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

क फाइल संख्या : File No : **V2/101/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-50-18-19**

दिनांक Date : **31.07.18** जारी करने की तारीख Date of Issue: **20/8/2018**

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-CGX-003-SUPDT-01-2018 दिनांक : **24-04-2018** से सृजित

Arising out of Order-in-Original: **AHM-CGX-003-SUPDT-01-2018**, Date: **24-04-2018**
Issued by: ,CGST, Div., Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Gujrat Foils Limited

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।

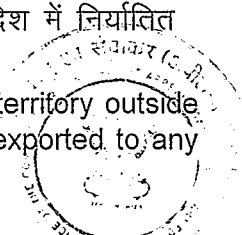
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

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:-

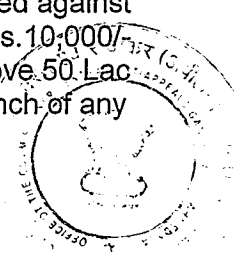
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 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 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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. 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 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."

ORDER - IN - APPEAL

M/s. Gujarat Foils Limited, Plot No.3436 to 3446, Phase-IV, GIDC, Chhatral, Taluka - Kalol, Dist.- Gandhinagar (henceforth, "appellant") has filed this appeal against the Order-in-original No. AHM-CEX-003-SUPDT-01-2018 dated 24.04.2018 (henceforth, "impugned order") issued by the Superintendent, Central GST, AR-III Kalol Division (henceforth, "adjudicating authority").

2. To state briefly, the facts of the case are that based on an audit observation that the appellant avails CENVAT credit of service tax paid on Courier service utilized for outward transportation of finished goods during December 2016 to June 2017, a show cause notice dated 14.12.2017 was issued for recovery of CENVAT credit amounting to Rs.3,44,343/- taken wrongly by the appellant. Vide the impugned order, the adjudicating authority has confirmed the demand along with interest and imposed equal penalty under rule 15(2) of the CENVAT Credit Rules, 2004 read with section 11AC(1)(a) of the Central Excise Act, 1994.

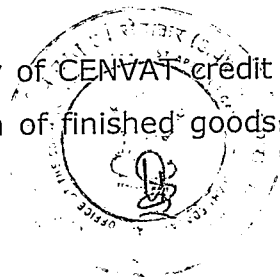
3. The main grounds of appeal, in brief, are as follows-

- The Courier service is different from GTA service and cannot be equated with outward transportation. Appellant analyses the definition of input service and relying on various decisions submits that CENVAT credit has been taken rightly.
- Appellant contends that when goods have been supplied on FOR basis, CENVAT credit of Courier service used for delivery of goods is allowable. Appellant has quoted Supreme Court's decision in the case of Escorts JCB Ltd [2000(118) ELT 650] and High Court's decision in the case of Ambuja Cements [2009(119) ELT 431 (P&H HC DB)]

4. In the personal hearing held on 26.07.2018, Shri Vipul Khandhar, Chartered Accountant reiterated the grounds of appeal and submitted earlier Order-in-Appeal dated 27.03.2018/15.05.20198 issued by the Commissioner (Appeals) in the appellant's case.

5. I note that present appeals have not been filed within the period of two months as prescribed under Section 35 of the Central Excise Act, 1944. However, considering that the delay is not more than a month and considering the request for condonation filed by the appellant, I allow the delay in filing of appeal in terms of proviso to section 35 of CEA .

6. The issue involved in the present appeal is admissibility of CENVAT credit of service tax paid on Courier service for outward transportation of finished goods. I



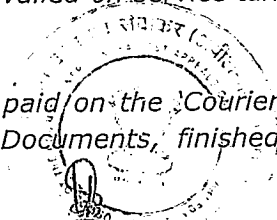
observe that the Adjudicating authority has denied the credit on the reason that the use of Courier service for outward transportation of finished goods is tantamount to use of GTA service for the same purpose and since credit of GTA service for such a use is inadmissible in view of the fact that service used beyond the place of removal (factory gate, in this case) does not qualify as an input service. Appellant, on the other hand, contends that Courier service cannot be equated with the GTA service and that CENVAT credit on Courier service used for delivery of goods is allowable.

