
 <p>सत्यमेव जयते</p>	<p>केन्द्रीय कर आयुक्त (अपील)</p> <p>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</p> <p>वस्तु एवं सेवा कर भवन</p> <p>यानवी मंजिल पॉलिटेक्निक के पास,</p> <p>आम्बावाडी, अहमदाबाद-380015</p> <p>☎ 079-26305065</p>	 <p>GST Building, 7<sup>th</sup> Floor,, Near Polytechnic, Ambavadi, Ahmedabad- 380015</p> <p>टेलीफैक्स : 079 - 26305136</p>
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क फाइल संख्या : File No : V2(70)144/STC-III/2016-17 / 1963 to 1966

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-0130-17-18

दिनांक Date : 28.09.2017 जारी करने की तारीख Date of Issue: 12-10-17

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 :  
39/DC/DEM/EXCISE/2016-17 दिनांक : 24.11.2016 से सृजित

Arising out of Order-in-Original: 39/DC/DEM/EXCISE/2016-17, Date: 24.11.2016 Issued  
by: Deputy Commissioner, Central Excise, Div:Kadi, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Gemstone Glass 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।

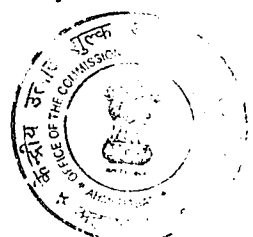
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी 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 प्रक्रिया 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:-

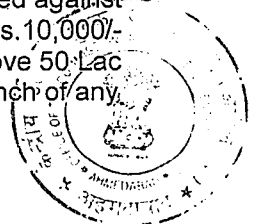
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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.

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 रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहाँ रुपए 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 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 हैं

- (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।

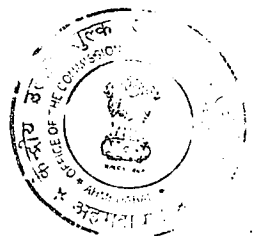
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

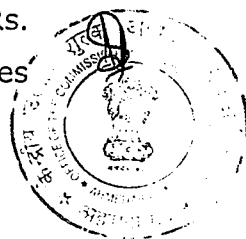


**ORDER-IN-APPEAL**

This appeal has been filed by M/s. Gemstone Glass Pvt Ltd (Successor to M/s Pino Bisazza Glass Pvt Ltd.) 23E, GIDC Estate, Kadi-382715, District-Mehsana (hereinafter referred to "as the appellant") against the Order-in-Original number 39/DC/DEM/EXCISE/216-17 dated 24.11.2016 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner of Central Excise, Kadi Division, (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellant having Central Excise Registration No. AABCP8041QXM001 are engaged in the manufacture of excisable goods viz. Glass Mosaic and Glass Cullet etc. falling under Chapter 70 of the Central Excise Tariff Act, 1985. During the course of audit, it was found that the appellant had availed Cenvat Credit of Rs. 4,94,933/- on Catering Service provided by two outdoor caterers namely M/s Shree Sainath Caterers and Shree Devi Caters during the period from April. 2011 to August, 2014. Outdoor Catering Service has been kept out of the purview of the "input service" in terms of the provisions of Rule 2(I) of CCR, 2004, when such services are used primarily for personal use or consumption of any employee. It is observed that the outdoor catering service is obtained by the said appellant to provide to its employee for their personal use or consumption; hence cenvat credit is not allowed thereon and is liable to be recovered from the under Rule 14 of CCR, 2004. On this ground a Show Cause Notice dated 17.02.2016 issued to the appellant and same was adjudicated by the adjudicating authority vide above said impugned order. The adjudicating authority, allow the service Tax Credit of Rs. 3,26,143/- and uphold the demand of Cenvat Credit of Rs. 1,68,790/- alongwith interest & penalty thereon under rule 2(I) of CCR,2004 as well as Board's clarificatory Circular No. 943/4/2011-Cx- dated 29.04.2011.

3. Being aggrieved, the appellant have filed the present appeal on the grounds that they are rightly eligible for the Cenvat Credit of Rs. 85,734/- out of Cenvat Credit of Rs. 1,68,790/- which was disallowed by the adjudicating authority. Appellant has submitted in their grounds of appeal that, the adjudicating authority allowed the Cenvat Credit on outdoor catering services to them but has erred in not considering the invoices for the period April, 2014 to August, 2014. They further stated that out of Rs. 88,233/- (period from April 2014 to August, 2014), and amount of Rs. 85,734/- should be allowed as Cenvat Credit on outdoor catering services and rest Cenvat Credit has been reversed by them.

