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|---|--------------------------------------|---|
|  | केन्द्रीय कर आयुक्त (अपील)           |  |
| O/O THE COMMISSIONER (APPEALS), CENTRAL TAX                                       |                                      |   |
| वस्तु एवं सेवा  | GST Building, 7 <sup>th</sup> Floor, |   |
| कर भवन  | Near Polytechnic,                    |   |
| सातवीं मंजिल पोलिटेकनिक के पास,   | Ambavadi, Ahmedabad,                 |   |
| आम्बावाडी अहमदाबाद-380015   | 380015                               |   |
| ☎ 079-26305065  |                                      | ☎ 079-26305136  |

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क फाइल संख्या : File No : **V2/123/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-116-18-19**

दिनांक Date : **23-10-2018** जारी करने की तारीख Date of Issue: **22/11/2018**

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 : **15/CE/REF/AC/18-19** दिनांक : **18-07-2018** से सृजित

Arising out of Order-in-Original: **15/CE/REF/AC/18-19**, Date: **18-07-2018** Issued by: Assistant Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

**M/s. Vishakha Poyfab 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।

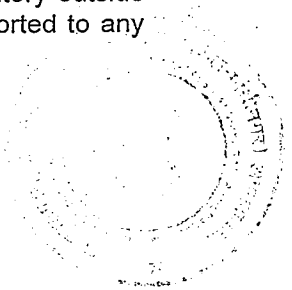
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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- षोबी/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 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 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 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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।

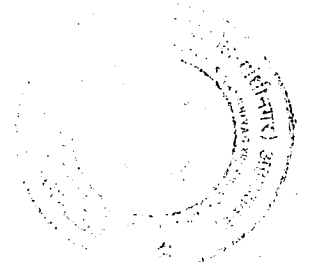
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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**

M/s. Vishakha Polyfab Pvt. Ltd., Plot Number 549/2, Village Vadsar, Kalol (*hereinafter referred to as 'appellants'*) have filed the present appeal Order-in-Original number 15/CE/Ref/AC/18-19 dated 18.07.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Kalol Division, Gandhinagar (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case are that the appellants are engaged in the manufacture of multilayered plastic extruded lay flat tubing (both plain and printed), printed bags, printed pouches and zip fresh pouches (for storing vegetables). They also generate waste in all categories and their basic raw material is plastic granules. They were registered with the Central Excise Department having registration number AAACV6439RXM001. The appellants had filed a refund claim of ₹ 5,09,294/- before the adjudicating authority on the basis of the Order-in-Original number AHM-C.EX-003-ADC-AJS-052-053-16-17 dated 30.01.2017 passed by the then Additional Commissioner of Central Excise, Ahmedabad-III. The appellants had filed an appeal before me against the Order-in-Original number AHM-C.EX-003-ADC-AJS-052-053-16-17 dated 30.01.2017. I, vide OIA number AHM/EXCUS-003-APP-0180-17-18 dated 29.01.2018, had remanded back the case for fresh adjudication. The appellants had sent damaged rollers for re-engraving to various firms on job work basis. The said firms were raising job work invoices on which Service Tax was getting charged. On the basis of the said invoices, the appellants availed Service Tax credit of ₹ 5,09,294/-. During the course of audit, on being pointed out, the appellants reversed the said amount under protest.

3. On scrutiny of the claim, it was presumed that the appellants were not eligible to take the credit as the case was remanded back and therefore, the Order-in-Original number AHM-C.EX-003-ADC-AJS-052-053-16-17 dated 30.01.2017 became null and void. The adjudicating authority further concluded that since no adjudication order is prevalent as on date in respect of show cause notice dated 29.03.2016, no refund claim related to the same should be processed. Accordingly, the adjudicating authority, vide the impugned order, rejected the refund claim of ₹ 5,09,294/- under Section 11B of the Central Excise Act, 1944.

4. Being aggrieved with the impugned order the appellant has preferred the present appeal. The appellants have submitted that the impugned order is not proper, legal and sustainable on the ground that it was passed in routine and superfluous manner. The appellants claimed that two separate and independent issues were involved in the show cause notice dated 29.03.2016. Out of the two issues only one had been decided vide the Order-in-Original number AHM-C.EX-003-ADC-AJS-052-053-16-17 dated 30.01.2017 and hence, the refund claim filed by the appellants should not have been rejected. They further argued that the issue for which the case was remanded back was not pertaining to CENVAT credit availed on job work therefore, the issue of credit remains live. In view of the above arguments, the appellants requested to set aside the impugned

order.

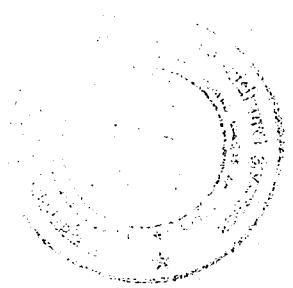
5. Personal hearing in the matter was granted and held on 09.10.2018. Shri P. G. Mehta, Advocate, appeared on behalf of the appellants and reiterated the contents of appeal memorandum. He further submitted copy of the Circular number 1053/2/2017-CX dated 10.03.2017.

6. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submission made at the time of personal hearing. I now proceed to decide the case as per merit and available records.

