


 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
	वस्तु एवं सेवा कर भवन	GST Building, 7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015	
	सानवी मजिल पोलिटिकनिक के पास, आम्बावाडी, अहमदाबाद-380015		
 079-26305065			टेलीफैक्स 079-26305136

1013/1010137

क फाइल संख्या : File No : V2/167,168 & 169/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-192 to 194-18-19

दिनांक Date : 27-03-2019 जारी करने की तारीख Date of Issue:

27/4/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

0.6

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : 108/MEH/FINAL/REF/2018-19 दिनांक : 24-10-2018 से सृजित

Arising out of Order-in-Original: 108,109 & 110/MEH/FINAL/REF/2018-19, Date: 24-10-2018 Issued by: Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Navrang Agro

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।

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, 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 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 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 2<sup>nd</sup> 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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be is filed 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 25) 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 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."

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

One appeal has been filed by M/s. Navarang Agro and two appeals have been filed by M/s. Navarang Engineering Works; both having the same address i.e. Near Unjha Nagarpalika, Gandhi Chowk, Unjha, Gujarat-384170 (hereinafter referred to as the 'appellants'), against the following Orders-in-Original (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, CGST, Division-Mehsana, Mehana-384002 (hereinafter referred to as 'adjudicating authority'). Since the issue involved in all these appeals is common, I take up for disposal by a common order.

Sr. No.	Name of the appellant	GSTIN No.	Appeal No.	Order no. and Date of Form GST RFD 06	Period of dispute	Amount under dispute	
						Central	State
1	M/s. Navarang Agro	24ABYPP886 3F1ZV	V2/GST/167/GNR/ 2018-19	108/MEH/FINAL/ REF/2018-19 dated 24.10.2018	March 2018	30038	30038
2	M/s. Navarang Engineering Works	24AABFN348 1D1ZN	V2/GST/168/GNR/ 2018-19	109/MEH/FINAL/ REF/2018-19 dated 24.10.2018	January 2018	22384	22384
3	M/s. Navarang Engineering Works	24AABFN348 1D1ZN	V2/GST/169/GNR/ 2018-19	110/MEH/FINAL/ REF/2018-19 dated 24.10.2018	February 2018	254747	254747

2. The facts of the case, in brief, are that the appellants had filed refund claims under section 54 of the CGST Act, 2017 for refund of unutilized input credit accumulated due to inverted tax structure. On going through the said refund claims, some discrepancy have been noticed by the adjudicating authority and Show Cause Notices were issued to the appellants mainly on the basis of the following observation-

“Under the sub-section 3 of Section 54 of the CGST Act 2017, a registered person may claim refund of unutilized input credit where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outward supplies (other than nil rated or fully exempt supplies). But ongoing through the refund claims, it has been found that there is purchase of inputs @ 18% which do not come under definition of accumulation due to inverted duty structure.”

3. The adjudicating authority vide the impugned orders rejected the amount of refund claims (as shown in the above table) under sub-section 3 of Section 54 of CGST Act 2017, mainly on the following grounds:

(a) As per sub section 3 of Section 54, refund of unutilized ITC shall be allowed in the case 'where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

(b) In present cases, the tax rate on inputs is less or equal than the tax rate on outputs. Therefore, the inputs that are taxed 18% (12% & 18% in case of the appeal listed at Sl. No. 3 in the above table) do not fulfill the criteria that “rate of tax on inputs being higher than the rate of tax on



output supplies” and no credit can get accumulated against purchase of such inputs. Hence, inputs @18% (12% & 18% in case of the appeal listed at Sl. No. 3 in the above table) do not come under purview of Sub section 3 of Section 54 of the CGST Act 2017 and are liable for rejection.

