold the goods valued at Rs. 2,19,70,355/- as liable for confiscation under Rule 25(a) and (d) of the Central Excise Rules, 2002.
- c) Impose penalty under Rule 25 of the Central Excise Rules, 2002.
- d) Enforce the B-17 bond furnished by them and appropriate the security, if any, towards their duty liabilities.

4. The SCN was adjudicated vide the impugned order wherein :

- I. The central excise duty amounting to Rs. 21,40,434/- was confirmed under the proviso to Section 11A(1) of the Central Excise Act, 1944 along with interest under Section 11AB of the Central Excise Act, 1944.
- II. The goods valued at Rs. 2,19,70,355/- were ordered to be confiscated and fine amounting to Rs. 1,00,000/- was imposed in lieu of confiscation under Rule 25(a) and (d) of the Central Excise Rules, 2002.
- III. Penalty amounting to Rs. 21,40,434/- was imposed under Rule 25 of the Central Excise Rules, 2002.
- IV. The B-17 Bond furnished by the appellant was ordered to be enforced and the security, if any, was ordered to be appropriated.

5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal contesting the issue on merits and also on the grounds that the impugned order was passed in violation of the principles of natural justice. It has been mentioned at Para 46 of the impugned order that they were granted personal hearing but they did not turn up for the same. However, they did not receive any notice of personal hearing and, therefore, they could not attend the hearing. It has also been contended by the appellant that the submissions made by them vide letter dated 12.07.2011 have been ignored. Nowhere in the impugned order the submissions made by them has been mentioned. The impugned order passed



without putting on record and considering their submissions is arbitrary, perverse and illegal.

6. Personal Hearing in the case was held on 22.02.2023. Shri N.K Tiwari, Consultant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

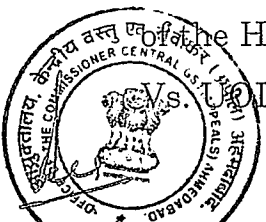
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the confirmation of demand of central excise duty amounting to Rs. 21,40,434/- along with interest and fine and penalty. The demand pertains to the period from April, 2010 to November, 2010 (up to 15.11.2010).

8. I have gone through the impugned order and find that there is no mention of any defense reply filed by the appellant. The appellant have on the other hand contended that they had filed their written submissions on 12.07.2011 but the same has neither been taken on record nor considered by the adjudicating authority. It is further observed that the adjudicating authority has recorded at Para 46 of the impugned order that the appellant was called for personal hearing on 11/12.11.2021, 13/14.12.2021 and 10/11.02.2022 but the appellant did not turn up for the hearing. Thereafter, the case was adjudicated ex-parte by the adjudicating authority. The appellant have in the appeal memorandum contended that they have not received any notice of personal hearing.

8.1 In terms of Section 33A (1) of the Central Excise Act, 1944, the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 were not been granted to the appellant. It is pertinent to refer to the judgment

of the Hon 'ble High Court of Gujarat in the case of Regent Overseas Pvt. Ltd.

CI - 2017 (6) GSTL 15 (Guj) wherein it was held that :

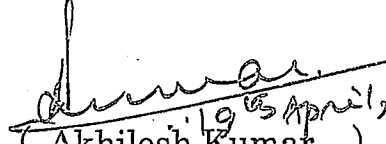


“12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing.”


9. In view of the above, I am of the considered view that the matter is required to be remanded back to the adjudicating authority. The appellant is directed to file their written submissions before the adjudicating, within 15 days of the receipt of this order. The adjudicating authority shall considering the written submissions of the appellant, decide the matter afresh by following the principles of natural justice. The adjudicating authority is also directed to consider all the issues raised by the appellant in their written submissions and pass a speaking order covering all issues. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

10. 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.

  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Date: 19.04.2023

Attested:

  
(N.Suryanarayanan. Iyer)  
Assistant Commissioner (In situ),  
CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Kiri Dyes & Chemicals Ltd.,  
(Now Kiri Industries Ltd.),  
Plot No. 299/1/A, Near Water Tank,  
Phase II, GIDC, Vatva,  
Ahmedabad- 382 445

Appellant

The Assistant Commissioner,  
Division- III, CGST,  
Commissionerate : Ahmedabad South.

Respondent



## Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.  
(for uploading the OIA)
4. Guard File.
5. P.A. File.