6. I observe that issue involved in the present appeal for the periods prior to November 2016 to June 2016 has already decided by me vide OIA No.AHM-EXCUS-003-APP-0281-282-17-18 dated 27.03.2018, based on settled case laws. Vide, the said OIA, the credit of service tax paid on Courier service for outward transportation of finished goods has been allowed and the said decision is still operative; therefore, I follow the same in this case also.

6.1 In the case of **Dynaflex Pvt Ltd** v. CCE & ST, Vadodara-II [Order No.A/11924-11951/2017 dated 30.06.2017] the admissibility of CENVAT credit of service tax paid on Courier service used for sending/ receiving the samples, documents and finished goods to the customers has been decided by the Hon'ble Tribunal, Ahmedabad and held that service tax paid on Courier services would be eligible to CENVAT credit before and even after amendment to the definition of 'input service' with effect from 01.04.2011. I would like to quote para 7 and 8 of the order for easy reference –

7. *A simple reading of the said provision, makes it clear that though the expression 'activities relating to business, such as' has been deleted, but the illustrative services viz., Accounting, Auditing, Financing, Recruitment and quality control, Coaching/ training, computer networking, Credit Rating, Share Registry, Legal Services, Security, Business Exhibition, etc., even though directly not related to manufacturing activity, being not used inside the factory premises, but continued to remain in the said definition of input service. Needless to mention that these services are even though not directly linked to the manufacturing activity in the factory premises of the assessee but connected or related to the business of manufacturing activity which also involved marketing/ sale of the manufactured goods. Therefore, the contention of the Revenue that unless the activity has a direct nexus with the manufacturing of goods in the factory premises, post deletion of the expression activities relating to business, could not entitle the assessee to avail credit on the service tax paid on services, including "Courier Services" which are not directly connected with the manufacturing activity. It cannot be denied that 'Courier Service' involves a host of uses relating to the activities of manufacture and sale of goods. For example, the documents relating to technical expert's opinion, sample testing report, sending of samples, machine catalogue, etc., are received and dispatched by utilizing the services of 'Courier' and it cannot be said that these are de hors of the activities of manufacturing business. This Tribunal in the cases of long Meditech Ltd and Sunbeam Generators Pvt Ltd (supra) opined that credit availed on service tax paid on 'Courier Services' is eligible to CENVAT credit.*

8. *In the result, I am of the view that service tax paid on the Courier Services' for various purposes viz. Sending Samples, Documents, finished,*



goods, etc., would be eligible to CENVAT credit before and even after amendment to the definition of the 'Input Service' with effect from 01.04.2011. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law. Appeals disposed off accordingly.

6.2 Similarly, in the case of **Associated Power Structures Pvt Ltd v. CCE & ST, Vadodara-II** [Order No.A/11878-11879/2017 dated 30.06.2017] also, Hon'ble Tribunal has allowed the CENVAT credit on Courier services used for , inter-alia, sending finished goods.

7. Therefore, when the issue stands decided in the Jurisdictional Tribunal's two different orders, I have no reason to deviate in the matter. Accordingly, I set aside the impugned order and allow the appeal.

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.

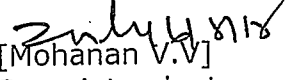
उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: /07/2018

Attested


[Mohanan V.V]
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Gujarat Foils Limited,
Plot No.3436 to 3446, Phase-IV, GIDC, Chhatral,
Taluka - Kalol, Dist.- Gandhinagar

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central GST, Gandhinagar.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt. Commissioner, Kalol Division, Central GST, Gandhinagar
5. Guard File.
6. P.A.

