

सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

वस्तु एवं सेवा
कर भवन,

सातवीं मंजिल, पॉलिटेक्निक के पास,
आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor.,
Near Polytechnic,
Ambavadi, Ahmedabad-
380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(27)03/ST-4/STC-III/2017-18** / 292
ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-003-APP-0173-17-18**
दिनांक Date : **26.12.2017** जारी करने की तारीख Date of Issue : **17-1-2018**
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 :
38/D/GNR/VHB/2016-17 दिनांक : **06.03.2017** से सृजित

Arising out of Order-in-Original: **38/D/GNR/VHB/2016-17**, Date: **06.03.2017** Issued by:
Assistant Commissioner, Central Excise, Div. Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Himdustan Petroleum Corporation Limited

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 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।

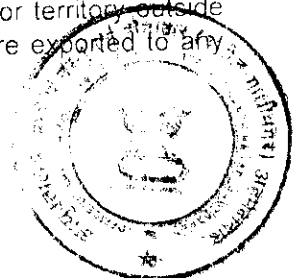
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 हो 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 मारा 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- ए0बी/35-इ के अंतर्गत:-

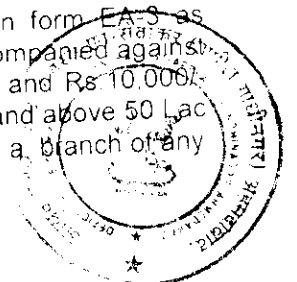
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 हारिपटल 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 न्यायाधिकरणों 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 रूपे 5 लाख या उससे कम है वहाँ रूपे 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहाँ रूपे 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-8 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 पंजी 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 filed 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगा।

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,

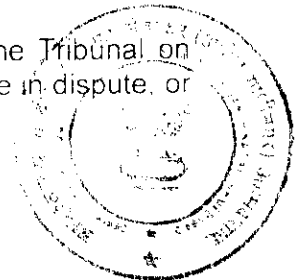
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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-IN- APPEAL ::

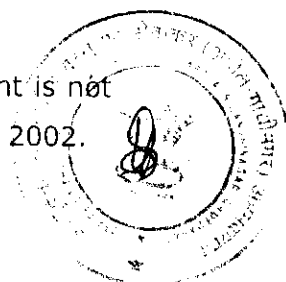
The Assistant Commissioner, Central Excise, Division-Gandhinagar, Ahmedabad (hereinafter referred to as 'appellant') has filed the present appeal against the Order-in-Original number 38/D/GNR/VHB/2016-17 dated 06.03.2017 Orders-in-Original (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Central Excise, Gandhinagar Division, Ahmedabad-III in the case of M/s. Hindustan Petroleum Corporation Limited (AACH1118BXM163), Survey No. 124/1, N. H. 08, Near S. P. Ring Road, Nana Chiloda, District-Gnadhinagar-382330 (hereinafter referred to as 'respondent').

2.1 During the course preliminary scrutiny of ER-1 return for May, 2016 done by Jurisdictional Range Superintendent (hereinafter to as "JRS"), it was noticed that the assessee declared Rs. 41,47,408/- as Central Excise duty to be payable. It was further noticed that the Central Excise duty of Rs. 41,47,408/- was paid by the respondent vide Challan no. 02626 on 06.06.2016, however on verification of the aforesaid challan, it was found that the said challan did not pertain to the said assessee's ECC AACH1118BXM163, hence the said assessee is liable to pay Rs. 41,47,408/- along with applicable rate of interest and penalty. On being informed about the same the appellant paid the amount of Rs. 41,47,408/- on 28.12.2016 and 31.12.2016 but did not pay the interest and penalty.

2.2 In view of the above, a Show Cause Notice dated 15.02.2017 was issued to the appellant for recovery of interest under Section 11AA of the Central Excise Act, 1944 read with Rule 8(3) of Central Excise Rules, 2002 and penalty under Rule 8(3A) of Central Excise, Rules,2002. The adjudicating authority drop the interest and penalty vide above said impugned order.

3. The impugned orders were reviewed by the Commissioner of Central Excise, Ahmedabad-III, and issued review orders No. 04/2017-18 dated 12.06.2017 for filing an appeal under section 35E of Central Excise Act, 1944 before Commissioner of Appeals, Central Excise, Ahmedabad on the following ground:

- (i) The appellant had the liability to pay the Excise duty of Rs. 41,47,408/- on Assessable value of goods cleared by them during the month of May,2016 in the manner as provided in Rule 8 of Central Excise Rules, 2002
- (ii) The JAC erred in law and facts in holding that the appellant is not liable for penalty under Rule 8(3A) of Central Excise Rules, 2002.

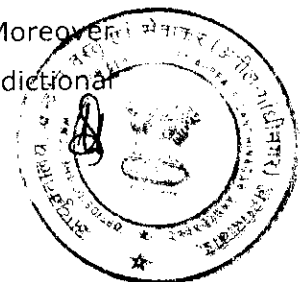


- (iii) The JAC grossly erred in holding that there was no delay in payment of duty on the part of the appellant, as the appellant deposited duty in another account pertaining to Chennai Unit. However the duty had been deposited in account of the assessee's Chennai Unit for which the appellant has made a separate Excise Registration and the same cannot be considered as duty paid for the Gandhinagar unit which had cleared the goods.
- (iv) The JAC has also erred in relying on the decision of Hon'ble High Court of Gujarat as reported in 2016(41)STR418(Guj) in the case of M/s Devang Paper Mills Pvt Ltd Vs. UOI as the fact involved in the case of appellant are totally distinct to the case decided by Hon'ble High Court of Gujarat. It would be further relevant to mention that the decision of the Hon'ble High Court has not been accepted by the Department in principle, but due to lower monetary ground, the issue has not been contested further.
- (v) The decision of the Hon'ble Tribunal in the case of M/s Plasticemix Industries Vs Commr. of Central Excise Service Tax reported at 2016 (44) STR 254(Tri. Ahmd) in the said case the appellant had wrongly paid Service Tax liability in the code of its unit. After considering the facts of the case the Hon'ble Tribunal has held that the appellant should make the payment of the confirmed demand with interest with regard to the unit in which the liability occurred.

