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

क फाइल संख्या : File No : **V2/141&142/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-139-140-18-19**

दिनांक Date : **18-12-2018** जारी करने की तारीख Date of Issue:

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 : **09/D/GNR/NK/2018-19**
 दिनांक : **11-09-2018** से सृजित

Arising out of Order-in-Original: **09&10/D/GNR/NK/2018-19**, Date: **11-09-2018** 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. HPCL

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

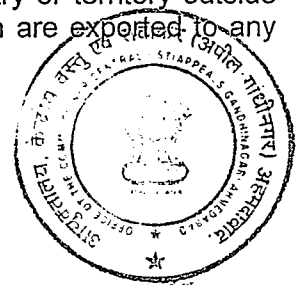
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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- णबी/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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

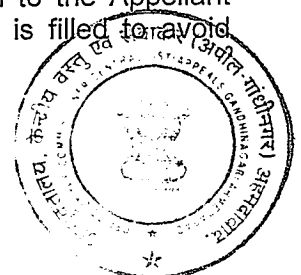
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(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 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 (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 अर्जी 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:

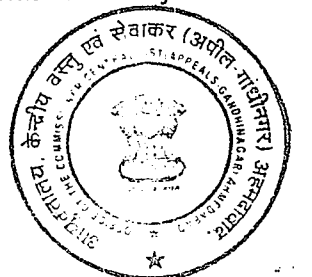
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This order arises out of two appeals filed by M/s. Hindustan Petroleum Corporation Limited, Survey No. 124/1, N.H. 08, Near S.P.Ring Road, Nana Chiloda, District Gandhinagar, Gujarat (in short 'appellant') against following Order-in-Original Nos. (in short 'impugned orders') passed by the Assistant Commissioner, Central GST, Gandhinagar Division (in short 'adjudicating authority').

Sr. No.	O.I.O.No. & date	Period involved.	Total duty confirmed(Rs.).		Appeal No.
			Outward transportation	Operation & maintenance	
1	09/D/GNR/NK/2018-19 dtd.11.09.2018	July-2016 to March-2017	11,36,353/-	3,66,316/-	142/GNR/2018-19
2	10/D/GNR/NK/2018-19 dtd.12.09.2018	April-2017 to June-2017	4,16,502/-	2,19,753/-	141/GNR/2018-19

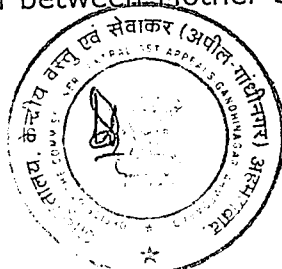
2. Briefly stated that two periodical show cause notices dated 21.06.2017 and 27.09.2017 were issued for the period July-2016 to March-2017 and April-2017 to June-2017 respectively to the appellant alleging wrong availment of Cenvat credit of :

- [a] Rs.15,52,855 /- (Rs.11,36,353/- + Rs.4,16,502/-) on **Outward Transportation** of compressed natural gas [CNG] filled into "high pressure gas cylinders" which were mounted on LCV and sent from mother station to daughter stations; and
- [b] Rs.5,86,069/- (Rs.3,66,316/- + Rs.2,19,753/-) in respect of service utilized for **Operation & Maintenance** of CNG Hydraulic Compressor sets, installed at various CNG stations/daughter stations

and its recovery alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944; imposition of penalty under Rule 15(1)ibid. This SCNs were adjudicated by the adjudicating authority vide impugned orders wherein said demand was confirmed alongwith interest and imposition of penalty.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, interalia, stated that:

- inclusive part of the definition of input service specifically includes the outward transportation service and operation & maintenance services upto the place of removal.
- that when CNG is sold from Daughter Station, the place of removal is Daughter Station.
- that there is no dispute that outward transportation service and operation & maintenance services have respectively been used upto the place of removal, their treatment as an input service under Rule 2(l) of the Cenvat Credit Rules cannot be disputed.
- Board's circular no.875/13/2008-CX dtd.16.10.2008 relied upon by the adjudicating authority is inapplicable in the present case since compression of CNG takes place both at Mother and Daughter Stations hence it is also to be treated as place of removal.
- The adjudicating authority has not considered sale invoice for selling CNG from Mother Station to Daughter Station and price break-up for retail selling price of CNG; that excise duty had been paid including the element of transportation between Mother Station and Daughter Station.



