



 केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
वस्तु एवं सेवा कर भवन सातवीं मंजिल पोलिटैक्निक के पास अम्बावाडी, अहमदाबाद-380015	GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015	
 079-26305065	टेलीफैक्स : 079 - 26305136	

क फाइल संख्या : File No : **V2(WCS)1/RA/GNR/2017-18** / 6062 & 6066

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0140-17-18**

दिनांक Date : **26.10.2017** जारी करने की तारीख Date of Issue: 16-11-17

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 :
GNR-STX-DEM-DC-17/2017 दिनांक : 31.03.2017 से सृजित

Arising out of Order-in-Original: **GNR-STX-DEM-DC-17/2017**, Date: 31.03.2017 Issued by: Assistant Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Kalaptaru Power Transmission 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 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 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 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 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 paisa 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, 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 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 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 is filed by the Assistant Commissioner of CGST, Gandhinagar Division under Section 84(1) of the Finance Act, 1994 [for short-*the department*] against order-in-original No.GNR-STX-DEM-DC-17/2017 dated 31.03.2017 [for short-impugned order], in terms of Review Order No.06/2017-18 dated 06.07.2017 of the Commissioner of CGST, Gandhinagar in respect of M/s Kalpataru Power Transmission Ltd., 101, Part-III, GIDC Estate, Sector-28, Gandhinagar [*for short-KPTL*]

2. This appeal is primarily against CENVAT credit which stands allowed by the adjudicating authority on Group Gratuity Scheme amounting to Rs,1,01,841/- and Workmen's Compensation Insurance Policy amounting to Rs,32,12,001/-. The facts of the case is that based on an audit objection, show cause notice dated 10.10.2016, covering period from 2011-12 to 2014-15 was issued to M/s KPTL, *inter alia*, proposing to disallow above referred CENVAT Credit availed on Group Gratuity Scheme and Workmen's Compensation Insurance Policy. The notice issued for recovery of said Cenvat credit wrongly availed with interest and further proposed penalty on the appellant. Vide the impugned order the show cause notice was decided, by allowing the CENVAT credit in respect of the aforementioned services

3. Being aggrieved, the department has filed the present appeal on the grounds that:

- As per definition of input service w.e.f 01.04.2011, cenvat credit on Group Gratuity Scheme and Workmen's Compensation Insurance Policy as it covered under the exclusive clause of the definition of input service; that as per said definition and clarification issued by CBEC vide circular No.943/4/2011-CX dated 29.04.2011 credit is not allowable when any service are used primarily for personal use or consumption of employees.
- The service of Group Gratuity Scheme for employees and Welfare Compensation Insurance policy is purely voluntary act and a welfare measure in the interest of its employees and it has no relation directly or indirectly towards manufacturing/output service activities.
- The department has relied on CESTAT, Principal Bench, New Delhi decision in case of M/s Gujarat Ambuja Cement [2007 (080) RLT-008], wherein it was held that the said services are not covered under Rule 2(I) of Cenvat Credit Rules and Hon'ble High Court, Mumbai decision in case of M/s Raymond Ltd[2009 (24) ELT 180], wherein it has concluded that interpretation of statutes to be construed strictly by way of literal meaning.



- The adjudicating authority has erred in relying upon the decision of Hon'ble CESTAT Chennai decision in case of M/s Fiem Industries Ltd which has been not accepted by the department in principle, but due to lower monetary grounds the decision has not contested further.

4. Personal hearing in the matter was held on 11.09.2017. Shri S.J.Vyas, Advocate appeared on behalf of M/s KPTL and explained their points. He submitted copies of cases laws in their favour. Mrs. Mary George, Superintendent of CGST, Gandhinagar Division appeared on behalf of department and reiterated the grounds of appeal in departmental appeal.

5. I have gone through the facts of the case, the grounds mentioned in the appeal by the department and the oral averments, raised during the course of personal hearing by M/s KPTL. The main issue to be decided is whether as alleged by the department, the adjudicating authority has wrongly allowed CENVAT credit on input services in question or otherwise.

6. I find that the dispute is regarding availment of CENVAT credit in respect of Group Gratuity Scheme amounting to Rs,1,01,841/- and Workmen's Compensation Insurance Policy amounting to Rs,32,12,001/-.

