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

क फाइल संख्या : File No : V2/3/RA/GNR/2019-20 / 121H2 TO 121H6

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-25-19-20 / 06/09/2019

दिनांक Date : 30/08/2019 जारी करने की तारीख Date of Issue:

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

C. J. file

Passed by Shri Gopi Nath Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : 04/ST/REF/AC/18-19

दिनांक : 12-03-2019 से सृजित

Arising out of Order-in-Original: 04/ST/REF/AC/18-19, Date: 12-03-2019 Issued by:
Assistant Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

ध 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।

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 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 रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहाँ रुपए 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 पढ़ी 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 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 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन और 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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

This appeal has been filed by the Assistant Commissioner of CGST, Kalol Division, Gandhinagar Commissionerate [for short-"department"] , in view of Review Order No.03/2019 dated 29.04.2019 of the Commissioner of CGST, Gandhinagar, against Order-in-Original No.04/ST-REF/AC/18-19 dated 12.03.2019 [for-short "impugned order"] passed by the Assistant Commissioner of CGST, Kalol Divison [for short-"adjudicating authority"] in respect of M/s Deepkiran Food Pvt Ltd, 228/2, Dantali Industrial Estate, Village Dantiali, Taluka Kalol, Gandhinagar District [for short-"respondent"].

2. Briefly stated, the facts of the case are that the respondent was availing Cenvat credit on input services received/utilized for export of goods and GTA service on outward transportation upto place of removal. They had filed refund claims on input services received/utilized for the period of January 2006 to December 2009, which was sanctioned under various Orders-in-Original by the jurisdictional Assistant Commissioner, except on input services on services viz. Air Travel Agent, CHA, GTA on outward transportation as these services are do not fall under the definition of Rule 2(I) if Cenvat Credit Rules, 2004 (CCR). The respondent as well as department have filed an appeal before Commissioner (Appeals) against the said OIO which was decided by the Commissioner (Appeals) in favour of the rspondent, vide OIA No.AHM-EXCUS-APP-16 to 35-18-19 dated 13.07.2018. Accordingly, the respondent has filed a refund claim of Rs.30,33,282/- on 28.09.2018. The adjudicating authority has sanctioned the said refund claim, vide impugned order.

3. Being aggrieved with certain amount of refund sanctioned by the adjudicating authority, the department has filed the instant appeal on the grounds that:

- The adjudicating authority has committed gross error while sanctioning the refund of Rs.5,57,382/- taken as *suo-moto credit* by the appellant in respect of OIO No.14/R/2009-dated 09.07.2009; that while sanctioning the said amount, the adjudicating authority ought to have appreciated the fact that in this case out of total refund of Rs.20,84,410/-, the respondent has claimed the refund of Rs.5,57,382/- and the amount of the demand of Rs.20,03,116/- was confirmed by the Additional commissioner, CGST, vide OIO dated 31.12.2018, against which the appellant has filed an appeal before Commissioner (Appeals) which has not attained finality. In the circumstances, the refund of suo-moto credit sanctioned is not correct when the issue is pending; that he also legitimated the remaining amount of the demand of suo-moto credit by treating the said amount eligible refund spontaneously which is not claimed by the respondent.
- The refund sanctioned on the basis of Cenvat credit taken as suo-moto credit by the adjudicating authority is erroneous and bad in law.



- The refund claim is pre-mature being sub judice, therefore, impugned order is not proper and legal.

4. The respondent has filed cross-objection dated 07.06.2019 to the appeal filed by the department, wherein, inter-alia stated that the Appellate Authority, vide OIA dated 29.03.2019, has decided the case, contended by the department, by allowing the refund claim in question. In the circumstances, the department appeal is required to be set aside.

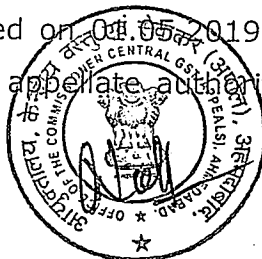
5. A personal hearing in the matter was held on 21.08.2019. Shri M.H.Ravel, Consultant appeared for the same on behalf of the respondent and submitted written submission dated 21.08.2019 for consideration.

6. I have carefully gone through the fact of the case and submission made in the appeal memorandum of the department as well as the cross-objection filed by the respondent. The limited point to be decided in the matter is regarding admissibility of refund claim of Rs.5,57,382/-, out of total refund claim sanctioned by the adjudicating authority vide impugned order.

7. I find that the refund claim of Rs.5,57,382/- in question, which was sanctioned by the adjudicating authority is based on the order of Commissioner (Appeals) dated 28.06.2018 and the basis for filing of the appeal by the department is the Order-in-Original dated 31.12.2018 passed by the Additional Commissioner which was challenged before the Commissioner (Appeals). There is nothing on record to show that the order of Commissioner (Appeals) on the basis of which the refund has been sanctioned has been appealed against. The adjudicating authority categorically held that before sanctioning of refund claim, the claim was duly pre-audited by the competent authority.

8. I further find that the main contention of the department in the appeal is that the refund amount of Rs.5,57,382/-, sanctioned by the adjudicating authority, vide impugned order is pertaining to suo-moto of Cenvat credit taken by the respondent; that the demand against total suo-moto credit of Rs.20,03,116/-taken by the appellant was confirmed by the Additional Commissioner, vide his OIO dated 31.12.2018 which is sub.judice before Commissioner (Appeals); Since the refund of Rs.5,57,382/- sanctioned includes in the total demand of suo-moto credit confirmed and sub judice, the refund of said amount allowed is pre-mature.

9. I find on record that the adjudicating authority has sanctioned the refund amount of Rs.30,33,282/-, vide impugned order on 12.03.2019 which includes the refund of suo-moto credit of Cenvat credit taken by the respondent. With regard to the ground of filing appeal that the matter is sub judice in respect of demand of suo-moto credit, I find that the Commissioner (Appeals), vide OIA No.AHM-EXCUS-003-APP-207-18-19 dated 29.03.2019 (issued on 01.05.2019) has finally decided the appeal. In the said OIA, I find that the appellate authority has set aside the



"From the above, it is clearly evident that the eligibility of input service credit which involves the suo-moto credit of Rs.20,03,116/- taken by the appellant has already been decided by the jurisdictional Assistant Commissioner and thereof by the Appellate authority. The eligibility of the said credit, initially rejected by the Assistant Commissioner was further decided by me, vide OIA No. OIA No. AHM-EXCUS-003-APP-16 to 35-18-19 dated 28.06.2018 by holding that the appellant were eligible take credit of input service viz CHA, Freight Forward and Outward transportation and accordingly, they were eligible for refund under Rule 5 of CCR. It appears that no further appeal was filed against the said OIA. Now, the question arises whether the suo-moto credit taken by the appellant in respect of eligible input service credit is correct or otherwise. The adjudicating authority 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.

9. In view of above foregoing discussions, I find that the appeal filed by the department does not hold the water, therefore, does not succeed and liable for rejection.

(Gopi Nath)
Commissioner (Appeals)
Date : .08.2019

(Mohan V.V)
Superintendent (Appeals),
Central Tax,Ahmedabad.

1. The Assistant Commissioner,
CGST, Kalol Division, Gandhinagar Commissionerate.
2. M/s Deeokiran Foods Pvt Ltd
228/2, Dantali Industrial Estate,
Village Dantiali, Taluka Kalol, Gandhinagar District

Copy to:-

1. The Principal Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar.
3. The Assistant Commissioner, CGST, Kalol Division.
4. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
5. The Assistant Commissioner, Kalol Division.
- ✓ 6. Guard file.
7. P.A file.