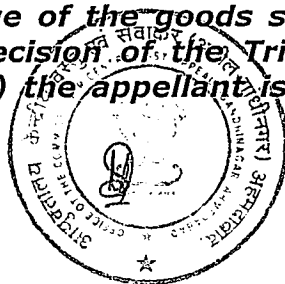
- Quantification for the purpose of duty payment is not the issue covered in the adjudication relying upon the Board's Circular No.875/13/2008-CX dtd.16.10.2008.
- On a similar issue for the earlier period the Hon'ble CESTAT vide Order No. A/13644/2017 dtd.15.11.2017 has upheld the availment of Cenvat credit on the service tax paid on transportation of CNG between Mother Station and Daughter Station and service tax paid on the maintenance & repair service of compressors at Daughter Station.
- The impugned order is passed without understanding the manner in which the manufacturing activity takes place while handling the CNG.
- The case laws of Mahanagar Gas and Adani Gas relied upon by the adjudicating authority relates to availment of cenvat credit on capital goods and not input services.
- They rely on case laws viz. Ratnamani Metals & Tubes Ltd. Vs. CCE-2017(7) TMI-64-CESTAT and CCE, Raipur Vs.Lafarge India Pvt. Ltd.-2017(51) STR-48 (Tri. Del.) for transportation of CNG from Mother Station to Daughter station and Parry Engg. & Electronics Pvt. Ltd. Vs. CCE&ST, Ahmedabad-2015(40) STR-243 (Tri. LB) for maintenance and repair of the compressors at Daughter Stations.
- as service tax credit has been utilized correctly there is no case for interest.
- penalty is not applicable since they were under bonafide belief about eligibility of the cenvat credit considering the facts.

4. Personal hearing in the matter was held on 12.12.2018. Shri Prakash Ramandasani, Sr. Manager, and Shri Viraj K. Chauhan, Accounts Officer, appeared on behalf of the appellant and reiterated the grounds of appeal and submitted that the Tribunal has decided the issue in their favour(Order No.A/13644/2017 dtd.15.11.2017).

5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. The limited issues to be decided is whether the CENVAT Credit can be availed on [a]**Outward Transportation** of CNG from Mother Station to Daughter Station; and [b]**Operation & Maintenance** of CNG Hydraulic Compressor sets installed at various CNG stations/daughter stations.

6. Prima facie, I find that the said issues have already been settled by this appellate forum in the appellant's own case vide OIA No. AHM-EXCUS-003-APP-114-16-17 dated 21.09.2016. I also find that in an appeal filed by the appellant against the said OIA dtd.21.06.2019, the Hon'ble CESTAT, Ahmedabad, vide Order No.A/13644/2017 dtd.15.11.2017 has set-aside the said OIA and allowed the appeal holding that the appellant has correctly availed cenvat credit on the service in question vide para 7 and 8 which is reproduced below for the sake of ease:

"7. In this case, I find that Cenvat Credit sought to be denied on 'Outward Transportation' Service' from mother station to daughter station on the premise that the same is beyond the place of removal but the goods have been sold by the appellant from the daughter station and transportation cost up to daughter station has been included in the excisable value of the goods sold by the appellant. Therefore, in terms of the decision of the Tribunal in the case of Lafarge India Pvt. Ltd (supra) the appellant is entitled to avail the



credit on 'Outward Transportation Service' upto the daughter station as the place of removal.

8. With regard to the Cenvat Credit on 'Repair and Maintenance' of compressors at daughter station, I find that without maintaining a particular pressure of gas at daughter station, the gas cannot be sold. When the gas cannot sold, the appellant cannot run their manufacturing activity, therefore, the appellant is entitled to avail Cenvat Credit on 'Repair and Maintenance Service' of compressors at daughter station."

Accordingly, honouring the decision of the said Hon'ble Tribunal and following the judicial discipline, I set-aside the impugned orders and allow the appeals filed by the appellant with consequential relief, if any, as per the law.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stands disposed of in above terms.

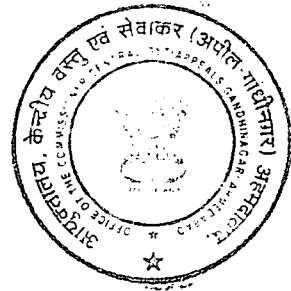
उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

B.A. Patel
01/01/19
(B.A. Patel)
Superintendent(Appeals)
CGST, Ahmedabad.



BY SPEED POST TO:

M/s. Hindustan Petroleum Corporation Limited,
Survey No. 124/1, N.H. 08, Near S.P.Ring Road,
Nana Chiloda, District Gandhinagar, Gujarat.

Copy to:-

1. The Chief Commissioner, Central GST, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, Central GST, Gandhinagar.
3. The Deputy/Assistant Commissioner, Central GST, Gandhinagar Division.
4. The Asstt. Commissioner(System), Central GST HQ, Gandhinagar.
(for uploading OIA on website)
5. Guard File.
6. P.A.