

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(69)51/Ahd-III/2016-17/Appeal-I / 604-608

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-254-16-17

दिनांक Date : 27.02.2017 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: 03 & 04/D/GNR/APB/2015-16 Date: 29.01.2016 Issued
by: Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Oracle Granito 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
पूवोक्त 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।

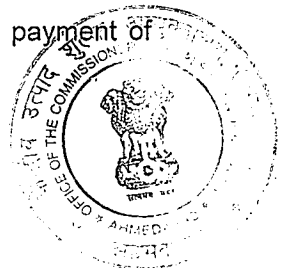
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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- एबी/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 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 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

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 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, 1988 की धारा 34फ 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 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,

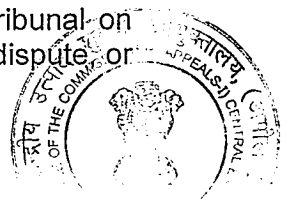
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

M/s Oracle Granito Ltd., situated at Block No.286, Sabar Diary – Talod Road, Ghadhoda, Himmatnagar, District: Sabarkantha (hereinafter referred to as 'the appellant') is holding Central Excise registration No.AACO6238PXM001 and is engaged in the manufacture of Vitrified Tiles falling under Chapter sub-heading no.69071010 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is availing CENVAT credit of duty paid on inputs as well as capital goods and on input services.

2. During the course of audit it was noticed that the appellant had availed CENVAT credit of Service Tax amounting to **Rs.1,20,510/-** during the period **from March-2013 to February-2014** in respect of **rent paid to certain establishments where its goods were displayed** as provided by Shri Harvinder Sing (New Delhi office). A Show Cause Notice F.No.V.69/03-14/D/GNR/2014 dated 01/04/2014 (hereinafter referred to as 'the SCN') that was adjudicated by the Assistant Commissioner, Central Excise, Gandhinagar Division, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority') by issuance of O.I.O. No. 03&04/D./GNR/APBI/2015-15 dated 29/01/2016 (hereinafter referred to as 'the impugned order'). In the impugned order, the demand for CENVAT credit of Rs.1,20,510/- has been confirmed along with interest and a penalty on Rs.1,20,510/- has been imposed on the appellant.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal, inter alia, on the following grounds:

- 1) The appellant had paid rent to certain establishment for display of excisable goods manufactured by it, which was activity pertaining to business promotion and such activity, was covered under the definition of 'Input service'. The appellant had taken Service Tax credit within the framework of definition of 'Input service' which could not be denied.
- 2) The appellant invites attention to the judgment in the case of **BHARAT FRITZ WERNER LTD. Vs COMMISSIONER OF CENTRAL EXCISE, BANGALORE - 2011 (22) STR 429** wherein the Hon'ble Tribunal has allowed credit in identical matter. On the basis of this decision, Hon'ble CESTAT had passed **Order No. A/10325 & 10326/WZB/AHD/2013 & M/10988/WZB/AHD/201** dated **15/02/2013** allowing the appellant's appeal.
- 3) The appellant had taken credit of input service within the parameter of definition of 'input service' and hence penalty was not imposable. The impugned order suffers from non-consideration of evidence produced by the appellant in as much as the C.A.'s certificate showing that the expenses were towards selling and distribution overheads and the citations supra, against which no appeal had been filed by the department, were not considered in the impugned order.
- 4) There was no change in Law, procedure and hence in order to take a decision contrary to settled law was clearly with disregard to judicial propriety. Therefore, interest was not payable under Rule 14 of CCR, 2004 read with Section 11AA of CEA, 1944.

4. Personal hearing in the appeal was held on 24/01/2017. Shri N.K. Oza, Advocate appeared for personal hearing and reiterated the grounds of appeal. He stated that

earlier CESTAT had decided in favour of the party and yet this case was decided against the appellant.

5. The appellant has submitted an application with the plea to condone delay of three days under Section 35 (1) of CEA, 1944 on the ground that the person handling the matter had submitted the appeal through Registered AD post on 20/06/2016, which was received on 23/06/2016.

