

क फाइल संख्या :File No : V2/177 & 178/GNR/2018-19

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अपील आदेश संख्या :Order-In-Appeal No.: <u>AHM-EXCUS-003-APP-0208-209-18-19</u>

दिनाँक Date :<u>29-03-2019</u> जारी करने की तारीख Date of Issue: ७५ -०५ - २०१९

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 :35/RF/HMT/18-19 दिनॉंक : 11-01-2019 से सृजित

Arising out of Order-in-Original: **35/RF/HMT/18-19**, Date: **11-01-2019** Issued by: Assistant Commissioner,CGST, Div:Himmatnagar, Gandhinagar Commissionerate, Ahmedabad.

ध <u>अपीलकर्ता</u> एवं प्रतिवादी का नाम एवं पता

Name & Address of the <u>Appellant</u> & Respondent

M/s. National Fertilizers Ltd.

कोई व्यवित्त इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनर्राक्षण 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 पूर्वाक्त 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 मामलें 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 डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारों 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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— ण्०बी/35—इ के अंतर्गतः—

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 <u>(सिस्टेट)</u> 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 प्रपन्न इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, व्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, व्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, व्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उत्पत्त हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, व्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकित 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. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश 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 हैं।

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 not withstanding 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 रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 प्रधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 " मॉंगकिए 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 होगे।

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.

 \rightarrow 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 प्रधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्डविवादित 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.



به به هترجوید مدر

F.NO.V2/GST/177&178/GNR/18-19

ORDER-IN-APPEAL

This order arises on account of 2 appeals filed by M/s. National Fertilizers Ltd., Zonal Office, A/A-2, Office Complex, Gautam Nagar, Bhopal-462023(MP) (in short '*appellant*') against the following Refund Orders (in short '*impugned orders*') passed by the Assistant Commissioner, CGST Division, Himmatnagar (in short '*adjudicating authority*'). Since the issue involved in both the appeals are same, taken up for disposal by a common order:

Sr.	Refund Order	Refund	Period	Amount of refund	Appeal No.
No.	No.	Order		rejected	
		date.		(₹)	· ·
1	34/RF/HMT/18-19	11.01.2019	Aug-2017	6,15,59,219/-	V2/GST/177/ GNR/18-19
2	35/RF/HMT/18-19	11.01.2019	Sept-2017	3,72,95,593/-	V2/GST/178/ GNR/18-19.

2. Brief facts of the case are that the appellant is holding GST Registration number 24AAACN0189N1ZA. They had filed above refund claims, before the adjudicating authority, under Section 54 of CGST Act, 2017 for accumulated ITC on account of rate of tax on inputs being higher than the rate of the output supplies. The adjudicating authority, vide the above mentioned impugned orders, rejected the refund claims on the ground that they had availed ITC on inputs @5% and the same goods were cleared by paying GST@5% and therefore there should not be any accumulation of ITC and they are receiving govt. subsidy wherein rates of fertilizer products have been fixed; that if the subsidy had not been provided by the govt., the ITC would have not been accumulated.

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

- The adjudicating authority has completely omitted the amount of Rs.6,75,960/-(Rs.3,37,980/- CGST + Rs.3,37,980/- SGST) credit against refund claim of Rs.6,22,35,179/-.
- They are entitle to receive refund of the accumulated ITC on account of inverted duty structure as per Section 54(3)(ii) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017.
- > The fact that fertilizers are eligible for subsidy will not take away the benefit of refund in case of inverted duty structure.
- CBIC Circular dated 31.12.2018 clarifies that the ITC pertaining to such inputs procured at equal or lower rate of GST would be included for calculating the maximum refund amount in case of inverted rated structure.

4. A personal hearing in the matter-was held on 28.03.2019. Ms. Priyanka Kalwani and Yashashvi Jain, both advocate; appeared before me on behalf of the



appellant and reiterated the contents of the grounds of appeal and submitted compilation of relevant rules and circular.

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5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that only issue to be decided is whether the appellant is eligible for refund of ITC on all inputs or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the appellants had filed the refund claims under Section 54 of CGST Act, 2017 for accumulated ITC on account of rate of tax on inputs being higher than the rate of the output supplies. Now, the main issue remains to me is whether while calculating the inverted rate refund claim under section 54 of CGST Act, net ITC will be taken after deduction of inverted rated purchase or otherwise. I find that sub-rule (5) of Rule 89 of the CGST Rules, 2017 has clarified the matter pertaining to refund on account of inverted duty structure vide following formula:

"Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation : - For the purposes of this sub-rule, the expressions -

- (a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- (b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).]"

On plain reading of the provision and rules, Net ITC has been specifically defined in the rule, which states that input tax credit availed on input during the relevant period other than input tax credit pertain to zero rated supply mentioned in Rule 89 (4A) and (4B). So I find that the contention of the adjudicating authority while rejecting the said refund claims that if the subsidy had not been provided by the Govt., the ITC would not have been accumulated is not sustainable as there is no such bar exists in the Act or the rules made thereunder supra. I find that net ITC has to be as per the definition mentioned in the above rule i.e. input tax credit availed on inputs during the relevant period. Thus, I find that the adjudicating authority, on his own, has travelled beyond the clarification as prescribed in the statute.

7. I also find that the CBIC vide Circular No.79/53/2018-GST dated 31.12.2018 has issued clarification in the subject matter vide Para 4 as under:

"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 rates of tax, in the formula provided in Rule 89(5) of the CGST Rules, the terms "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax."

Therefore, I find that the adjudicating authority has wrongly considered ITC of the same rate i.e. 5% availed by the appellant and agree to the plea placed before me.

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8. As regards the plea of the appellant that the adjudicating authority has completely omitted the amount of Rs.6,75,960/-(Rs.3,37,980/- CGST + Rs.3,37,980/- SGST) credit against refund claim of Rs.6,22,35,179/-, I find that the appellant vide Para A.2 of the Grounds of Appeal have clearly stated that they has inadvertently included the ITC pertaining to input services while filing the refund claim. In fact, the ITC pertaining to input services is required to be excluded vide amendments made in the said rules 89(5) vide Notifn. No.21/2018-Central Tax dated 18.04.2018 and Notifn. No.26/2018-Central Tax dated 13.06.2018. So, it appears that the adjudicating authority has not omitted the said ITC but excluded from the net ITC for arriving at the maximum refund amount as per the formula given in the said rule.

In view of above, I modify the impugned orders in above terms and 9. partially allow the appeals filed by the appellant with consequential relief as per law.

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

> 32112:10 (उमा शंकर) Principal Commissioner(Appeals)



Attested:

latel)

(B.Å Superintendent(Appeals), CGST, Ahmedabad.

BY SPEED POST TO:

M/s. National Fertilizers Ltd., Zonal Office, A/A-2, Office Complex, Gautam Nagar, Bhopal-462023(MP).

Copy to:-

- 1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
- 2. The Commissioner, Central Tax, Ahmedabad North.
- з. The Asstt. Commissioner, Central Tax, Division-Himmatnagar.
- 4. The Asstt. Commissioner, Central Tax (System), HQ, Ahmedabad North.
- Guard file. 5.
- P.A file. 6.