



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

GST Building, 7<sup>th</sup> Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

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क फाइल संख्या : File No : V2/108/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-123-18-19

दिनांक Date : 20-11-2018 जारी करने की तारीख Date of Issue: 18/12/2018

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 : 23/Ref/CEX/NK/2018-19 दिनांक : 19-06-2018 से सृजित

Arising out of Order-in-Original: 23/Ref/CEX/NK/2018-19, Date: 19-06-2018 Issued by: Assistant Commissioner, CGST, Div: Gandhinagar, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Molex India Pvt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए राक्षग 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।

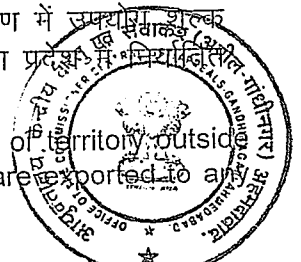
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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 कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(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 आ 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:-

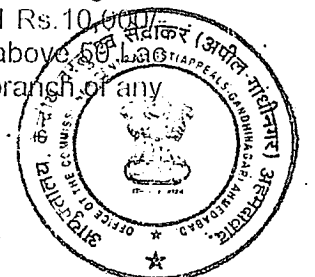
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मैनटल 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 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 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 Appellate 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 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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, penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by M/s Molex (India) Pvt Ltd, C-7 & 8, GIDC Electronic Estate, Section 25, Gandhinagar [hereinafter referred to as "appellant"] against Order-in-Original No.23/Ref/CEX/NK/2018-19 dated 19.06.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of CGSt, Gandhinagar Division, Gandhinagar [hereinafter referred to as "adjudicating authority"].

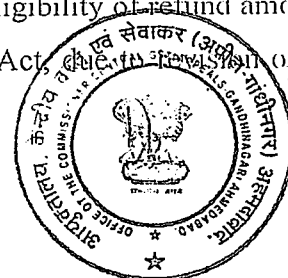
2. Briefly stated, the fact of the case is that the appellant has filed a refund claim of Rs.1,93,866/- under the provisions of Section 142(9) (b) of Central Goods and Service Tax Act, 2017 [CGST Act]. The backgrounds for filing the said refund claim is that the appellant had filed original ER-1 return for the month of June 2017 on 10.07.2017 and carried forward an amount of Rs.1,71,22,659/- of CENVAT credit in Form TRAN-1 as per the provisions of Section 140(1) of CGST Act. They had subsequently filed revised ER-1 return for the said month on 31.07.2017 and revised the carried forward the CENVAT credit amount of Rs.1,73,16,625/- as available in Form TRAN-. Therefore, as per provisions of Section 142(9)(b) of CGST, the appellant has filed the refund claim of Rs.1,93,866/- which was not carried forward in TRAN-1. The Adjudicating authority has rejected the said claim on the grounds that the appellant has not availed the statutory remedy as available under Rule 120A of Central Goods and Service Tax Rules, 2007 (CGST Rule); that as per the said CGST Rule, the appellant can file revised declaration in form GST Trans-1 electronically on the common portal within time period specified and since they failed to do so, the refund in question is not admissible to them.

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

- Additional CENVAT credit found to be admissible pursuant to revision of returns furnished under the existing law is liable be refunded in cash under existing law, as per provisions of Section 142 (9)(b) of CGST Act; that they had revised return within the time limit prescribed under Rule 8 of Central Excise Rules, 2002.
- It is a settled position that provision of law ought to be interpreted harmoniously in a manner that it does not defeat any other provisions of law; that the credit arising on account of revision of ER-1 return had to be claimed only by way of revision, of Form GST Trans-1, the entire purpose of Section 142(9)(b) supra would stand defeated.
- Rules cannot be over ride the Act.

4. Personal hearing in the matter was held on 25.10.2018. Shri V Sripanu, Manager Commercial of the appellant appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The issue to be decided in the instant case is relating to eligibility of refund amounting to Rs.1,93,866/- as per provisions of Section 142(9)(b) of CGST Act, whether the appellant is eligible for refund of ER-1 return.



6. Provisions of Section 142(9)(b) of CGST Act reads as under:

*“where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.”*

7. The above referred Section stipulates that where any return furnished under existing law is revised in the CGST regime, within the time limit specified under the existing law and pursuant to such revision any amount is found to be refundable or CENVAT credit is found to be admissible, the same shall be refunded in cash under the existing law. In the instant case, the adjudicating authority has rejected the claim on the grounds that since the appellant have option to avail statutory remedy as available under Rule 117 read with Rule 120A of CGST Rule, they filed the refund claim under Section 142(9)(b) of the CGST Act; that as per the said CGST Rule, the appellant can file revised declaration in form GST Trans-1 electronically on the common portal within time period specified and since they failed to do so, the refund in question is not admissible to them. For the clarity, I reproduced the provisions of the relevant Rules hereunder.

8. Rule 117 stipulates that :-

*“Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day. — (1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [of eligible duties and taxes, as defined in Explanation 2 to section 140,] to which he is entitled under the provisions of the said section..”*

Rule 120 A of CGST Rule has been inserted on 15.09.2017, vide which revision of TRAN-1 declaration has been permitted for one time only, which reads as under:

*[RULE 120A. [Revision of declaration in FORM GST TRAN-1\*]. — Every registered person who has submitted a declaration electronically in FORM GST TRAN-1\* within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1\* electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]*

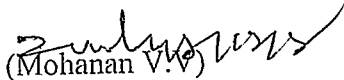
9. The above referred Rules provides the procedure for transition of tax or duty credit carried forward under existing law or on goods held in stock on the appointed day. In the instant case, I find that the appellant has filed their return on 10.07.2017 and accordingly filed their GST TRAN-1 showing their balance credit. Further, they filed a revised return on 31.07.2017, adding the additional CENVAT credit of Rs. 1,93,866/- admissible to them. They filed a refund claim of Rs.1,93,866/- on 20.03.2018, which was not carried forward in TRAN-1 under the provisions of Section 142 (9) (b) of CGST Act. In the instant case, I observe that though the provisions of Rule 120A specifically allows the appellant to file a revised GST TRAN-1 once within ninety days of



the appointed day, which has been further extended till 27<sup>th</sup> December 2017 vide CBEC order dated 15.11.2017, the appellant have not availed or bothered to avail such facility and instead, they filed a refund claim on 20.03.2018 which indicates the intention of getting cash of such credit by way of refund by ignoring the statutory provision. It is a fact on records that the appellant had sufficient time to file the revised GST TRAN-1 declaration as per provisions of CGST Rules supra, however, they deliberately chose not to avail such statutory remedy with a specific intention to encash the CENVAT credit. Further, the appellant has also failed to furnish any cogent reason that under which circumstances they did not avail facility as stipulated under CGST Rule for filing revised declaration under TRAN-1. Looking into the facts and circumstances case, I find that the adjudicating authority has correctly rejected the refund claim and I do not find any merit to interfere the impugned order passed by the adjudicating authority. Therefore, I uphold the same.

10. In view of above, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

Attested

  
(Mohanan V.V.)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.

By RPAD.

To,  
M/s Molex (India) Pvt Ltd,  
C-7 & 8, GIDC Electronic Estate,  
Section 25, Gandhinagar

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Gandhinagar.
3. The Assistant Commissioner, System, Central Tax, Gandhinagar
4. The Assistant Commissioner, CGST, Gandhinagar Division
5. Guard File.
6. P.A.

