

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)74/Ahd-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-032-17-18

दिनांक Date : 29.05.2017 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-III आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: 18/D/GNR/VHB/2016-17 Date: 30.08.2016 Issued by:
Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Swastik Ceracon Ltd. Unit-4

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 an 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 हों।

(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- एनबी/35-इ के अंतर्गत:-

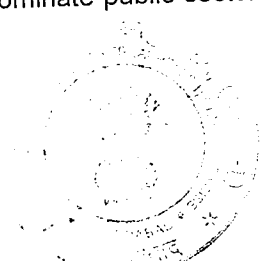
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(a) 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.

(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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 वहाँ 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 (सीस्टेट) 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 63 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 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

M/s Swatik Ceracon Ltd (unit No.4), Ceramic Zone, Block No.180/B, At & PO Dalpur, Taluka. Pramtij, Dist. Sabarkantha, Gujarat (hereinafter referred to as the appellant) filed an appeal against the Order-in-Original No.18/D/GNR/VHB/2016-17 dated 30.08.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Gandhinagar Division, Ahmedabad-III (hereinafter referred to as "the adjudicating authority")

2. The appellant is engaged in the manufacture of Ceramic Glaze Floor Tiles falling under Chapter 69 of Central Excise Tariff Act, 1985 and holding Central Excise Registration. During the course of audit of records of the appellant, it was noticed that [i] they had availed Cenvat credit of Rs.3,17,057/- in respect of various input service received from different service providers at their office premises which was meant for their four units/plants; that the said input service under various invoices were received without mentioning turnover of four units /plants and without having ISD registration and without issuing invoices as required under Service Tax (Registration of Special Category of Persons) Rule 2005 and Service Tax Rules, 1994; and [ii] taken Cenvat credit of Rs.31,511/- pertaining to Service Tax paid on Outward Freight which is not admissible as per provisions of Section 4(3)(c) of Central Excise Act, 1944. Accordingly, a show cause notice dated 25.01.2016 was issued to the appellant for demanding the Cenvat credit wrongly taken with interest and imposition of penalty. Vide impugned order, the adjudicating authority has confirmed demand of Rs.3,17,057/- with interest and imposed penalty of Rs.1,58,529/-. However, the demand of Rs.31,511/- was dropped by the adjudicating authority.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:-

- They have different manufacturing units and the accounting of all their units are being maintained and all the payment towards services also being remitted by their Head Office; that the Head office is receiving the common service and after verification of invoice and payment of service tax along with value of services, the proportionate service tax credit attributable to particular unit in proportion to sale ratio is being transferred under journal vouchers; that the amount of Rs.3,17,057/- was transferred to the appellant in accordance to the sale turnover of the unit. Therefore, they have correctly distributed the credit as provided under Rule 7 of the Cenvat Credit Rules, 2004
- As regards to the transfer of credit without ISD registration, the appellant submitted that due to oversight and inadvertent mistake the ISD registration was not taken, although the appellant was duly registered with central excise and service tax; that they had taken ISD registration immediately on pointed out by the officers; that non-registration of ISD is a procedural requirement and credit cannot be denied in such situation. The appellant cited various case laws in support of their arguments.

4. A personal hearing in the matter was held on 19.04.2017. Shri Nilam A. Shah, authorized person of the appellant appeared for the same and reiterated the grounds of appeal.



5. I have carefully gone through the facts of the case on records and submissions made by the appellant. The limited point to be decided in the instant case is relating admissibility of service tax credit to the appellant which was diverted by their Head office without being registered as ISD.

6. At the outset, I observe that the adjudicating authority has denied the credit mainly on the ground that [i] the Head office of the appellant is not registered as ISD as required under the Service Tax Rules; and [ii] the appellant have not submitted any supporting documents viz invoices etc issued by the service provider along with journal voucher so as to verify the nature of service availed and whether the same is eligible as input service.

7. As regards [i], I observe that as per Rule 2(m) of the Cenvat Credit Rules, 2004 read with Rule 2(ccc) of the Service Tax Rules, 1994, the definition of ISD states that an office of the manufacturer/ producer of final products or the provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchase of input services and issues invoice/bill/challan for the purpose of distributing credit of the service tax paid on the said input services to such manufacturer/producer or service provider. Rule 3(1) of the Service Tax (Registration of Special Category of Persons) Rules, 2005 requires an ISD to obtain registration with the Department. Sub-rule (2) of Rule 4A of the Service Tax Rules, 1994 provides the manner in which a registered ISD shall distribute service tax credit. It provides that the ISD shall issue an invoice/bill/challan duly signed by him or it or a person authorized by him/it, for each of the recipients of the credit so distributed. This provision also specifies that the document should contain (i) the name, address and registration number of the provider of input service and the serial number & date of the invoice/bill/challan issued by the service provider, (ii) the name and address of the ISD, (iii) the name and address of the recipient of the credit distributed and (iv) the amount of credit distributed.