7. The adjudicating authority, vide his impugned order allowed CENVAT credit availed by M/s KPTL on the above services, on the following grounds:

- The gratuity is a statutory benefit to the employees for their services to the Employer and is governed by the Gratuity Act, 1972 (Amended 2010); that the Act stipulates payment of the Gratuity as a statutory benefit to such employees who have to pay Gratuity benefits better than the statutory requirements has to be paid by the company in accordance with the law and this is obligatory and to fulfill this legal obligation, M/s KPTL has opted for Group Gratuity Scheme. Therefore, it can be said that such service is relatable to business activity and is to fulfill one of the legal obligation.
- In case of an accident within the factory, the compensation has to be paid by the company in accordance with the law and to fulfill the said legal obligation, M/s KPTL has taken insurance, therefore, the insurance premium is related to business activity; that Workmen's Compensation insurance policy is different than the Health Service, Health Insurance, Life Insurance, therefore, does not excludes the service in relation to Workmen's Compensation Insurance Policy.

8. I find that the adjudicating authority has broadly categorized it as group gratuity and workmen's compensation insurance policy coverage. The adjudicating authority's contention in respect of CENVAT credit on group



gratuity is that M/s KPTL is liable to pay gratuity under Gratuity Act, 1972; that in order to provide quality medical service in case of illness/accident they had taken Workmen's Compensation insurance Policy and paid the premium; the primary/main reason for such insurance coverage was to comply with the statutory requirement and not to extend any kind of benefit, to employees; that the said services are different than the Health service, Health Insurance Service and Life Insurance Service covered under exclusive clause of definition of input service. On other hand, the department contended that the service of Group Gratuity Scheme for employees and Welfare Compensation Insurance policy is purely voluntary act and a welfare measure in the interest of its employees and it has no relation directly or indirectly towards manufacturing/output service activities.

9. As per exclusive clause under definition of "input service", life insurance, health insurance is not fall within the ambit of input service when such services are used primarily for personal use or consumption of any employee. Such exclusion w.e.f 1.4.2011 was conscious decision on part of the legislature having knowledge of judicial decisions on such subject, yet it chose to exclude these items from the definition of input service and wisdom of the legislature cannot be questioned in the guise of interpretation. Generally, the Group Gratuity Scheme operates in the name of a company, who submits details of their employees to LIC and deposit required amount as directed by LIC. Finally, upon receiving the resignation letter from an employee, eligible to receive Gratuity the company submits a claim form to LIC in specified format claiming the Gratuity amount from the Fund. LIC cross verifies the details and forwards the cheque to the Gratuity scheme (EMPLOYER). The employer in turn releases the cheque to the employee.

10. From the above, I observe that the Group Gratuity Scheme is beneficiary scheme extended by a company to their employees and the liability is purely incurred by the company. As such, M/s KPTL has incurred the premium of such Group gratuity scheme on behalf of their employees who are involved in their manufacturing/output service activities. In the circumstances, the contention that such scheme is for personal use or consumption of any employees is not correct, as alleged by the department.

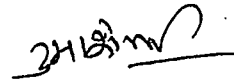
11. Like wise, the premium in respect of Workmen's Compensation Insurance Policy. Employers are legally obligated to take reasonable care to assure that their workplaces are safe. Nevertheless, accidents happen. When they do, workers compensation insurance provides coverage. Workers compensation insurance assures that injured workers get medical care and compensation for a portion of the income they lose while they are unable to



return to work and it usually protects employers from lawsuits by workers injured while working. Workers receive benefits regardless of who was at fault in the accident. If a worker is killed while working, Workers Company provides death benefits for the worker's dependents. Thus, it is a legal obligation to the company and definitely relatable directly or indirectly to business activities.

12. I observe that the decision relied on by the adjudicating authority in case of M/s Fiem Industries [2016-43-STR-470-Tri Chenn] is squarely applicable in the instant issues. Further, I observe that the Hon'ble Tribunal, Chennai in case of M/s Sundaram Fasteners Ltd [2016-43-STR-454] held that "so far as the Cenvat credit on insurance service is claimed, the exclusion of such service in certain events has been incorporated into the law with effect from 1-4-2011. That is only in respect of the insurance coverage given to employees during journey availing leave travel concession. But that had not taken away welfare of workers under the Factories Act, from its fold if insurance service is availed to overcome difficulties under Workmen's Compensation Act, in case of hazard. Accordingly, appellant's claim of Cenvat credit on the service tax paid to avail insurance service for employees employed in factory is permissible."

15. In view of above discussion, I reject the appeal filed by the department and uphold the impugned order. The appeal filed by the department stands disposed of in above terms. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है




(उमा शंकर)

आयुक्त (अपील्स)

Date: /00/2017.

Attested


(Mohanan V.V)
Superintendent (Appeal)

By RPAD

To

M/s Kalpataru Power Transmission Ltd.,
101, Part-III, GIDC Estate, Sector-28, Gandhinagar

Copy to:-

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

