

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

क फाइल संख्या : File No : **V2/67/GNR/2018-19**

6/17/06104

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-74-18-19**

दिनांक Date : **27.08.2018** जारी करने की तारीख Date of Issue: 6/9/2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

*C. J. J.*

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
**40/AC/EX/MEH/17-18** दिनांक : **14-03-2018** से सृजित

Arising out of Order-in-Original: **40/AC/EX/MEH/17-18**, Date: **14-03-2018** 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. Ransariya Poly Pack**

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।

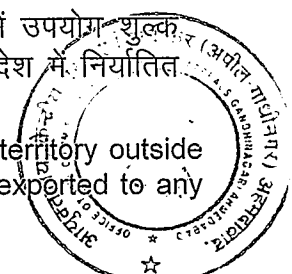
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

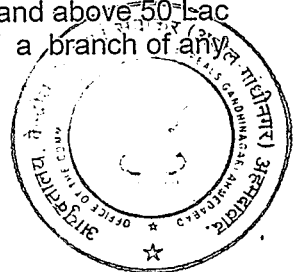
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघाणी 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 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 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 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, 1984 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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,

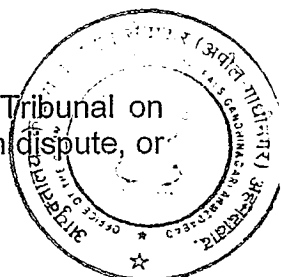
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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."



**ORDER-IN-APPEAL**

This order arises out of an appeal filed by M/s. Ranasaria Poly Pack Pvt. Ltd., Plot No.727/C, Village Moti-Bhoyan, Kalol-Khatraj Road, Taluka Kalol, Distt. Gandhinagar (in short 'appellant') against Order-in-Original No.40/AC/EX/MEH/17-18 dtd.14.03.2018 (in short 'impugned order') passed by the Assistant Commissioner, Central GST, Division Mehsana (in short 'adjudicating authority').

2. Briefly stated that adjudicating authority vide impugned order confirmed demand of Rs.6,30,014/- alongwith interest under Section 11A and 11AA of the Central Excise Act, 1944 respectively read with Rule 14 of the Cenvat Credit Rules, 2004, being wrongly availed Cenvat credit of service tax paid on **Outward Freight services, Travelling Services and Courier services** i.e. beyond the 'place of removal' during the period **August-2015 to June-2016** in terms of Rule 2(l) ibid and also imposed penalty of Rs.6,30,014/- under Section 11AC ibid read with Rule 15(2) ibid.

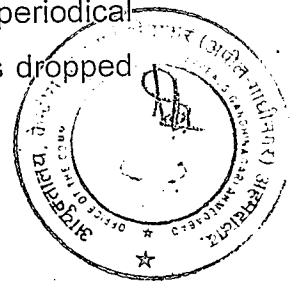
3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that:

- In a case where periodical SCN issued on the same grounds adjudicated in which proceedings are dropped but in subsequent SCN earlier decision has not been followed and taken decision contrary to settled issue. whether this is justifiable or not?
- Whether imposition of penalty on confirmed demand under Rule 15(1) read with section 11AC of the Central Excise Act, 1944 is justifiable or otherwise?

4. Personal hearing in the matter was held on 25.07.2018. Shri Pradip G. Tulsian, CA, appeared on behalf of the appellant and reiterated the grounds of appeal and submitted copy of earlier OIA dtd. 22.03.2016 passed in their own case.

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 main issue to be decided is whether the appellant is entitled to Cenvat credit of service tax paid on Outward Freight services, Travelling Services and Courier services or otherwise. Accordingly, I proceed to decide the case on merits.

