
 सत्यमेव जयते केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन सातवीं मंजिल पोलिटैक्निक के पास आम्बावाडी अहमदाबाद-380015 380015	 7 th Floor: Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad- 380015
079-26805065	टैलेफैक्स : 079-26305136

क फाइल संख्या : File No : V2(RIP)69/STC-III/2016-17/Appeal

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-060-17-18

दिनांक Date : 25.07.2017 जारी करने की तारीख Date of Issue:

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक : 8/8/17 से सृजित

Arising out of Order-in-Original: 142/Ref/ST/AC/2016-17 Date: 19.12.2016 Issued by:
Assistant Commissioner, Central Excise, Din:Gandhinagar, G'nagar-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Arvind 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 मामले 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- प0बी/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 अनुसूचे-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 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 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 Arvind Ltd, Naroda Road, Ahmedabad (hereinafter referred to as "the appellant") filed the instant appeal against Order-in-Original No.142/Ref/ST/AC/2016-17 dated 19.12.2016 ('the impugned order') passed by the Assistant Commissioner of Central Excise, Service Tax Division, Gandhinagar, Ahmedabad-III ('the adjudicating authority').

2. Briefly stated, the appellant has filed a refund claim of service tax amounting to Rs. 5,95,608/- before the jurisdictional office on 07.07.2015. The grounds for filing the said refund claim is that the appellant had taken a godown on rent from M/s Mahalaxmi Storehouses Pvt Ltd for storage or warehouse of baled cotton and paid service tax amounting to Rs.5,95,608/- for the service of 'Renting of Immovable Property' received by them for months of July 2014 to December 2014; that as the service by way of storage or warehouse of cotton baled was exempted from the payment of service tax, vide notification No. 06/2014-ST dated 06.07.2014; and that since the appellant had utilized the rented premises for an exempted service, the service tax paid to M/s Mahalaxmi Storehouses Pvt Ltd, for the rented premises under 'renting of immovable property service' is being sought as refund. The claim was rejected by the authority on the grounds that the notification exempts only the service by way of storage or warehouse of cotton in baled; that they had paid the service tax to M/s Mahalaxmi Storehouses Pvt Ltd for being provided the service of "Renting of Immovable Property", which was not covered under exemption notification No.06/2014 -ST dated 06.07.2014. Vide Order-in-Appeal dated 22.08.2016, the appeal filed by the appellant was remanded to the original adjudicating authority with a direction to re-examine the case on the basis of documents furnished by the appellant; that the refund claim can only be sanctioned if it is proved to the satisfaction of the department that the rented godown was used for storage or warehouse of goods specified in the notification *ibid*. Vide the impugned order, the adjudicating authority has rejected the refund claim, stating that the appellant has failed to prove the usage of the said godown only for the purpose of storage or warehouse of cotton, ginned or baled.

4. Being aggrieved, the appellant has filed the instant appeal on the grounds that they made exhaustive submissions with evidences to establish beyond doubt that the renting services were in connection with storing of baled cotton; that the insurance policies are always taken to cover all contingencies and do not imply that all such contingencies have happened that since the services of warehousing of baled cotton are clearly covered under the exemption notification No.06/2014-ST and once the warehouse is taken on rent, the service may be termed as renting of property "warehouse" by the provider; and that the notification gives exemption to various services, e.g. loading, unloading, packing, storage or warehousing, when rendered in respect of rice/cotton; that the exemption, obviously, is not with reference to category of service; that neither the charge of tax nor the exemption is based upon the category of service.

5. A personal hearing in the matter was held on 20.07.2017. Shri S.J.Vyas, Advocate appeared before me and reiterated the submissions advanced in the appeal. He pointed out that an Order-in-Original has been passed by Service Tax Division, Ahmedabad in their favour on similar issue.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The instant case relates to refund of service tax paid by the appellant to their service-provider M/s Mahalaxmi Storehouses Pvt Ltd, who provided the taxable service viz. 'Renting of immovable Property' which the appellant contends was utilized for exempted service viz. "service by way of storage or warehouse of baled cotton".

7. At the outset, I observe that earlier, this issue was decided by the appellate authority vide order-in-appeal No.AHM-EXCUS-003-APP-086-16-17 dated 22.08.2016, wherein the case was remanded to the adjudicating authority on the grounds that the refund claim can only be sanctioned if it is proved by the appellant to the satisfaction of the department that the rented godown was used for storage or warehouse of goods specified in the notification *ibid* i.e cotton in ginned or baled form only.

8. Accordingly, vide the impugned order, the adjudicating authority has decided the case by rejecting the refund claim on the grounds that:

[i] the invoices issued by the service provider and the insurance poly papers originally submitted by the appellant at the time of filing of refund claim are silent about the nature of goods.

[ii] the certificate dated 30.08.2016 issued by the insurer of the godown declares that the policy formation and premium charged is for providing coverage of cotton bales storage at Sr.No.1,2,3 & 5 of cotton godown list attached with the certificate. However, on going the documents viz. Free declaration policy & Cotton Godown declaration policy, it observe that the said warehouse has been used to store "raw cotton/cotton bales" as well as "Fibre raw/bales"; that the said declared was accepted by the Senior Manager (Raw material) of the appellant and Contractor for loading and unloading of raw material in their affidavit furnished during personal hearing.

[iii] the refund claim was pertaining to July 2014 to December 2014, however, the copies of cotton purchase invoice along with Lorry Receipt submitted by the appellant pertains to the period of October 2014 and November 2014 only.

[iv] the appellant had not submitted copy of rent agreement showing the area of the godown and rent amount agreed upon and the effective date of agreement.

9. I observe that the appellant has furnished documents viz. transaction carried out at the godown in question during July 2014 to December 2014; Fire declaration policy with its godown declared policy; cotton purchase office and Order-in-Original passed by the departmental authority in a similar case pertains to the rented godown of M/s Modern Organizer, Ahmedabad in their favour. On going through the documents furnished by the appellant, I observe that the adjudicating authority has casually scrutinized and

documents in a constricted method. The sample invoices furnished by the appellant and the transaction details carried out to the said godown clearly shows that the goods received by the appellant was Cotton bales during the relevant period. Further, the appellant vehemently argued that they made exhaustive submissions with evidences to establish beyond doubt that the renting services were in connection with storing of baled cotton. They also contended that the insurance policies are always taken to cover all contingencies and do not imply that all such contingencies have happened while warehouse is taken on rent. I find merit consideration in the said argument. The certificate issued by the insurer of the godown declaring that the policy formation and premium lodged is for providing coverage of cotton bales storage at the godown in question clearly proves that the usage of godown for storage of cotton baled. It appears that in the backdrops of these documents, the Assistant Commissioner of Service Tax has allowed the refund on similar issue pertains to storage of godown of M/s Modern Organizer used by the appellant under the said exemption notification. In view of above, the evidences support the appellant's declaration that the goods stored in the godown were baled cotton and accordingly, I am of the considered view that the refund claim filed by the appellant is eligible to them under the said notification.


10. In view of above, I find that the refund claim filed by the appellant is eligible to them. Accordingly, I set aside the impugned order and allow the appeal. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है. The appeal filed by the appellant stand disposed of in above terms.

(उमा शंकर)

आयुक्त (अपील्स - I)

Date 25/07/2017

Attested


(Mohanan V. V.)
Superintendent (Appeals-I)
Central Excise, Ahmedabad

R.P.A.D

To

M/s Arvind Ltd,
Naroda Road, Ahmedabad

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, S.T Division, Gandhinagar, Ahmedabad-III
- ✓ 5. Guard file.
6. P.A.