7. On going through the arguments of the appellants in their grounds of appeal, I find that the previous Order-in-Original number AHM-C.EX-003-ADC-AJS-052-053-16-17 dated 30.01.2017 dealt with two distinct issues viz., (a) vacating the demand of CENVAT credit amounting to ₹ 35,22,118/- taken by the appellants on the taxable activity of re-engraving of printing rollers and (b) confirming the demand of CENVAT credit amounting to ₹ 95,09,115/- taken by the appellants on the returned goods in terms of Rule 16 of the Central Excise Rules, 2002. The appellants challenged the demand of ₹ 95,09,115/-, as mentioned in (b), and filed an appeal before me. The department did not file any appeal against the decision of vacating the demand of CENVAT credit amounting to ₹ 35,22,118/-, as mentioned in (a) above, indicating that the said decision has been accepted by the department. Now when the appeal was filed before me against the Order-in-Original number AHM-C.EX-003-ADC-AJS-052-053-16-17 dated 30.01.2017, the issue was exclusively pertaining to the amount of ₹ 95,09,115/- as mentioned in (b) above. Thus, when I remanded back the case, vide my order number AHM/EXCUS-003-APP-0180-17-18 dated 29.01.2018, the issue was completely based on the demand of amount of ₹ 95,09,115/- which was challenged by the appellants. I have, in the O-I-A *ibid* paragraph 3 and 4, categorically mentioned that the appeal has been filed for an amount of ₹ 95,09,115/- and discussed the appellant's submission ONLY w.r.t. the demand mentioned therein i.e., ₹ 95,09,115/-. The reason I had remanded back the case was that the appellants had submitted before me certain vague documents which needed to be properly checked by the adjudicating authority. For better illumination, I would like to reproduce below my own verdict lifted from paragraph 7 of my previous remand order mentioned above;

*"7. On going through the arguments of the appellants in their grounds of appeal, in paragraph 12, I found that the appellants have claimed that they had received back 411235.340 kgs. of finished goods and out of which, 116611.850 kgs. of returned goods did not amount to manufacture and cleared on payment of duty equal to Cenvat credit taken on receipt of return goods and remaining 233494.750 kgs. were cleared on payment of duty on the transaction value. In support of their claim, they submitted before me, **unsigned copies of**, daily stock register, sample invoices issued after goods*

*D*



were received back, corresponding invoices initially issued and rejection memo/letters. To verify the genuineness of the claim of the appellants, the undersigned requested the Commissioner, Central G. S. T., Gandhinagar, vide letter issued from F. No. V2(39)146/Ahd-III/26-17 dated 12.10.2017, for a verification report pertaining to the returned goods, clearance of the returned goods on payment of duty (as claimed by the appellants), details of the remaining rejected goods and whether the appellants had submitted any intimation to the jurisdictional authority regarding returned goods. As no reply was received from the Commissioner, Gandhinagar, a reminder dated 13.11.2017 was issued again with a request to send the verification report at the earliest. However, in spite of the reminder, no reply was received by the undersigned.

In absence of the verification report, it is not possible for the undersigned to do justice to the case as the appellants too have failed to submit any authentic supporting document. In view of the above, following the doctrine of natural justice, I would like to remand the case back to the adjudicating authority to conduct a proper verification and issue a speaking order afresh taking care of all the lacunae present in the impugned order and the grievance of the appellants."

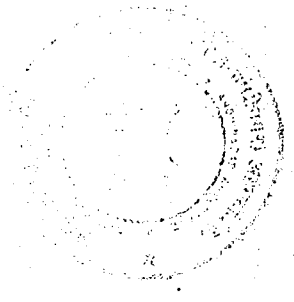
Thus, it is quite clear that the case was remanded only because the appellants submitted before me unsigned copies of daily stock register and invoices pertaining to the returned goods. Thus, the portion of the previous OIO, that became null and void, pertains to the issue of receipt of the returned goods and not that of the availment of CENVAT credit related to job work of rollers. I would like to reproduce below my conclusion as mentioned in paragraph 8 of my previous remand order;

**"8. In view of above, I remand the case back to the adjudicating authority for verification of the returned goods as per my letter dated 12.10.2017. The appellants are also hereby 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. Thus the appeal filed by the appellants is disposed off in above terms."**

I would like to highlight here that my previous remand order nowhere mentioned that the Order-in-Original number AHM-CEX-003-ADC-AJS-052-053-16-17 dated 18.01.2017 (the then impugned order) has been set aside and therefore, the portion of the said O-I-O which was not been challenged, does not get affected by my remand order. Thus, I find that the adjudicating authority has adopted a very juvenile approach while rejecting the refund claim of the appellants. The appellants are eligible for the refund of ₹5,09,294/- and the adjudicating authority should sanction the said refund if all the related documents, submitted by the appellants, are found in order.

**8.** In view of above, I remand the case back to the adjudicating authority with direction to sanction the refund claim after a proper scrutiny

9



of all the related documents and after granting the appellants the benefit of personal hearing as per the principles of natural justice. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing required documents during the proceeding for which the case is remanded back. The appeal filed by the appellants is disposed off in above terms.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*S. DUTTA*  
(S. DUTTA) 22-1118

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.

To,  
M/s. Vishakha Polyfab Pvt. Ltd.,  
Plot Number 549/2, Village Vadsar,  
Kalol.

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Gandhinagar.
- 3) The Dy./Asst. Commissioner, Central Tax, Kalol Division.
- 4) The Asst. Commissioner (System), Central Tax Hq., Gandhinagar.
- 5) Guard File.
- 6) P. A. File.