6. I have carefully gone through the show cause notice, the impugned order as well as the grounds of appeal. As per the findings of the adjudicating authority in paragraph 10 of the impugned order, the earlier demands covering the period of April-2009 to November-2010, December-2010 to December-2011 and December-2011 to November-2012 regarding the same issue of admissibility of CENVAT credit of Service Tax paid on rent expenses for display of manufactured goods, has been settled in favour of the appellant vide **CESTAT Order No. A/10325&10326/WZB/AHD/2013 & M/10988/WZB/AHD/201 dated 15/02/2013** and this order has been accepted by the department on monetary grounds. Again in paragraph 10 of the impugned order, the adjudicating authority in his findings has referred to the earlier demand on the same issue for the period December-2011 to November-2012, where the appeal filed by the appellant against confirmation of demand on the same issue has been allowed by the Commissioner (Appeals) vide **O.I.A. No. AHM-EXCUS-003-APP-084-14-15 dated 19/09/2014**. The adjudicating authority has clearly stated in his findings that even this O.I.A. has been accepted by the department on monetary grounds.

7. The **CESTAT Order No. A/10325&10326/WZB/AHD/2013 & M/10988/WZB/AHD/201 dated 15/02/2013** is reported as **ORACLE GRANITO LTD. vs COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD – 2013 (30) S.T.R. 357 (Tri.-Ahmd.)**. Hon'ble Tribunal had considered the Chartered Accountant's certificate produced by the appellant stating that the rent expenses were under the selling and distribution overhead which, understandably, goes into the costing of the final product. Relying on the decision in the case of **BHARAT FRITZ WERNER LTD. Vs COMMISSIONER OF CENTRAL EXCISE, BANGALORE - 2011 (22) STR 429**, the admissibility of the impugned CENVAT credit has been decided in favour of the appellant by CESTAT. Similarly, in **O.I.A. No. AHM-EXCUS-003-APP-084-14-15 dated 19/09/2014**, Commissioner (Appeals) has considered the period for which the appellant had produced a certificate from the Chartered Accountant i.e. from April-2012 to November-2012 and allowed the impugned credit for this period whereas he has disallowed the impugned credit for the period December-2011 to March-2012 as the appellant had not produced a certificate from the C.A. to prove that the cost of the impugned service was included in the cost of the final product cleared during December-2011 to March 2012. In the present case also, the appellant had produced similar certificates issued by the Chartered Accountant for the period of **2012-13 and 2013-14** (which covers the entire impugned period of March-2013 to February-2014 impugned in the present SCN), before the adjudicating authority. This is recorded in

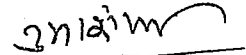


paragraph 7 of the impugned order. It is also pertinent to note that the validity or the relevance of these certificates are not disputed or negated in the impugned order. Further, there is no reasoning in the impugned order to distinguish the principle laid down in **CESTAT Order No. A/10325&10326/WZB/AHD/2013 & M/10988/WZB/AHD/201** dated 15/02/2013 as well as **O.I.A. No. AHM-EXCUS-003-APP-084-14-15** dated 19/09/2014. The only ground adduced in the impugned order is that the department had accepted both the previous orders on monetary grounds. Even if the said two decisions were accepted by the department on account of low monetary value, the ratio of the two decisions remain valid and judicial discipline requires that this ratio is followed by the adjudicating authority. Hon'ble High Court of Gujarat, in the case of **LUBI INDUSTRIES LLP vs UNION OF INDIA – 2016 (337) E.L.T. 179 (Guj.)** have held that the Assistant Commissioner committed a serious error in ignoring the binding judgment of superior Court that too in the case of the same assessee. Hon'ble High Court has ruled that even if the decision of the Tribunal was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision. I find that in the present case also, the adjudicating authority had erred seriously by not considering the principle laid down in **CESTAT Order No. A/10325&10326/WZB/AHD/2013 & M/10988/WZB/AHD/201** dated 15/02/2013 as well as **O.I.A. No. AHM-EXCUS-003-APP-084-14-15** dated 19/09/2014. The impugned order has been passed in gross violation of judicial discipline and the same is set aside.

8. The delay of three days is condoned and the appeal is allowed

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

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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 27/02/2017

Attested

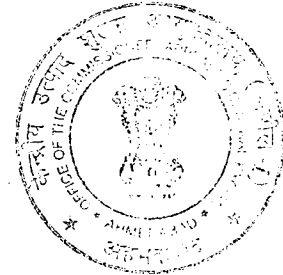


(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To

M/s Oracle Granito Ltd.,
Block No.286, Sabar Dairy –Talod Road,
Gadhoda, Himmatnagar, District: Sabarkantha.



Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner, Central Excise (System), Ahmedabad-III.
4. The Assistant Commissioner, Central Excise, Division-Gandhinagar.
- ✓ 5. Guard File
6. P.A.