

केन्द्रीय कर (आयुक्त) (अपील)

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

वस्तु एवं सेवा कर भवन
GSF Building, 7th Floor,
Near Polytechnic
Ambavadi, Ahmedabad-380015

सतलजीमंजिल पोलिटैकनिक के पास
आम्बावाडी, अहमदाबाद-380015

079-26305065

टेलिफैक्स : 079-26305136

क फाइल संख्या : File No : **V2/23 to 26 & 28 to 40/GNR/2018-19 & V2/4 to 6/RA/GNR/18-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-16 to 35-18-19**

दिनांक Date : **28.06.18** 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 : **44/Ref/08-09** दिनांक : **15-12-2008** से सृजित

Arising out of Order-in-Original: **44/Ref/08-09**, Date: **15-12-2008** Issued by: Assistant Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. DeepKiran Foods 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।

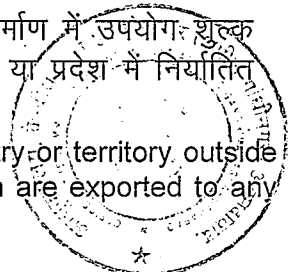
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

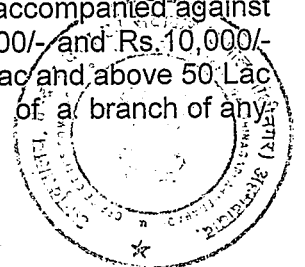
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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,

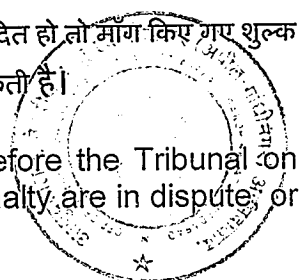
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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."



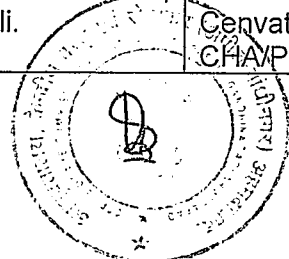
ORDER-IN-APPEAL

This order arises out of following 17 appeals filed by M/s. Deepkiran Foods Pvt. Ltd., 228/2, Dantali Industrial Estate, Village-Dantali, Taluka-Kalol, Distt. Gandhinagar, a 100% EOU (in short 'appellant') against Order-in-Original Nos.(in short 'impugned orders') passed by the then Deputy/Asstt. Commissioner, Central Excise, Division Kalol, Ahmedabad-III (in short 'adjudicating authority'). Since the issue involved in all these appeals is common, I take up for disposal by a common order.

