

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX वस्तु एवं सेवा कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079-26305136
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क फाइल संख्या : File No : **V2(WCS)26/AHD-III/2017-18 / 4053 to 4057**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0136-17-18**

दिनांक Date : **13.10.2017** जारी करने की तारीख Date of Issue **13.10.17**

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 :
21/Ref/ST/AC/2017-18 दिनांक : **31.05.2017** से सृजित

Arising out of Order-in-Original: **21/Ref/ST/AC/2017-18**, Date: **31.05.2017** 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. Mirambica Construction Co.

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 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- णबी/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 मैटल 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 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 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 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 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 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. Mirambica Construction Co., 19-Baloj Complex, Opp. Market Yard, Unjha, Mehsana (hereinafter referred to "as the appellants") against the Order-in-Original number 21/Ref/ST/AC/2017-18 dated 31.05.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Service Tax Division, Gandhinagar, (hereinafter referred to as "the adjudicating authority").

2. The facts of the case, in brief, are that the appellants, holding Service Tax Registration No. AACFM6713GSD001, had filed a refund claim amounting to Rs.35,02,236/- on 07.11.2016 under provisions of Section 102 of the Finance Act, 1994. On the preliminary scrutiny of the said refund claim, following discrepancies were noticed by the adjudicating authority;

- (i) Not submitting the copies of invoices/Bills (in original) raised by them to the service receivers.
- (ii) No documentary proof/evidence was produced by them showing that the amount of Service Tax paid by them, whose refund is being claimed, was not hit by the bar of unjust enrichment.
- (iii) Interest paid on delayed payment of service tax claimed as refunded by them did not appear to be admissible to them.
- (iv) Whether they had claimed Cenvat Credit of the amount whose refund is being demanded.
- (v) Self-attested copy of the books of account evidencing the said amount as receivable;
- (vi) Copy of CA's certificate to the effect that the said amount had not been formed a part of expenditure in the books of account;
- (vi) Ledgers in respect of work Contract (service receiver wise) in respect of which the said refund is claimed by them.
- (vii) Ledger in respect of the service tax paid by them during the relevant period;
- (viii) Copy of Contracts and Agreement which they are entered into with the service receivers mentioning terms and conditions;
- (ix) The reasons for delayed payment of Service Tax;

- (x) Detailed worksheet regarding Service Tax liability as per returns filed by them during F.Y. 2015-16 alongwith proof of payment.

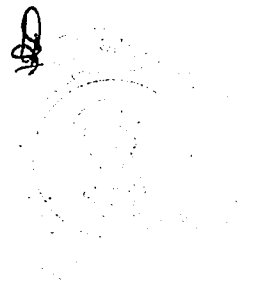
Accordingly a letter dated 21.11.2016 was issued to the appellant requesting to submit the compliance of the said letter. Further, the appellant vide letter dated 06.02.2017 submitted a declaration regarding Cenvat Credit that they maintained separate records for project wise as per Rule 6(1) of CCR,2004. On the scrutiny of refund claim and records thereof, the adjudicating authority allowed the refund claim of Rs.29,39,207/-, out of Rs.35,02,236/-, and the remaining amount of Rs.5,63,029/- (Rs.4,02,209/- + Rs.1,60,820/-) was rejected on the ground that appellants failed to submit the payment particulars in respect of RA Bill No. 7 dated 10.09.2015 and refund of interest of Rs.1,60,820/-, paid on delayed payment of Service Tax, was rejected as there is no such provision in Section 102 of Finance Act, 1994.

3. Being aggrieved, the appellants have filed the present appeal and requested to set-aside the impugned order and allow the refund claim of Rs.5,63,029/-. The appellants have submitted, in their grounds of appeal, that refund claim of Rs.4,02,209/- was rejected on the basis of non submission of payment particulars of the same. In respect of that, the appellants have submitted a copy of GAR-7 challan of Rs. 3,64,699/- and further stated that remaining amount of Rs.37,510/- was paid by utilizing Cenvat credit.

