
	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
वस्तु एवं सेवा	GST Building, 7 th Floor,		
कर भवन	Near Polytechnic,		
सातवां मजिल, पलिटैकनिक के पास	Ambavadi, Ahmedabad-		
आम्बावाडी, अहमदाबाद-380015	380015		
फोन : 079-26305065	टेलीफैक्स : 079-26305136		

क फाइल संख्या : File No : V2/78/GNR/2018-19

8063 708067

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-162-18-19

दिनांक Date : 28-12-2018 जारी करने की तारीख Date of Issue:

9/1/2019

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 : 30/DC/MEH/DIV/09-10
दिनांक : 11-03-2010 से सृजित

Arising out of Order-in-Original: 30/DC/MEH/DIV/09-10, Date: 11-03-2010 Issued by:
Deputy Commssioner, CGST, Div: Mehsana, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Zircar Ceramics Pvt Ltd

G. file

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथिति 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 मजिल, 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 :

(i) 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.

घ 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 हों।

(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 दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

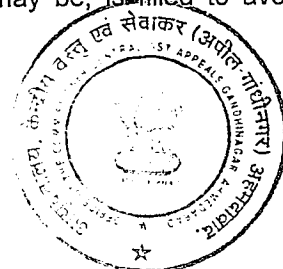
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 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 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:

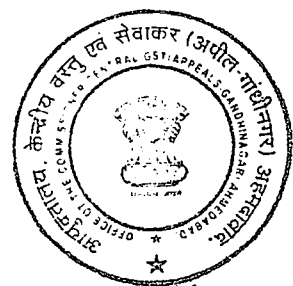
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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 an appeal filed by M/s. Zircar Ceramics Pvt. Ltd., Survey No.306, Kukarwada, Mehsana (in short 'appellant') against Order-in-Original No.30/DC/MEH/DIV/09-10 dtd. 11.03.2010 (in short 'impugned order') passed by the then Deputy Commissioner, Central Excise, Division Mehsana, Ahmedabad-III Commissionerate (in short 'adjudicating authority').

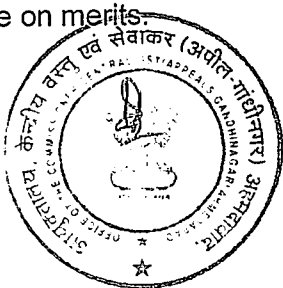
2. Briefly stated that adjudicating authority vide impugned order disallowed service tax credit Rs.1,15,323/- availed relating to export of goods and insurance of goods during the period 2008-09 and ordered to recover it alongwith interest under Rule 14 of the Central Excise Rules, 2002 read with Section 11A(1) and 11AB of the Central Excise Act, 1944 respectively and also imposed penalty of Rs.1,12,714/- under Rule 15ibid.

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

- The adjudicating authority has not considered all pleas, submissions made before him and case laws and has held that they had taken cenvat credit on services relating to export of goods and insurance of goods sold beyond the place of removal and hence, cenvat credit taken on such services are inadmissible.
- The adjudicating authority has misinterpreted the judgment of Ultratech Cement Ltd. reported at 2007(6)STR-(Tri. Ahmd).
- The Hon'ble Tribunal in case of Rolex Rings Pvt. Ltd. has held that in respect of export of goods, the place of removal would be the port of India and any service availed uptill the place of removal is Cenvatable.
- The adjudicating authority has also rejected service tax credit on audit/consultancy charges on services provided by chartered accountant which is directly covered by the definition itself of input service.

4. Personal hearing in the matter was held on 23.07.2018, 23.08.2018, 10.10.2018 and 20.11.2018. None appeared on behalf of the appellant nor any representation received in the matter till date. Hence, I proceed to decide the case ex-parte.

5. I have carefully gone through the appeal memorandum and evidences available on records. I find that the main issue to be decided is whether the appellant is entitled to Cenvat credit of service tax paid on C&F Charges, marine Insurance charges on materials sent from factory to Port/Airport and Audit/Consultancy charges or otherwise during the relevant period. Accordingly, I proceed to decide the case on merits.



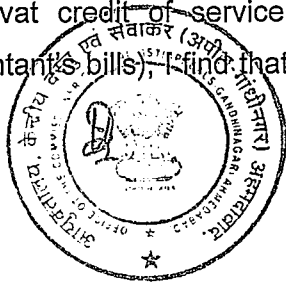
6. Prima facie, I find that during the course of internal audit, it was noticed that the appellant had availed Cenvat credit of service tax paid on C&F Bills, Marine Insurance and Chartered Accountant Bill during the period 2008-09 which is not admissible in terms of definition of 'input service' contained in Rule 2(l) of the Cenvat Credit Rules, 2004.

7. In this regard, I find that the issue involved was already settled by the Hon'ble CESTAT, Chennai Larger Bench in the case of ABB Ltd. Vs. CCE & ST, Bangalore [2009(15) STR-23(Tri.LB)]. However, in the appeal before the High Court of Karnataka by the department against the said judgment of the CESTAT, 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. This civil application was 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 judgment 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]"

However, I find that in the instant case the period involved is 2008-09. The appellant has availed Cenvat credit of service tax paid on C&F Bills and Marine Insurance for export of goods. In this regard, I find that in catena of case laws, it is categorically held by the higher appellate forum that in case of export of goods, the place of removal would be port of export/airport/ICD, as the case may be, and the services availed from the factory gate to the port of export/airport/ICD shall be treated as 'input service' and credit thereof would be available. So, to this extent, I hold that the appellant is eligible to avail service tax credit on said services.

8. As regards the Cenvat credit of service tax paid on Audit/Consultancy Charges (Chartered Accountant's bills), I find that the inclusive portion of definition



of 'input service' as contained in Rule 2(l)ibid at the relevant time itself provides for services used in relation to accounting, auditing, financing etc. In this regard, I find that the Hon'ble CESTAT, Hyderabad in case of Sai Life Sciences Ltd. Vs. CCE&ST, Hyderabad-IV [2017(51)STR-55 (Tri.Hyd.)] has held as under:

“Cenvat credit - Input service - Chartered Accountant Service - Said service an eligible input service for credit availment - Rule 2(l) of Cenvat Credit Rules, 2004. [para 4]”

Accordingly, following the judicial discipline, I hold that that appellant is entitle to avail Cenvat credit of service tax paid on Chartered Accountant Bills.

In view of the above discussion and findings, the appeal filed by the appellant is allowed with consequential relief, if any, as per the law and the impugned order is set-aside.

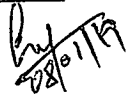
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

3/11/17

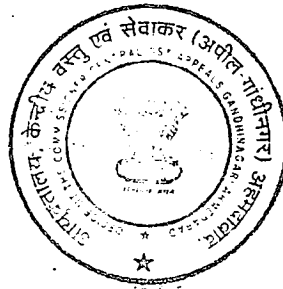
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील)

Attested:



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



BY SPEED POST TO:

M/s. Akash Ceramics Pvt. Ltd.,
402, Campus Corner,
Nr. St. Xavier's College Cross Road,
Navrangpura, Ahmedabad-380009.

Copy to:-

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