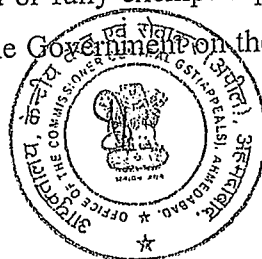
4. Feeling aggrieved, the appellants have filed these appeals against the rejection of the refund claims, on the grounds which are inter alia mentioned that:

- a) The appellants are manufacturer of machinery for Agro goods. They also sells its spare-parts. The Machinery manufactured by them is chargeable to GST @ 5% and Spare-parts are chargeable @ 12% and 18%. The appellants had purchased raw materials at different rates of GST ranging from 5% to 28%.
- b) In inverted duty structure of tax under GST Act, Section 54(3) says that- ‘where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax of outward supplies then refund can be claimed due to inverted duty structure’. As per this Section the appellants had claimed refund.
- c) The matter is now clarified by CBIC under Para 4 of its Circular No. 79/53/2018-GST dated 31.12.2018. The Board has amply clarified with example that when ITC is accumulated on account of inverted tax structure then refund of excess tax should be given considering even those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply.

5. Personal hearing in the matter was held on 05.03.2019 wherein two advocates Shri. K. D. Popat and Shri. P. N. Popat appeared on behalf of the appellants and reiterated the contents of appeal memorandum. Further, He submitted the Circular No. 79/53/2018-GST dated 31.12.2018 in course of the hearing.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, submissions made by the appellants at the time of personal hearing. I find that the primary question for determination is whether the adjudicating authority was correct in rejecting the refund claim or otherwise.

7. In the present cases, I find that the adjudicating authority has rejected the refund claims on the grounds that the tax rate on inputs is less or equal than the tax rate on outputs. Therefore, the inputs that are taxed 18% (12% & 18% in case of the appeal listed at Sl. No. 3 in the above table) do not fulfill the criteria that “rate of tax on inputs being higher than the rate of tax on output supplies”. Hence, inputs @18% (12% & 18% in case of the appeal listed at Sl. No. 3 in the above table) do not come under purview of Sub section 3 of Section 54 of the CGST Act 2017. Further, as per sub section 3 of Section 54, refund of unutilized ITC shall be allowed in the case ‘where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.



8. I find that the issue involve in the present appeals has already been clarified by the CBIC vide Circular No. 79/53/2018-GST dated 31.12.2018. I would like to reproduce the relevant para 4 of the Circular for proper clarity:

**“Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure:**

4. Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the departmental officers are denying the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term „Net ITC“ covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

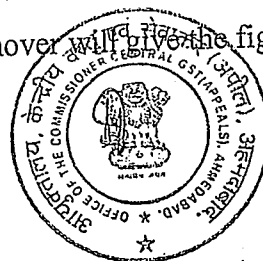
i. Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

ii. The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

iii. Further assume that the claimant supplies the output Y having value of Rs. 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.

iv. If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).

v. Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.



vi. From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.”

9. On going through the CBIC Circular No. 79/53/2018-GST dated 31.12.2018, it is seen that the CBIC has clarified the matter with an illustrative example and it is evident from the above that where there are multiple inputs attracting different rates of tax, the term Net ITC will cover the ITC availed on all inputs in the relevant period, irrespective of their rate of tax. Therefore, the ground which has been followed by the adjudicating authority in rejecting the above appeals is not sustainable in view of the above circular.

10. In view of the foregoing, the impugned orders, rejecting the refund claims on the grounds mentioned in the impugned orders, are set aside, with consequential relief to the appellants.

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

11. The appeals filed by the appellants stand disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Attested

*Vinod Lukose*  
(Vinod Lukose)  
Superintendent (Appeals)  
Central Tax, Ahmedabad



To,

1. M/s. Navarang Agro,  
Near Unjha Nagarpalika, Gandhi Chowk,  
Unjha, Gujarat-384170.
2. M/s. Navarang Engineering Works,  
Near Unjha Nagarpalika, Gandhi Chowk,  
Unjha, Gujarat-384170.

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Commissioner, Central GST, Gandhinagar.
- (3) The Assistant Commissioner, Central GST, Mehsana Division.
- (4) The Assistant Commissioner(RRA), Central GST, Gandhinagar.
- (5) The Asst. Commissioner(System), Central GST, Gandhinagar.
- (6) Guard file.
- (7) P.A. file.