S.No.	O.I.O.No./date.	Period involved	Disputed amount.(Rs.)	New Appeal No. (Old Appeal No.)
1	44/Ref/2008-09/ dtd.15.12.2008	July-06 to Sept-06	4,23,734/-	V2/23/GNR/18-19 (12/AHD-III/2009)
2	45/Ref/2008-09/ dtd.15.12.2008	Oct-06 to Dec-06	17,28,107/-	V2/25/GNR/18-19 (13/AHD-III/2009)
3	46/Ref/2008-09/ dtd.15.12.2008	Apr-06 to June-06	2,93,725/-	V2/30/GNR/18-19 (14/AHD-III/2009)
4	47/Ref/2008-09/ dtd.15.12.2008	Jan-06 to Mar-06	3,340/-	V2/29/GNR/18-19 (15/AHD-III/2009)
5	49/R/2008 / Dtd.22.12.2008	March-2007	22,43,472/-	V2/26/GNR/18-19 (16/AHD-III/2009)
6	51/R/2008/ Dtd.22.12.2008	Feb-2007	1,28,434/-	V2/28/GNR/18-19 (17/AHD-III/2009)
7	52/R/2008/ Dtd.22.12.2008	Jan-2007	12,58,146/-	V2/24/GNR/18-19 (18/AHD-III/2008)
8	4/Refund/2009-10/ dtd.22.04.2009	June-2008	5,90,447/-	V2/36/GNR/18-19 (167/AHD-III/2009)
9	5/Refund/2009-10/ dtd.22.04.2009	July-2008	2,08,796/-	V2/35/GNR/18-19 (168/AHD-III/2009)
10	6/Refund/2009-10/ dtd.22.04.2009	Aug-2008	1,41,937/-	V2/34/GNR/18-19 (169/AHD-III/2009)
11	9/Refund/2009-10/ dtd.20.05.2009	Nov-2008	67,809/-	V2/37/GNR/18-19 (194/AHD-III/2009)
12	10/Refund/2009-10/ dtd.20.05.2009	Oct-2008	1,09,163/-	V2/35/GNR/18-19 (195/AHD-III/2009)
13	15/R/2009-10/ dtd.09.07.2009	Jan-2009	4,69,202/-	V2/32/GNR/18-19 (264/AHD-III/2009)
14	14/R/2009-10/ dtd.09.07.2009	Sept-2008	20,84,410/-	V2/33/GNR/18-19 (269/AHD-III/2009)
15	19/Ref/2009-10/ dtd.02.09.2009	March-2009	2,04,110/-	V2/39/GNR/18-19 (325/AHD-III/2009)
16	20/Ref/2009-10/ dtd.02.09.2009	Feb-2009	92,340/-	V2/40/GNR/18-19 (326/AHD-III/2009)
17	07/Ref/2010-11/ dtd.25.05.2010	Dec-2009	1,65,022/-	V2/31/GNR/18-19 (75/AHD-III/2010)

Another following three appeals have also been filed by the then Assistant Commissioner, Central Excise, Division Kalol, Ahmedabad-III [in short 'department'] against the following Order-In-Original Nos. in terms of Review Orders passed by the then Commissioner, Central Excise, Ahmedabad-III against the appellant.

Sr. No	Order-In-Original No. & Date	Review Order No. & Date.	Name of respondent	Grounds of appeal
1	22/Ref/2009-10 dtd 02.12.2009	IV/18-253/R/ 2009- RA dtd.10.03.2010	M/s. Deepkiran Foods Pvt. Ltd., Dantali.	Refund sanctioned to the respondent for Cenvat credit availed on CFA/Port/Shipping

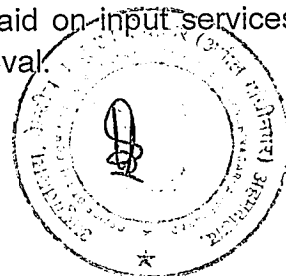


				services/GTA (Outward transportation) etc. is erroneous in terms of definition of 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004 .
2	23/Ref/2009-10 dtd.02.12.2009	IV/18-254/R/ 2009-RA dtd.11.03.2010	-do-	-do-
3	24/Ref/2009-10 dtd.02.12.2009	IV/18-255/R/ 2009-RA dtd.11.03.2010	-do-	-do-

2. Briefly stated that the appellant filed refund claims under Rule 5 of the Cenvat Credit Rules, 2004 for accumulated unutilized Cenvat credit of service tax paid on CHA/F&F/C&F/Outward Freight/GTA Outward Transportation/Air Ticket Travel/Vehicle Labour/ AC Installation/Insurance for staff bus/ Telephone/ Manpower services etc. availed. The adjudicating authority vide impugned orders rejected the refund claims for these services being not 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004.