6. **OUTWARD FREIGHT:-** In this regard, the appellant has submitted copy of earlier OIA dtd.22.03.2016 passed in their case. I have carefully gone through this OIA and finds that it covers issue of 'GTA Outward Transportation' only. I find that period involved in the said OIA was December-2005 to June-2007( i.e. prior to 01.04.2008 amendment made in the definition of 'input service' wherein the words "from the place of removal" were substituted by the words "upto the place of removal") whereas in the present case period involved is from August-2015 to June-2016 hence not applicable. The appellant has also argued that in similar periodical SCN for the earlier period, the Addl. Commr vide OIO dtd. 11.08.2016 has dropped



the proceedings. In this regard, I find that the appellant had produced evidences in support of him claim that sales contracts were on FOR destination basis. However, it appears that the appellant has not produced any documentary evidences for the relevant period before the adjudicating authority in support of his claim and simply stated that they rely on the said OIO dtd. 11.08.2016 of the Addl. Commr. I find that merely relying on the said OIO without having submitted any documentary evidence is of no use. Also, the appellant has not produced any documentary evidences before the undersigned. Hence, to this extent, case is remanded back to the adjudicating authority to decide a fresh after following the principle of natural justice within 30 days of communication of this order.

**7. TRAVELLING SERVICES AND COURIER SERVICES :-** In this regard, I find that the appellant has stated before the adjudicating authority that they rely on the said OIO dtd.11.08.2016 passed by the Addl. Commr. I find that the adjudicating authority has not gone through the submission made before the Addl. Commr. The appellant has stated before the Addl. Commr. that travelling expenses incurred by them is towards visit to customers, suppliers for sales promotion, procurement of materials, accounts etc. and courier charges are towards sending sales bills, acceptance of orders, accounts information etc. I find that the issue involved is no more *res-integra* and held by various higher appellate forum that the assessee is eligible for Cenvat credit of services utilized during the course of business activity. The Hon'ble High Court of Bombay in case of CCE, Nagpur Vs. Ultratech Cement Ltd.[reported in 2010(260) ELT-369 (Bom.)] has held as under:

***Cenvat credit of Service tax - Input service - Criterion for coverage - Expression "activities in relation to business" postulates activities integrally connected with business of assessee - Activities not integrally connected with business of manufacture of final product not qualify as input services - Rule 2(l) of Cenvat Credit Rules, 2004. [para 29]***

***Cenvat credit of Service tax - Input service - Scope of - Definition of input service is very wide - Input service covers not only services used directly or indirectly in or in relation to manufacture of final products but also various services used in relation to business of manufacture whether prior to manufacture or after manufacture - Definition not restricted to services used in or in relation to manufacture of final products but extends to all services having direct nexus or integrally connected with business of manufacturing final product - Definition of input service seeks to cover every conceivable service used in business of manufacture - All services used in relation to business of manufacture of final product covered - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 28, 34, 35]***

***Cenvat credit of Service tax - Input service - Definition of input service not only covers services falling in the substantial part of Rule 2(l) of Cenvat Credit Rules, 2004 but also covers services which are covered under inclusive part - Services covered under inclusive part are services rendered prior to commencement of manufacturing activity as well as services rendered after manufacture - Inclusive part of definition***



*includes services rendered in relation to business - Rule 2(l) ibid. [para 27]*

I also find there is nothing on records to indicate that these services are not relevant or dispensable. Hence, applying the ratio of above case laws, I allow the Cenvat credit availed on 'Travelling services' and 'Courier services'. Since the appellant is eligible for availing said Cenvat credit, question of recovery of interest does not arise to this extent.

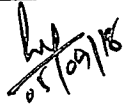
8. As regards penalty imposed on the appellant vide impugned order under Rule 15(2) of the CCR, 2004 read with Section 11AC of the CEA, 1944, I find that in the instant case, periodical SCN is issued wherein no extended period is invoked. I find that Rule 15(2) ibid provides for imposition of penalty where extended period is invoked. In absence of such charges in the SCN, imposition of penalty is ultra-virus and not sustainable. Accordingly, penalty imposed under Rule 15(2) ibid in 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.

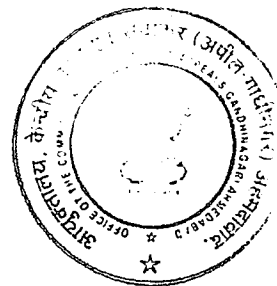
उमा शंकर

(उमा शंकर)  
केन्द्रीय कर आयुक्त (अपील्स)

Attested:



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



**BY SPEED POST TO:**

M/s. Ranasaria Poly Pack Pvt. Ltd.,  
Plot No.727/C, Village Moti-Bhoyan,  
Kalol-Khatraj Road, Taluka Kalol,  
Distt. Gandhinagar.

**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.