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

क फाइल संख्या : File No : **V2/182/GNR/2018-19** / 10170 to 10173

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-207-18-19**
दिनांक Date : **29-03-2019** जारी करने की तारीख Date of Issue: **01/05/2019**

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 : **AHM-CEX-003-ADC-JN-009-012-18-19** दिनांक : **31-12-2018** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-JN-009-012-18-19**, Date: **31-12-2018** Issued by: Additional Commissioner, CGST, Div: RRA, HQ, 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।

1. 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 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- 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 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 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 filed to avoid scription 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 हैं।

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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 हैं

- (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 विचारधीन स्थगन अर्ज़ी 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."

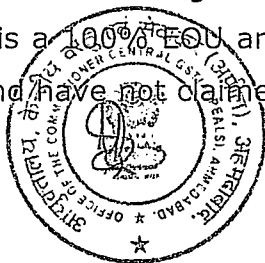
II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



- (i) The adjudicating authority has passed the order without authority and without following the judicial discipline.
- (ii) The adjudicating authority has confirmed the demand of Rs. 20,03,116/- in respect of SCN No. V.ST/15-62/Dem/OA/2009 dated 22.06.2009 on the ground that the appellant had availed suo moto credit; that the issue of taking suo moto credit which was part of OIO No. 14/R/2009 dated 09.07.2009 has been stand decided in favour of the appellant vide OIA No. AHM-EXCUS-003-App-16 to 35-18-19 dated 28.06.2019 by the Appellate Authority and the same order is not challenged by the department till date.
- (iii) In case of scn no. V.7/15-20/Dem/OA/2010 dated 20.04.2011, it is stated that said scn was issued to protect the revenue in the eventuality of the appeal filed by the department against OIA No. 86 to 89/2008 dated 18.09.2008 decided in favour of the department; that the appeal of the department was rejected by Hon'ble Tribunal vide Order No. A/1493-1508/WZB/2011 dated 18.08.2011. The adjudicating authority has not given any reason as to why the cenvat credit in respect of manpower supply service is not admissible. The admissibility of Cenvat credit on the manpower supply services is a settled issue and the impugned order disallowing he credit is travesty of justice.
- (iv) In respect of scn V7/15-63/Dem/OA/14-15/ dated 04.07.2014, it is stated that the refund of Cenvat credit rule 5 of Cenvat credi Rules 2004 was filed for the period July 2013 to December 2013 and same was rejected vide OIO No. 24/CE/Ref/2014—15 and 25/CE/Ref/2014-15 both dated 09.10.2014. The appeal filed by the appellant was allowed by the Appellate Authority vide OIA No. AHM-EXCuS-003-APP-164 to 165 16.03.2015 and subsequently the refund was sanctioned vide OIO No. 12/CE/REF/DC/2015-16 dated 12.06.2015. Thus the issue has attained finality.

4. A Personal hearing in the matter was held on 28.03.2019. 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 appellant is a 100% EOU and all the goods manufactured were exported under bond and have not claimed any rebate of duty paid on inputs



used in the exported goods. There was no domestic sale hence they were unable to use the Cenvat credit availed on inputs and input services.

The main issue to be decided in the matter is as under:

- (i). Whether the suo moto cenvat credit of Rs.20,03,116/- for the services related to Custom House Agent, Port Services, outward GTA services in respect of SCN dated 22.06.2009 eligible for cenvat under CCR,2004 credit or not;
- (ii) Whether the services related to Air Ticket services and Manpower Recruitment Services in respect of SCN dated 20.04.2011 are eligible for cenvat credit under CCR,2004 or not; and
- (iii) Whether the services related to Business Support Service, BAS & BSS, Repair & maintenance, Telecommunication , Internate Tele communication in respect of SCN dated 04.07.2014 services are eligible for cenvat under CCR,2004 credit or not.

6. I take the matter one by one.

Issue-I

Demand of Rs. 20,03,116/- in respect of scn No. V.ST/15-62/Dem/OA/2009 dated 22.06.2009.

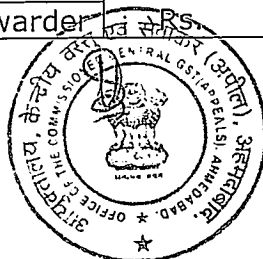
The appellant has argued that the issue of taking suo moto credit which was a part of OIO No. 14/R/2009 dated 09.07.2009 was decided by the appellate authority in favour of the appellant, vide OIA No. AHM-EXCUS-003-APP-16 to 35-18-19 dated 28.06.2019 and the same order is not challenged by the department till date. I find that in the said OIO, the Assistant Commissioner, Central Excise, Kalol Division has allowed refund of certain input service credit and disallowed certain input service credit. The details are as under:

