
	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS) GENERAL TAX		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GST Building 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015	
	सातवीं मंजिल, पोलिटेक्निक के पास	380015	
	आम्बावाडी, अहमदाबाद-380015		
☎ 079-26305065			☎ 079-26305136

क फाइल संख्या : File No : **V2/134/GNR/2017-18**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-02-17-18**

दिनांक Date : **27.04.2018** जारी करने की तारीख Date of Issue: **6/6/2018**

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 : **AHM-CEX-003-AC-024-2018** दिनांक : **24.01.2018** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-AC-024-2018**, Date: **24.01.2018** Issued by: Assistant Commissioner, Service Tax, Div:Kalol, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Morakhia Copper & Alloys 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।

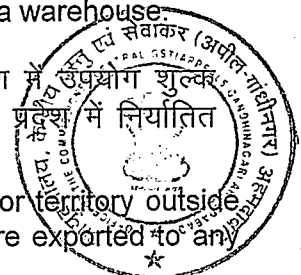
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रकिया 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- षबी/35-इ के अंतर्गत:-

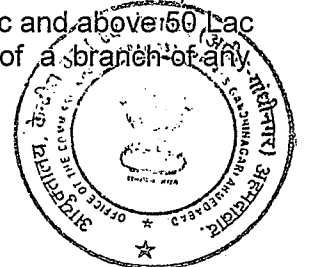
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघाणी 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 पढी 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 अनुसूचि-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 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,

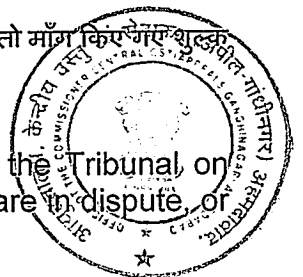
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 Morakhia Copper & Alloys Pvt Ltd, Unit-1, Plot No.3429, GIDC, Phase-IV, Chhatral, Taluka-Kalol, Gujarat [hereinafter referred to as "*the appellant*"] against Order-in-Original No.AHM-CEX-003-AC-024-2018-dated 25.01.2018 [*impugned order*] passed by the Assistant Commissioner of CGST, Kalol Division [*adjudicating authority*].

2. Briefly stated, based on an audit objection, a show cause notice dated 06.09.2016 was issued to the appellant, alleging that [i] they had taken and utilized CENVAT credit amounting to Rs.4,20,316/- towards 180 invoices after a lapse of one year period and thereby contravened the provisions of Rule 4(1) of CENVAT credit Rules, 2004 (CER); and [ii]for recovery of Rs.39,098/- for contravention of Rule 4(5)of CER as the goods sent for job work had not been returned back after 180 days. The adjudicating authority has confirmed the duty demanded with interest and imposed penalty equal to the demand.

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

- The input service in question was received in their factory under valid documents and therefore, the CENVAT credit taken is proper and correct; that the delay in taking credit cannot be construed as malafide; that the appellant did not take any benefit in taking credit after due date but it was a lapse on their part which caused loss to them.
- Interest and penalty cannot be imposed them on the issue of credit taken after due date. They relied on various case laws in this regard.
- Interest and penalty is also not imposable in respect of goods not returned back within 180 days as the provisions of Rules only stipulates to reverse the credit involved in the goods sent for job works. They relied on case laws and Commissioner (Appeals) order dated 13.11.2017.

4. Personal hearing in the matter was held on 26.04.2018. Shri P.G.Mehta, Advocate appeared for the same and reiterated the grounds of appeal. He further requested for waiver of penalty.

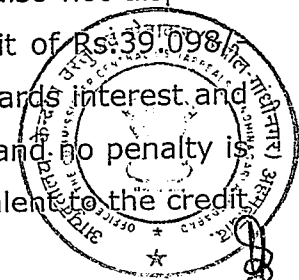
5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited point to be decided in the matter is relating to [i] CENVAT credit amounting to Rs.4,20,316/- wrongly taken and utilized towards 180 invoices after a lapse of one year period by contravening the provisions of Rule 4(1) of CER; and [ii] recovery of CENVAT credit Rs.39,098/- involved in respect of goods not returned back within 180 days from job worker.

6. As regards [i] above, I observe that with effect from 01.09.2014, as per provision of Rule 4(1) of CCR, the manufacturer or the provider of output service



shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule (1) of rule 9 CCR. It is a fact on records that the appellant had taken and utilized CENVAT credit amounting to Rs.4,20,316/- in respect of 180 invoices after a lapse of one year period. This fact was not disputed by the appellant at any stage. Though the provisions of Rule 4(1) of CCR restricts the appellant from taking CENVAT credit on input/input services after one year of the date of issue of the invoices, they had taken and utilized the said amount of credit which is a clear violation of the said provisions. Therefore, the said amount wrongly taken and utilized is required to be recovered with interest. The appellant contended that no penalty is imposable by relying Commissioner (Appeals) order dated 13.11.2017. I observe that though the mistake was brought to the notice of the appellant, they did not pay up the said amount of CENVAT credit wrongly taken. The Commissioner (Appeals) vide order dated 13.11.2017 has dropped the penalty in a situation where the assessee had taken the credit by mistake and paid the amount on being pointed out the same. Therefore, I do not find any merit to apply the ratio of the said decision in this case. The case laws cited by the appellant are also not applicable to the instant case, looking into the facts and circumstances of the case. Therefore, as regards imposition of penalty also, I do not find any merit to interfere the order of adjudicating authority.

7. As regards [ii] above, the allegation is that the appellant had sent excisable goods viz. Brass & Zinc for job work on 2.12.2015 and the same was not returned back within 180 days as stipulated under Rule 4(5) of CCR. As per the provisions of rule *supra* "the CENVAT credit on inputs shall be allowed even if any inputs as such or after being partially processed are sent to a job worker and from there subsequently sent to another job worker and likewise, for further processing, testing, repairing, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the inputs or the products produced there from are received back by the manufacturer or the provider of output service, as the case may be, within one hundred and eighty days of their being sent from the factory or premises of the provider of output service, as the case may be". Provisions of Rule 4(5) (iii) states that if the inputs or capital goods, as the case may be, are not received back within the time specified under sub-clause (i) or (ii), as the case may be, by the manufacturer or the provider of output service, the manufacturer or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods, as the case may be, by debiting the CENVAT credit or otherwise. In the instant case, it is also a fact that the goods sent for job work have not been received back within the stipulated period and the said fact was also not disputed by the appellant. In the circumstances, recovery of CENVAT credit of Rs.39,098/- ordered by the adjudicating authority is correct and proper. As regards interest and penalty imposed, the appellant argued that no interest is leviable and no penalty is imposable as the provision only stipulates to pay an amount equivalent to the credit



attributable to the inputs. I find merit consideration in the said argument as the said rule does not speaks about interest and penalty. Therefore, I set aside the interest demanded and penalty imposed on the said amount.

8. In view of above discussions, I partially allow^h the appeal as discussed above. The appeal stands disposed of accordingly.

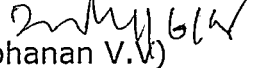
उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: /04/2018.

Attested


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

By R.P.A.D.

To
M/s Morakhia Copper & Alloys Pvt Ltd,
Unit-1, Plot No.3429, GIDC, Phase-IV,
Chhatral, Taluka-Kalol, Gujarat

Copy to:-

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