3. Aggrieved with the impugned orders, the appellant filed the present appeals wherein, inter alia, stated that:

- The only ground for not sanctioning the refund claim, as per Rule 5 of the Cenvat Credit Rules, 2004, is when the manufacturer or provider of output service avails drawback or claims rebate of duty or service tax. They had neither claimed drawback nor rebate of inputs.
- The adjudicating authority has erred in holding that the input services such as CHA, Air Travel Charges, Outward Freight etc. are beyond the scope of input services specified in Rule 2(l) of the Cenvat Credit Rules, 2004.
- The services availed by them are related to export of their finished goods. All these services are essential for business and hence it is covered under the definition of 'input service' under Rule 2(l)ibid.
- In the budget 2008-09, in clause (l) vide Notifn. No.10/2008-CE(NT) dated 01.03.2008 the words "clearance of final products from the place of removal" substituted with the words "clearance of final products upto the place of removal" This amendment clearly shows the Govt. intention that outward transportation falls within the ambit of "input service".
- The "place of removal" has been defined under Section 4(3)(c) of the Central Excise Act, 1944. For export of goods, the place of actual removal of the goods is airport/seaport. Their responsibility ceases only when the goods are loaded in the vessel. As such, whatever services availed by them, including the transport service, automatically becomes their input services because all these services are actually used for the business activity and rely upon the clarification issued by the Board vide Circular No.97/8/2007-ST dated 23.08.2007.
- Since they being 100% EOU and entire production is exported and their price is FOB destination, the place of actual removal is the airport/sea port and entitled for the credit of service tax paid on input services availed in removing the goods upto the place of removal.

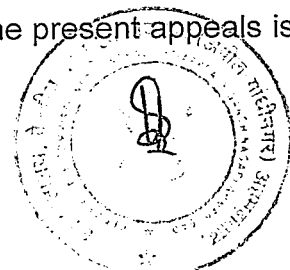


- As their entire product is exported to all over the world, their directors has to travel different countries to discuss the business, to set-up exhibition etc. and to acquire technology, capital goods, raw materials etc. When he travels by air, for booking of air ticket, services of air travel agent is necessary as it is availed in the interest of business.
- The term 'in relation to' and 'directly or indirectly' make input service comprehensive. It is clear that clearing and forwarding is indirectly used in export of goods hence it becomes input service to their business and rely upon OIA No.8 to 15/2009 (Ahd-III)CE/KCG/Commr(A) dtd.13.01.2009 passed in case of M/s. Finecare Bio Systems.
- As per para 3 of the Board's Circular No.341/15/2007-TRU dated 17.04.2008, 16 services have been notified and the service tax paid on these services, which are attributable to exports even if they are not used as input service, shall be refunded to exporter.
- As regards the Cenvat credit availed on the basis of TR-6 challans, the issue involved has already been settled in their favour in their own case vide OIA No.86 to 89/2008(Ahd-III)CE/KCG/Commr(A) dated 04.09.2008.
- The issue involved in the present appeals has already been settle by the Larger Bench of the CESTAT, Bangalore in case of ABB Ltd. vs. CCE&ST, Bangalore reported in 2009(15) STR-23(Tri.LB).

4. Personal hearing in the matter was held on 13.06.2018. Shri M.H. Raval, Consultant, appeared on behalf of the appellant and reiterated the grounds of appeal and filed additional written submission. None represented from the department.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the appellant is entitled to claim refund of Cenvat credit of service tax paid on the services availed (as stated in Para 2 supra) or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the appellant is a 100% EOU and all the goods manufactured is exported under bond and have not claimed any rebate of duty paid on inputs used in the exported goods. There is no domestic sale hence they are unable to use Cenvat credit availed on inputs and input services. As such there remained Cenvat credit unutilized and accumulated and filed refund claim of such accumulated Cenvat credit in terms of Rule 5 of the Cenvat Credit Rules, 2004. This fact is not in dispute. The adjudicating authority rejected the amount of service tax paid and claimed as refund on the services availed viz. CHA, C&F, F&F, GTA Outward Transportation etc. on the ground that said services are not 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004 vide impugned orders. Hence, aggrieved with the impugned orders, the appellant has preferred the present appeals. The period covered in the present appeals is from January-2006 to December-2009.



