

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(85)39 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-004-16-17

दिनांक Date : 25.04.2016 जारी करने की तारीख Date of Issue 25/4/16

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-JC-002-15-16 Date: 27.04.2015
Issued by: Joint Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Vardhman Stamping Pvt. Ltd.

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।

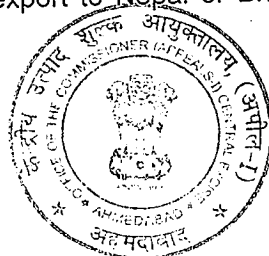
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 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- णबी/35-इ के अंतर्गत:-

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

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

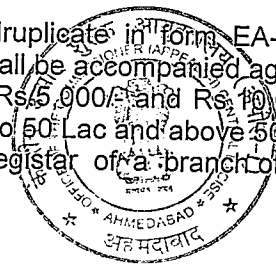
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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



रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(85)39 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-004-15-16

दिनांक Date : 25.04.2016 जारी करने की तारीख Date of Issue _____

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-JC-002-15-16 Date: 27.04.2015
Issued by: Joint Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Vardhman Stamping Pvt. Ltd.

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।

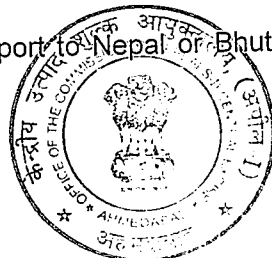
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 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- णबी/35-इ के अंतर्गत:-

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

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

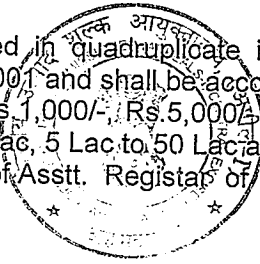
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

(b) 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 इ.ए-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 रूपए 5 लाख या उससे कम है वहां 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 वहां 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 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 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, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।

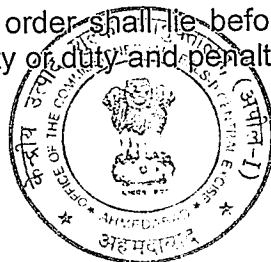
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

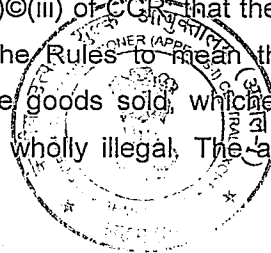


ORDER-IN-APPEAL

This appeal has been filed by M/s Vardhman Stampings Pvt Ltd., Irana Road, S No.132/C, Budasan, Kadi-Chhatral Road, Kadi, Dist. Mehsana (hereinafter referred to as "the appellant") against Order-in-Original No.AHM-CEX-003-JC-002-15-16 dated 27.04.2015 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner of Central Excise, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case is that during the course of audit of the records of the appellant by CERA Audit officers, it was observed that the appellant had engaged in trading of their own raw materials on High Sea Sale during the year 2009-10 to December 2013; that the said High Sea sale was effected before delivery of raw material in the premises of the appellant. It was noticed that the appellant had availed Cenvat credit of service tax on the services which were procured on import of the said raw materials and sold on High Sea Sale. Thus, the Cenvat credit of common input services viz telephone services, printing and stationary, legal expenses etc which was not admissible to them as the said services were not used in or in relation to the manufacture of final products were required to be reversed proportionately from the total of input service credit availed during the relevant period. The CERA Audit officer observed that an amount of Rs.47,46,426/- was required to be reversed proportionately during the period from 2009-10 to December 2013. Therefore, a show cause notice dated 02.05.2014 was issued to the appellant for demanding Cenvat credit amounting to Rs.47,46,426/- with interest and also proposed penalty under Rule 15 of Cenvat Credit Rules, 2004 (CCR) read with Section 11 AC of the Central Excise Act, 1944 (CEA). The said show cause notice was adjudicated by the adjudicating authority vide the impugned order, by confirming the demand with interest and also imposed penalty equal to the duty demanded.

3. Being aggrieved, the appellant had filed the present appeal on the grounds that the adjudicating authority has committed error in denying Cenvat credit for the period 2009-10 onwards on the basis that the trading (high sea sale) was in the nature of exempted service though trading is legislatively considered as "exempted service" for the purpose of Rule 6(3) of the CCR with effect from 01.04.2011 only by virtue of notification No.03/2011-CE (NT) dated 01.03.2011 and therefore, Cenvat credit of common input services for the period prior to 01.04.2011 cannot be denied. The scheme of Rule 6(3) of CCR attracts only when a manufacturer was engaged in manufacture of excisable goods as well as rendering exempted services, but the appellant in the instant case have been engaged only trading business apart from manufacture of excisable goods; that the trading activities was not in the nature of exempted service prior to 01.04.2011. Therefore, the demand of Rs.16,60,265/- for the period prior to 01.04.2011 is not sustainable in above terms. The appellant further submitted that the calculation method taken by the department for arriving proportionate Cenvat credit amounting to Rs.47,46,426/- during the relevant period is ex-facie erroneous as per the formula for arriving at the proportion between admissible and inadmissible Cenvat credit as laid down under Rule 6(3A)(iii) of CCR that the value of the trading activity is also defined in Explanation-1 © of the Rules to mean the difference between the sale price and cost of goods or 10% of the goods sold, whichever is more. Therefore, the demand of credit on an inflated basis is wholly illegal. The appellant also