8. In the instant case, undisputed facts revealed that the appellant had availed Input service credit on the basis of documents viz., Journal Voucher issued by their Head Office which is not registered as an ISD at the time of distributing the credit. Accordingly, the adjudicating authority has rejected the credit in view of above mentioned statute and by relying case laws viz. (a) Hanuman Chromocoates Ltd [2013 (31) STR 721-Tri. Del]; (b) DSM Sugar [2013 (287) ELT 236-Tri. Del]; (c) NITCO LTD [20144 (34) str 835-Tri.Mumbai]; and (d) Mangalore Refinery & Petrochemicals [2013 (30) STR 475 -Tri. Ban].

8. On other hand, the appellant argued that availment of credit by manufacturing unit prior to ISD registration by Head office is procedural lapse and when no dispute regarding receipt of input services at Head Office, credit is admissible. In this regard, the appellant has relied on various case laws in case of [a] Trident power craft Pvt Ltd [2016(41) STR 687 Tri. Bang]; (b) Precision wires India Ltd [2013 (31) STR 62 Tri.



Ahmd.]; (c) Inox Air Products Ltd -[2015(38) STR 79 -Tri.Mum]; and (d) Lona Industries [2016 (42) STR 362-Tri Mum].

9. Contentions of the adjudicating authority as well as of the appellant in respect of availment of input service credit are considerable in the light of provision contained in Rule 2(m) of Cenvat Credit Rules, 2004 granting credit to allocation of such credit made by the ISD which was permitted from 10-9-2004. The regulatory measure of registration of ISD came into force from 16-6-2005. I observe that the Hon'ble CESTAT, Chennai in the case of M/s Pricol Ltd [2015 (38) S.T.R. 668] while deciding similar issue held that the substantial law in Rule 2(m) leads to the conclusion that appellant was entitled to the credit for no finding on the genuinity of the credit availed and such credit allocated by the ISD. Similarly, there was no disintegration between the appellant and its head office. The Hon'ble CESTAT further referred a decision of the Hon'ble Supreme Court in the case of *Sambhaji v. Gangabai* - 2009 (240) ELT 161 (S.C.) which states that the procedural law should not dominate over the substantial law to deprive the litigant from the process of justice.

10. Further, I observe that while deciding a similar issue, the Hon'ble High Court of Gujarat in the case of CCE V/s Dashion Ltd [2016 (41) STR 884 has held that:-

"7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed. However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No. 1 therefore shall have to be answered in favour of the respondent and against the assessee."

I further observe that the Hon'ble Tribunal, Ahmedabad in case of Doshin Ltd V/s CCE Ahmedabad has held that the omission to take registration as an Input Service Distributor can at best be considered as procedural irregularity. The said decision was also upheld by the Hon'ble High Court of Gujarat in the case of CCE V/s Chandresh C Shah [2014 (36) S.T.R. 972 (Guj.)] and further appeal filed the department in this regard has dismissed by the Hon'ble Supreme court [2015 (38)STR275 (S.C.)].

11. In view of above discussion, by applying the ratio of the decisions cited at para 8 to 10, I am also of the considered view that the Input service credit availed by the appellant is eligible to them and cannot be denied due to non-registration by the Head Office.



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12. As regard the matter relating to point [ii] referred at para 6 that the appellant have not submitted any supporting documents viz invoices etc issued by the service provider along with journal voucher so as to verify the nature of service availed and whether the same is eligible as input service. I find merit consideration in the contention of the adjudicating authority; that the credit will be available to the appellant if it is attributable to its manufacturing activity. In the circumstances the service availed and the activity for which such service is required to be verified with the relevant documents. Therefore, the case is required to be remanded to the adjudicating authority to verify the eligibility and the appellant is at a liberty to file all the requisite documents before the adjudicating authority.

13. In view of foregoing discussion, I remand the matter to the adjudicating authority. The appeal filed by the appellant stands disposed of accordingly.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 29/05/2017

Attested

Mohan V.V.
(Mohan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To:

M/s Swatik Ceracon Ltd (unit No.4),
Ceramic Zone, Block No.180/B,
At & PO Dalpur, Taluka. Prantij,
Dist. Sabarkantha, Gujarat

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-Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A file.