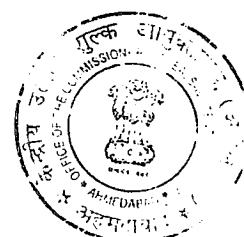


4. A personal hearing in the matter was held on 17.08.2017 and Smt. Pooja Shah, Chartered Accountant, appeared before me for the same. She reiterated the grounds of appeal and argued that the amount of Cenvat Credit of Rs. 85,734 should be allowed on outdoor catering services as stated in letter dated 13.02.2017 address to the Adjudicating Authority.

5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing. I find that clause (c) of input service definition give in rule 2(l) of CCR, 2004, introduced w.e.f. 01.04.2011 specifically excludes the outdoor catering service used for personal use or staff welfare from eligible input service, Which reads as follows :-

Rule 2(l) : "Input Service" means any service, -

- (i) used by a provider of output service for providing an output service; or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; but excludes, -
  - (A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) insofar as they are used for -
    - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
    - (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
  - (B) Services provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not a capital goods; or
  - (BA) Service of general insurance business, servicing, repair and maintenance, insofar as they relate to a motor vehicle which is not a capital goods, except when used by



- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or
- (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

6. As is seen in terms of the said amended rule, the definition of input service does not cover outdoor catering as there is a specific exclusion to the same. Such exclusion on 1.4.2011 was a conscious decision on part of the legislature having knowledge of earlier judicial decisions on the such subject, yet the legislature chose to exclude these items from the definition of input service and wisdom of the legislature cannot be questioned in the guise of interpretation. Moreover the interpretation cannot add words to the definition, where definition is unambiguous and crystal clear. The Hon'ble High Court of Bombay in the case of Nicholas Piramal (India) Limited [2009(244) ELT 321 (Bom)], has on the question of interpretation of Rules, made the following observation:

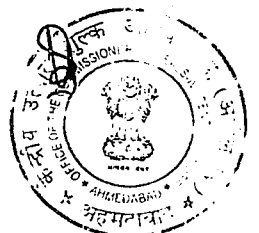
*"We may only mention that hardship cannot result in giving a go-by to the language of the rule and making the rule superfluous. In such a case it is for the assessee to represent to the rule making authority pointing out the defects if any. Courts cannot in the guise of interpretation take upon themselves the task of taking over legislative function of the rule making authorities. In our constitutional scheme that is reserved to the legislature or the delegate.*

*Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative. At the highest it would be a matter requiring reconsideration by the delegate.*

*It is never possible for the Legislature to conceive every possible difficulty. As noted a provision or a rule can occasion hardship to a few that cannot result in the rule being considered as absurd or manifestly unjust.*

*In our opinion, the rule must ordinarily be read in its literal sense unless it gives rise to an ambiguity or absurd results."*

7. In this regard Hon'ble Supreme Court has very categorically stated that "Courts cannot add words to a statute or read words into it which are not there" (Parmeshwaran Subramani [2009(242)ELT 162(SC)]. Moreover,



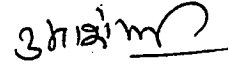
in the guise of interpretation, no intention can be added, when intention of legislature is very clear.

8. I also rely on the judgement of the (i) 2016(42) S.T.R. 720(Tri.-Bang.) in the case M/s AET LABORATORIES PVT. LTD. Versus C.C.E., CUS. & S.T., HYDERABAD-I and (ii) 2016(42) S.T.R. 441(Tri.-Mumbai) in the case M/s. APPLIED MICRO CIRCUITS INDIA PVT. LTD. Versus COMM. of C. EX., PUNE-III where in Cenvat credit on the outdoor catering service was rejected.

9. In view of above, I reject the appeal of the appellant

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.



(उमा शंकर)

Commissioner, (Appeals),  
Central Tax, Ahmedabad.

ATTESTED

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

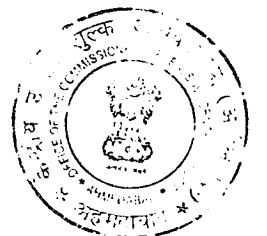
BY R.P.A.D

To,

M/s. Gemstone Glass Pvt Ltd  
(Successor to M/s Pino Bisazza Glass Pvt Ltd.)  
23E, GIDC Estate,  
Kadi-382715, District-Mehsana

Copy to:-

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



11.1