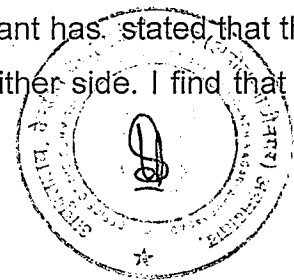
7. In this regard, I find that the issue involved is already settled by this appellate forum in their own case vide OIA No. No.82 to 85/2008(Ahd-III)CE/KCG/Commr(A) dated 04.09.2008. This OIA was challenged by the department before the CESTAT, Ahmedabad. The CESTAT vide Order No. A/1493-1508/WZB/AHD/2011 dated 18.08.2011 rejected the departmental appeals on the basis of Larger Bench decision of the Tribunal in the case of ABB Ltd. Vs. CCE & ST, Bangalore [2009(15) STR-23(Tri.LB)]. In the appeal before the High Court of Karnataka, the Hon'ble High Court of Karnataka upheld the decision of the Larger Bench of the Tribunal. As against this order of the High Court of Karnataka, the department filed Civil Application No.11402/2016 against ABB Ltd. before the Hon'ble Supreme Court of India. Similarly, the department had also filed Civil Application No. 11877-11884/2016 against the appellant which were tagged with Civil Appeal No.11710/2016 filed by CCE, Belgaum Vs. M/s. Vasavadatta Cements Ltd. The Hon'ble Supreme Court of India vide judgement dated 18.01.2018 [reported in 2018(11) GSTL-3 (SC)] on the subject matter has categorically discussed the words and phrase "from the place of removal" as it stood in the definition of 'input service' in Rule 2(l) ibid prior to amendment w.e.f. 01.04.2008 and held as under:

"Cenvat credit - Input services - GTA services - Outward Transportation of manufactured product - Place of removal - Definition of input services as it existed prior to amendment in 2008, included term "from place of removal" - Certainly it has to be upto a certain point - Thus GTA services used for outward transportation of goods from place of removal, i.e., factory gate up to first point of delivery viz. a Depot or a Customer's premises covered under input services - However, post 1-4-2008 amendment, said term having been substituted by term "upto the place of removal", credit beyond such place not admissible - There being no error in concurrent orders of CESTAT Larger Bench and High Court, impugned order sustainable - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 5, 6, 7, 8]"

Department's appeal dismissed/Assessee's appeal allowed

Following the ratio of this judgment of the Hon'ble Supreme Court of India, I hold that the appellant is eligible for availing Cenvat credit of service tax paid on the services mentioned in Para 2 supra and accordingly allow the appeals filed by the appellant with consequential relief for the period covered prior to 01.04.2008.

8. As regards the period covered post 01.04.2008 and upto December-2009, I find that the appellant is a 100% EOU and have exported all its goods manufactured and there is no domestic sale. The appellant has stated that their price is FOB destination. This fact is not in dispute by either side. I find that the



"place of removal" has been defined under Section 4(3)(c) of the Central Excise Act, 1944. For export of goods, the place of actual removal of the goods is airport/seaport/ICD, as the case may be, as held in series of judgments of the higher appellate forum. Accordingly, I hold that the appellant is eligible for availing Cenvat credit of service tax paid on the services mentioned in Para 2 supra and accordingly allow the appeals filed by the appellant with consequential relief for the period 01.04.2008 to December-2009.

9. In view of the above discussion in Para 7 and 8, the appeals filed by the department are rejected.

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

The appeal filed by the appellant stands disposed of in above terms.

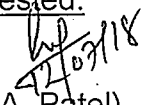
उमाशंकर

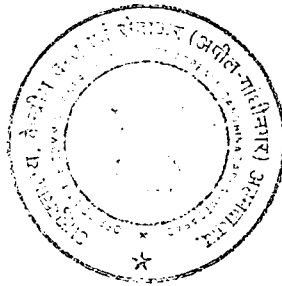
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Dt. 26/06.2018

Attested:


(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.



BY SPEED POST TO:

- (1) M/s. Deepkiran Foods Pvt. Ltd.,
228/2, Dantali Industrial Estate,
Village-Dantali, Taluka-Kalol,
Distt. Gandhinagar.
- (2) The Assistant Commissioner,
CGST, Division Kalol.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Asstt. Commr(System), CGST, Gandhinagar.
(for uploading OIA on website)
- (4) Guard file
- (5) P.A. file.
- (6) Individual file.