4. Personal hearing in the matter was granted and held on 30.11.2017. Mr. K Balagurunathan, G M Finance, HPCL for the respondent appeared before me and explained the case as well as submitted additional Written Submission.

5. The respondent vide their additional Written Submission explained their grounds in brief as follow:

- (i) That they have made the payment on 06.06.2016 and hence there was no delay in making the payment.
- (ii) That there was a liability to pay the central excise duty to the extent of Rs. 41,47,408/- which was discharged by them on 06.06.2016. Eventhough the payment was made by HPCL, it was made with an incorrect Assessee code of another HPCL Branch, which was incorrect and which did not have any liability to discharge. Hence, as confirmed by the Chennai Excise Authorities, the amount was lying to the credit of the Excise Dept. right from 06.06.2016 onwards.
- (iii) That the subject two case laws are very much relevant and they cover the very same issue that was covered in the SCN. Moreover the Devand Paper Mills decision is that of the jurisdictional



Gujarat High Court decision and hence binding on the Excise Authority in the State. The respondent also submit that M/s Devang Paper Mills relied in 2017 (353) ELT 7 (Guj) in Auro Pumps Pvt Ltd. Vs. UOI.

- (iv) That appellant quoted the decision of the Hon'ble Tribunal in the case of Plastichemix Industries Vs Commissioner of Central Excise and Service Tax reported at 2016(44)STR254 (Tri. Ahmd). But on the careful perusal of the case it is noticed that facts of the case are not identical. In the said case assessee had wrongly paid service tax liability in the code of its unit which is also an Active Assessee code. So there is possibility of use of the amount for other liability which pertains to that assessee code but in HPCL case the payment made in inactive assessee code. Hence the above case is not applicable in this case. The respondent further submitted against the above decision an appeal was filed in Gujarat High Court which was admitted as reported in 2016 (44) STR J 37 (Guj).

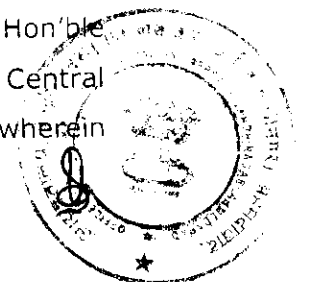
6. I have carefully gone through the facts of the case on records, grounds of appeal, submissions made by respondent in their written reply as well as during the course of personal hearing and other evidences available on record. The limited point to be decided in the matter is whether the interest is liable to pay under section 11AA of Central Excise Act 1944 and penalty under Rule 8(3A) of Central Excise Rule 2002 to respondent or not.

7. The respondent by mistake paid the excise duty in ECC No. AACH1118BXM063 (which is an inactive ECC) in place of AACH1118BXM163 (pertains to the said unit) on 06.06.2016. On pointed out by the JRS, the respondent paid the Central Excise duty on 23.12.2016 and 31.12.2016.

8. The adjudicating authority as well as respondent relied on the judgment in the case of Devang Paper Mills Pvt Ltd Vs. UOI (2016) wherein it was held that:

"when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of the entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties".

9. However, appellant (Department) relied on judgment of Hon'ble Tribunal in the case of Plastichemix Industries Vs Commissioner of Central Excise and Service Tax reported at 2016(44)STR254 (Tri. Ahmd) wherein



assessee made the payment in its another unit and it was held by the Tribunal that assessee should make the payment of the confirmed demand with interest with regard to the unit in which the liability occurred.

10. In the case of Lubi Industries LLP Vs Union of India as reported in 2016 (337) ELT 179 (Guj) wherein, Hon'ble H'gh Court has stated that unless a stay has been obtained, order of the higher judicial forum should be followed. The case M/s Plastichemix Industries Vs CCE & Service Tax passed on 27.06.2014 while the case M/s Devang Paper Mills Vs UOI passed on 30.11.2015 which is of later date. Hence in views of Hon'ble High Court order which is latest order in this matter needs to be followed. In view of the Hon'ble High Court decision in favour of the appellant, I respectfully follow the same and reject the appeal filed by the department.

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

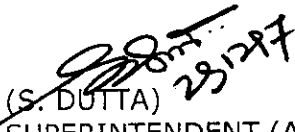
11. The appeals filed by the appellant stand disposed off in above terms.



उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(S. DUTTA)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

To,

M/s. Hindustan Petroleum Corporation Limited,
Survey No. 124/1, N. H. 08, Near S. P. Ring Road,
Nana Chiloda, District-Gnadhinagar-382330

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar.
3. The Dy. / Asstt. Commissioner, Central Tax, Division- Gandhinagar.
4. The Addl./Joint Commissioner, (Systems), Central Tax, Gandhinagar.
5. Guard file.
6. P.A file.

