

S सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

वस्तु एवं सेवा

GST Building, 7th Floor.,

कर भवन,

Near Polytechnic,

सातवीं मंजिल, पोलिटेक्निक के पास,

Ambavadi, Ahmedabad-

380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : **V2(BAS)2/AHD-III/2017-18 /10361**

ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-003-APP-0152-17-18**

दिनांक Date : **23.11.2017** जारी करने की तारीख Date of Issue: **01/12/17**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **GNR-STX-DEM-DC-07/2017** दिनांक : **30.01.2017** से सृजित

Arising out of Order-in-Original: **GNR-STX-DEM-DC-07/2017**, Date: **30.01.2017** Issued by: Assistant Commissioner, Service Tax, Div:Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Zicar Crucibles Pvt.Ltd.

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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

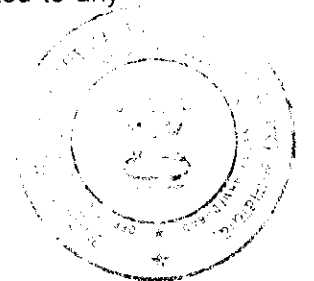
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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.

ध 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- षोबी/35-इ के अंतर्गत:-

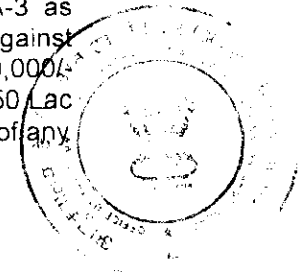
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 पढ़ी 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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

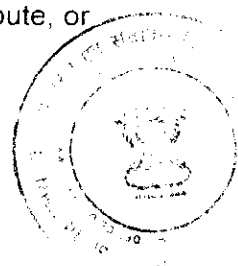
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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

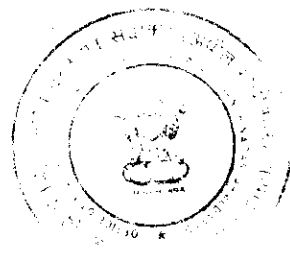
M/s Zircar Crucibles Pvt. Ltd., 306, Kukas Shobhasan Char Rasta, Mehsana-Vijapur Road, Mehsana (*hereinafter referred to as 'appellants'*) have filed the present appeal Order-in-Original No. GNR-STX-DEM-DC-07/2017 dated 30.01.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Service Tax, Gandhinagar Division, Ahmedabad-III (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case are that the appellant was engaged in the manufacture of refractory ceramic products falling under Chapter 6903 of the Central Excise Tariff. They are also registered with Service Tax Department having Service Tax Registration number AAACZ0650LST001. On the basis of intelligence, a search at the premises of the appellants was carried out by the officers of the Preventive Section, Central Excise, Ahmedabad-III. During the course of investigation it was noticed that the appellants had paid commission to their overseas agents, during the years 2011-12, 2012-13 and 2013-14, and did not pay Service Tax on the same under Reverse Charge Mechanism.

3. Thus, a show cause notice dated 06.10.2016 was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority confirmed the demand of Service Tax amounting to ₹ 5,99,095/- under Section 73 of the Finance Act, 1994 and ordered to appropriate ₹ 2,27,997/- already paid by the appellants against the above demand. The adjudicating authority further confirmed the demand of interest at appropriate rate on ₹ 5,99,095/- under Section 75 of the Finance Act, 1994 and ordered to appropriate the interest of ₹ 86,914/- already paid by the appellants against the total interest liability. He further imposed penalty of ₹ 10,000/- each under Sections 77(1)(a) and 77(2) of the Finance Act, 1994 and ordered to recover late fee specified under Rule 7C of Service Tax Rule, 1994. He also imposed equal penalty of ₹ 5,99,095/- under Section 78 of the Finance Act, 1994 and ordered to appropriate penalty of ₹ 58,749/- already paid by them towards the penalty liability under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellant has preferred the present appeal. The appellants have submitted that the adjudicating authority has passed the impugned order in gross violation of

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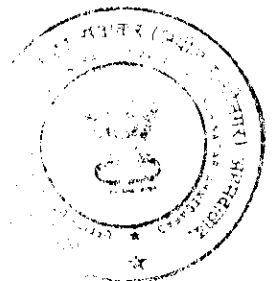


principles of natural justice. The order has been passed without quantifying interest and penalty. Further, the appellants argued that they had paid the amount when pointed out by the officers of the department. The demand was issued on the basis of audit of records and not on the basis of preventive investigation. They argued that there is no suppression on the part of them as balance sheets are public documents and once information is provided in the balance sheet, suppression of facts cannot be held.