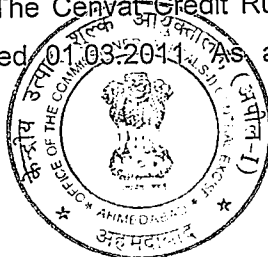
submitted that extended period of limitation was not invocable in their case as there was no suppression of facts with any intent to evade payment of duty. The appellant relied on various citation viz. M/s B.A Research India Ltd [2010 (18) STR 604], Sedco Forex International Drill Inc [2005 (12) 717 SC], Faber Heat Craft Industries Ltd [2008(12)STR 252 and M/s Swastik Tin Works [1986(25) ELT 798], M/s Padmini Products and Chemphar Drugs & Liniments [1989(43) ELT 195 SC], M/s Continental Foundation [2007 (216) ELT 177 SC], M/s Jayprakash Industries [2002 (146) ELT 481 SC] in support of their argument that Cenvat credit is not demandable prior to 01.04.2011 as explanation inserted for clarification is only for prospective effect and suppression of facts is not applicable to their case.

4. A personal hearing in the matter was held on 18.03.2016 and shri Paresh M Dave and Smt Shipa PDave, advocates appeared for the same. The reiterated the grounds of appeal mentioned in the appeal. They pleaded that the appellant had requested for adjournment on compelling grounds, which was not granted by the adjudicating authority and ex-parte order was passed. They further invited my attention to order and show cause notice to prove that departmental computation of demand is wrong and requested for remand the case so that they could present the case before original authority. They also argued limitation.

5. I have carefully gone through the records of the case and submissions made in the appeal memorandum as well as during the course of personal hearing. The case is relating to reversal of proportionate input service credit amounting to Rs. 47,46,426/- availed by the appellant on the services which were procured on import of the said raw materials and sold on High Sea Sale during the period from 2009-10 to December 2013.

5.1 I find that the case was originated as per CERA Audit observation that the appellant was engaged in trading of own raw materials on High Sea Sale and the said sale was effected before delivery of goods in the premises of the appellant, thus, the goods sold against high sea sale was not dutiable by the end of the appellant. Thus, it was hold that the credit of service tax of common input services availed by the appellant during the relevant period is required to be reversed proportionately. The adjudicating authority has confirmed the demand on the ground that the common input services availed by the appellant in respect of trading business have no nexus with the manufacturing and clearance of final products. On other hand, the appellant mainly argued that (i) denial of credit in respect of common input availed by them should have been effected from 01.04.2011 only by virtue of notification No.03/2011-CE (NT), (ii) the method of calculation for proportionate reversal of credit adopted by the department is not as per the procedure prescribed under Rule 6(3A)(iii) of CCR and (iii) the adjudicating authority has decided the case ex-parte.

5.2 In the matter, I find that the reversal of proportionate Cenvat credit availed on input services in question has not been disputed. The dispute in the matter is that whether the reversal of input service credit in question is effective from 01.04.2011 by virtue of notification No.03/2011-CE (NT) dated 01.03.2011 and the method of calculation adopted by the department for such reversal of credit is correct. The Cenvat Credit Rules, 2004 has been amended by notification 03/2011-CE (NT) dated 01.03.2011 as argued by the



appellant the relevant portion of the notification, said to be applicable in this case is as under:-

"2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2,

(iii) in clause (e), after the words and figures " section 66 of the Finance Act", the following shall be inserted, namely:-

"and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken

Explanation- For the removal of doubts, it is hereby clarified that "exempted services" includes "trading".

In above terms, the appellant argues that the trading business carried out by them is included as exempted service by virtue of above notification which is effective from 01.04.2011 only. The appellant also contended that trading activities have been brought under purview of Rule 6(3) of CCR and thereafter, they were required to maintained separate accounts for inputs/inputs service.

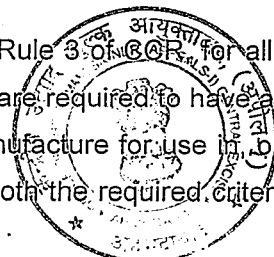
5.3 On perusal of the CERA objection, show cause notice issued thereof and the impugned order, I find that the above argument of the appellant is not relevant to the facts of the case. In the CERA objection, on the basis of which the show cause notice was issued to the appellant, it was alleged that the appellant had availed the disputed Cenvat credit of service tax paid on the services which were procured in relation with the import of the goods sold on High Sea Sale basis. Thus, the services exclusively used for import for High Seas Sales and used for common services is not admissible to them as the said services were not used for manufacturing activities and no nexus with the manufacture of the final products.