Table-A

Sl. No.	Input services	Total admissible amount
1.	Manpower recruitment	Rs. 3,52,379/-
2.	Security	
3.	Labour	
4.	House Keeping	

Table-B

Sl. No.	Input services	Total inadmissible amount	Reason for a inadmissibility
1.	CHA Service for export of manufacturing goods		The Assistant Commissioner, Central Excise, Kalol Division
2.	Freight Forwarder		



has disallowed the credit taken as suo-moto on the grounds that there is no provision under CCR to take credit suo-moto. I find that while rejecting the refund claim of input service credit in question vide OIO dated 27.02.2009, the jurisdictional Assistant Commissioner has not discussed the issue of suo-moto credit, though it was discussed in the facts of the case. The eligibility of Cenvat credit relatable to the refund claim filed by the appellant stands not considered by the adjudicating authority in the adjudication of refund rejection order dated 27.02.2009 and the same stands over ruled by the appellate authority. Inasmuch as the eligibility of credit has already been held in favour of the assessee and the refund claim filed on the ground of eligibility of credit stands allowed, the action of the assessee taking *suo motu* credit of the said input service cannot be with held at this stage.

In view of above discussion, I do not find any merit in the impugned order in this regard.

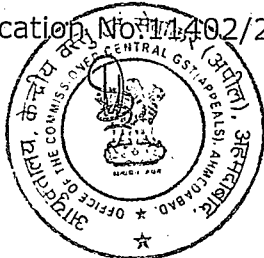
Issue-II

Services related to Air Ticket services and Manpower Recruitment Services in respect of SCN dated 20.04.2011 are eligible for cenvat credit under CCR,2004 or not.

I find that the adjudicating authority has denied the Cenvat credit in respect of Air Ticket service and Manpower Recruitment services on the grounds that the said services are not at all connected with the production of the final goods or the clearance of the same from the place of removal and hence these services cannot be classified as input services.

I find that the issue involved in the instant matter has already been decided by the appellate authority vide OIA 82 to 85/2008 and 86 to 89/2008 dated 04.09.2008 in appellant's case. The appellate authority has held that the cenvat credit availed on the input service in question falls under the definition of input service as per series of decision by Hon'ble CESTAT/Court. Further, the Hon'ble CESTAT, has also uphold the decision of the appellate authority vide it's order No. A/1493-1508/WZB/AHD/2011 dated 18.08.201. in the case of the appellant, has uphold the decision of the appellate authority (OIA No.82 to 85/2008 and 86 to 89/2008 dated 04.09.2008

Further, 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.1402/2016 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.

In view of above discussion, the above issue is no more res-integra. Therefore, I do not find any merit in the impugned order denying the Cenvat credit on the input services in dispute and accordingly, I allow the same.

Issue-III

Services related to Business Support Service, BAS & BSS, Repair & maintenance, Telecommunication, Internate Tele communication in respect of SCN dated 04.07.2014 services are eligible for cenvat under CCR,2004 credit or not.

I find that the adjudicating authority has denied the Cenvat credit in respect of Air Ticket service and Manpower Recruitment services on the grounds that the said services are not at all connected with the production of the final goods or the clearance of the same from the place of removal and hence these services cannot be classified as input services.

I find that the issue involved in the instant matter has also been decided by the appellate authority vide OIA No. AHM-EXCUS-003-APP-164 to 165 dated 16.03.2015 in appellant's case. The appellate authority has held that the cenvat credit availed on the input service in question falls under the definition of input service as per series of decision by Hon'ble CESTAT/Court.

The Assistant Commissioner has sanctioned refund of Rs. 12,78,340/- to the appellant, in view of above said order of appellate authority vide OIO No. 12/CE/REF/DC/2015-16-Refund dated **12.06.2015**.

From the above, it is clear that the scn no. V7/15-63/Dem/OA/14-15/ dated **04.07.2014** issued to the appellant and confirmed the demand of Rs. 12,78,340/- for the in admissible services as stated above is not correct. Since the matter is settled, the demand of Rs. Rs. 12,78,340/- with interest is not sustainable. Accordingly, I set aside the demand.



7. In view of the above discussion, I set aside the impugned order and allow the appeal filed by the appellant

8. 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

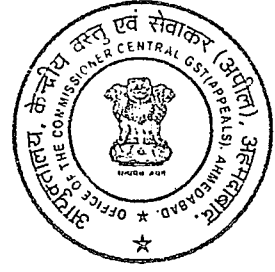
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Dt. .03.2019

Attested:

Mohan V.V.
(Mohan V.V)
Supdt.(Appeals)
Central GST, Ahmedabad.



BY SPEED POST TO:

M/s. Deepkiran Foods Pvt. Ltd.,
228/2, Dantali Industrial Estate,
Village-Dantali, Taluka-Kalol,
Distt. Gandhinagar.

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.