4. In respect of refund of interest amounting to Rs.1,60,820/-, the appellants submitted that they paid the interest on the duty, which has been refunded by the Government due to exemption notification, so the amount paid was not duty. When the amount paid is not duty, interest paid on the amount also becomes the deposit of amount paid in excess and it has to be allowed as refund.

5. Further, the appellants alleged that no show cause notice was issued to them and the adjudicating authority did not follow the principle of natural justice before the issuance of the impugned order. Thus the appellants have been deprived of their basic right which is 'The Right to be heard in Person'.

6. Personal hearing in the matter was granted and held on



07.09.2017. Shri Vipul Khandhar, Chartered Accountant, on the behalf of the appellants, appeared before me and reiterated the grounds of appeal and stated that actual challan could not be printed, so bank certified copy was submitted. They paid interest, which should be refunded and further stated that they would submit additional submission within seven days.

7. I have carefully gone through the facts of the case on records, the impugned order, grounds of appeal in the Appeal Memorandum and oral as well as written submissions made by the appellants at the time of personal hearing.

9. I observe that the appellants had been given reasonable opportunity before issuance of the impugned order as discussed above in para 2. For the refund claim of Rs.4,02,209/-, the appellants had submitted the copy of GAR-7 challan of Rs.3,64,699/- and further stated that remaining amount of Rs.37,510/- had been paid by utilizing Cenvat credit. However the proof of Cenvat utilization is not submitted by the appellants.

10. I find that the appellants have submitted a copy of the challan No. 50036 dated 29.12.2015 amounting to Rs.3,80,166/- (Rs.3,64,699/- as the duty under Works Contract Services and Rs.15,467/- as its interest). However, it is not possible at this stage to verify the authenticity of the said challan as a proper correction/reconciliation of the duty paying document and actual duty paid is needed. The adjudicating authority is the best suited person to verify the genuineness of the said challan. Further, the appellants have failed to submit before me the proof of utilization of cenvat credit for payment of duty. The same also needs to be verified by the adjudicating authority.

11. In view of the above, I remand the case back to verify the payment particulars. The adjudicating authority is directed to scrutinize the refund claim of Rs.4,02,209/- in light of the conditions laid down in Section 102 of Finance Act, 1944 and ensure that the right of the appellants is not denied unless revenue is adversely affected. The appellants are also directed to present all sort of assistance to the

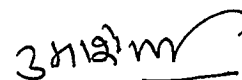
adjudicating authority by providing all required documents during the proceeding for which the case is remanded back

12. In respect to refund of interest paid amounting to Rs.1,60,820/-, the appellants submitted that they paid the interest on the duty, which has been refunded by the Government due to exemption notification. So when an amount is refunded by the department, the interest paid in relation to the said amount also needs to be refunded back. I agree with the contention of the appellants and consider the amount of Rs.1,60,820/- excess paid by the appellants. As Service Tax was not leviable on the said service, keeping its interest in the government's possession is illegal. Interest is integral part of duty. The department cannot by any means, withheld the so called interest paid on the so called duty, which has already been refunded back to the appellants. However, genuineness of the said interest, paid by the appellants, needs to be verified in relation to the refund amount of Rs.29,39,207/- which has been allowed to them. In view of the above, I remand the case back to verify the payment particulars in respect of interest of Rs. 1,60,820/- paid on the Service Tax for delayed payment. The appellants are hereby directed to extend fullest cooperation to the adjudicating authority and submit all the relevant documents needed by the adjudicating authority for verification.

15. The appeal is disposed off in terms of the discussion held above.

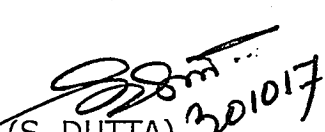
16. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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



(UMA SHANKER)
COMMISSIONER (APPEAL)
CENTRAL TAX, AHMEDABAD.

ATTESTED


(S. DUTTA) 30/10/17
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

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To,
M/s. Mirambica Construction C.
19-Baloj Complex, Opp. Market Yard,
Unjha, Mehsana-380054

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.