5. Personal hearing in the matter was granted and held on 01.11.2017. Shri Nirav P Shah, Advocate, appeared on behalf of the appellants and reiterated the contents of appeal memorandum and submitted some case laws. He stated that the issue of non-payment of Service Tax on overseas commission was pointed out by the audit team of the department and not by the preventive party. He submitted a photocopy of the audit report for the period March 2011 to march 2014.

6. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submission made at the time of personal hearing. I now proceed to decide the case as per merit and available records.

7. I find that the appellants have agreed to their Service Tax liability; however, they have challenged the amount of Service Tax demanded from them. I find many ambiguities in the contents of the impugned order and the grounds of appeal submitted by the appellants. In paragraph 2 of the impugned order, the adjudicating authority claims that the preventive officers of Central Excise, Ahmedabad-III carried out a raid in the premises of the appellants on 16/17.01.2015 and a show cause notice, dated 05.02.2016 demanding Central Excise duty was issued to the appellants. In paragraph 3 of the said impugned order, it is mentioned that Shri Shailesh N Patel, Accounts Officer of the appellants, confessed before the preventive staff that they paid commission to the overseas agents from 2011-12 to 2013-14 and did not pay Service Tax on it. However, the appellants counter that version of the adjudicating authority. The appellants claimed that it was not the preventive team but the audit team of the department that pointed out the issue. In support of their claim, they submitted before me a copy of the Audit Report number ST-04/2014-15 for the period March 2011 to March 2014. The Revenue Para 1 is the non-payment of Service Tax (for the period 2013-14) on overseas

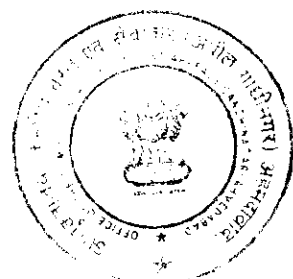


commission expenses. The appellants agreed to the said para and paid the Service Tax demanded by the audit party along with interest and penalty and the para is treated to be settled. However, I failed to find any reference of the said audit in the impugned order. I am not ready to agree the fact that the appellants did not raise the issue of audit (already conducted on the same issue) before the adjudicating authority. It is very natural on the part of any rational individual to react adversely when Service Tax is demanded twice on the same issue. The impugned order did not reflect any outburst on the part of the appellants. In paragraphs 7 and 8 of the impugned order, it is mentioned that the representative of the appellants confessed that Service Tax on commission (under BAS) was paid for 2013-14 however, when the respective ST-3 returns were checked, no payment of Service Tax under BAS was found. This is surprising to me as the appellants did not produce the audit report before the adjudicating authority but preferred to submit the audit report before me. Further, the appellants claimed, before me, that the impugned order was passed without quantifying the interest and penalty. It is not clear to me as to what kind of quantification the appellants were expecting in the impugned order. The interest was charged at the applicable rate on the Service Tax demanded. Equivalent penalty under Section 78 has been imposed on them. The appellants failed to enlighten me as to what kind of quantification and calculation they expected on the above.

8. In view of so many ambiguities in the case, it needs to be remanded back to the adjudicating authority to look into it thoroughly and issue a speaking order covering all the issues that are hovering on the case.

9. In view of above, I remand the case back to the adjudicating authority for verification of all the documents related to the case. The adjudicating authority should check the audit report and relate the same with the instant case. All the issues raised by the appellants should be looked into and they should not be denied natural justice due to them. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back.

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

10. The appeals filed by the appellant stand disposed off in above terms.

31/10/17
22/11/17
(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

(S. DUTTA)

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.

To,
M/s. Zircar Crucibles Pvt. Ltd.,
306, Kukas Shobhasan Char Rasta, Mehsana-Vijapur Road,
Mehsana

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Gandhinagar.
- 3) The Dy./Asst. Commissioner, Central Tax, Mehsana Division,
Gandhinagar Commissionerate.
- 4) The Asst. Commissioner (System), Central Tax Hq., Gandhinagar.
- 5) Guard File.
- 6) P. A. File.