5.4 In this case, I find that the appellant had engaged in trading of the raw material imported on High Sea Sale basis i.e before receiving in the factory premises. As per Rule 2(1) of CCR, "input service" means, *any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.* As per Rule 3 of CCR, *a manufacturer shall be allowed to take credit of (i) to (viii)...(ix) the service tax leviable under Section 66 of the Finance Act; (ix) to (xi)..., paid on*

- (i) *any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and*
- (ii) *any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,*

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

Thus, in view of provisions as laid down in Rule 2 (i) and Rule 3 of CCR for allowing input service credit, the input service used by the manufacturer are required to have a nexus with the manufacture of final products and received by the manufacture for use in, or in relation to, the manufacture of final product. In the instant case, both the required criteria have not



①

fulfilled as the raw material imported for use in the manufacturing activities were sold on High Sea Sale basis before receiving the said goods in the factory premises/used in manufacturing activities. Therefore, the amendment to explanation in notification No.03/2011-CE (NT) cited supra that "exempted service" includes "trading" applicable in the case where the goods are received in factory. In the instant case, the situation is different.

5.5 Further, I find that Rule 6 of CCR deals with the obligation of a manufacturer of dutiable and exempted goods and provider of taxable and exempted services. The said Rule says that:-

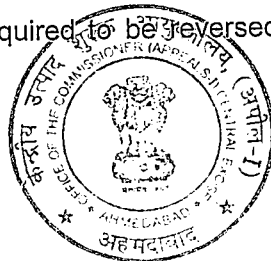
1) *The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).*

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) *Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.*

As per the provisions of Rule 6 *ibid*, Cenvat credit of input service which is used in the manufacture of exempted goods shall be allowed in the circumstances a manufacturer follow the procedures mentioned in sub clause (2) of Rule 6 *ibid*. As per the said clause, the manufacture shall maintain details of for receipt, consumption of input/input service meant for use in the manufacture of dutiable final products and in the manufacture of exempted goods. In the instant case, as discussed above, the goods imported were sold on High Sea sale basis and not received in the factory. Since the goods imported is not received in the factory and not used in the manufacture of final products or exempted goods, the question allowing Cenvat credit/input service credit involved in such goods does not arise. Therefore, the argument of the appellant that denial of credit in respect of common input availed by them should have been effected from 01.04.2011 only, by virtue of notification No.03/2011-CE (NT) is not relevant as the trading activities was not taken place in the factory premises. The other argument that the method of calculation for proportionate reversal of credit adopted by the department is not as per the procedure prescribed under Rule 6(3A)(c)(iii) of CCR is also not relevant in view of above discussion. The case citations relied upon by the appellant is not applicable to the instant case as the facts of the said cases are different.

5.6 I further find that the amount of Rs.47,46,426/- was calculated on the basis of information submitted by the appellant to the authority. In the circumstances, the grounds mentioned in the impugned order for demanding the said amount is proper and looking into the facts of the case, as discussed above in para 5.3 to 5.5, the appellant is not eligible for the availing input service credit availed in respect of service utilized for import of raw material and also used for common service and required to be reversed with applicable interest.



5.7 As regards imposition of penalty, I find that the appellant was aware of the facts that the input service credit availed on import of goods which were sold on High Sea Sale is required to be reversed proportionately. Though they knew such facts, they never disclose the facts to the department. Thus, the penalty imposed by the adjudicating authority is proper and justified.

5.8 Finally, I find that the appellant had argued that the case was adjudicated ex-parte by the adjudicating authority. This argument also finds no merit. In para 9 of the impugned order, I find that the personal hearing was granted by the adjudicating authority 19.01.2015, 18.02.2015 and 04.03.2015 and the appellant had neither appeared for the same nor submitted any written submission to the show cause notice. Therefore, I do not find any merit to remand the case back to the adjudicating authority for fresh decision again.

6. In view of above discussion, I uphold the impugned order and reject the appeal filed by the appellant. The appeal is disposed off accordingly.

Uma Shanker
(UMA SHANKER)

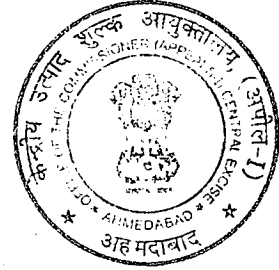
COMMISSIONER (APPEAL-I)
CENTRAL EXCISE, AHMEDABAD

Date: 25/04/2016

Attested

Mohan V.V.
(Mohan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad
BY R.P.A.D

To,
M/s Vardhman Stampings Pvt Ltd.,
Irana Road, S No.132/C,
Budasan, Kadi-Chhatral Road, Kadi,
Dist. Mehsana



Copy to:-

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