



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

कर भवन,

सातवीं मंजिल, पॉलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7<sup>th</sup> Floor,,  
Near Polytechnic,  
Ambavadi, Ahmedabad-  
380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2/56/GNR/2019-20 / 13079 To 13083**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-45-19-20**

दिनांक Date : **18/11/2019** जारी करने की तारीख Date of Issue: **26/11/2019**

आयुक्त (अपील) द्वारा पारित

Passed by Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **03/ST-Ref/AC/2019-20**  
दिनांक : **30/07/2019** से सृजित

Arising out of Order-in-Original: **03/ST-Ref/AC/2019-20**, Date: **30/07/2019** Issued by:  
Assistant Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

**M/s. Enviro Plastech Pvt. Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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, 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 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, बहमाली

भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियों सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां 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 वहां 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 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 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 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 रुपए 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 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**

M/s. Enviro Plastech Pvt. Ltd., Plot No. 595P, Kalol-Vamaj Road, Piyaj, Ta. Kalol Dist. Gandhinagar (*hereinafter referred to as 'the appellant'*) have filed the present appeal against Order-in-Original number 03/ST-Ref/AC/2019-20 dated 30.07.2019 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Kalol Division, Gandhinagar (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants were holding erstwhile Service Tax registration number AAACE1568BSD001. The appellants had filed a refund claim of ₹2,67,955/- on 11.03.2019 before the Assistant Commissioner of erstwhile CGST, Div-kalol, Gandhinagar on the ground that they had paid Service Tax on Ocean Freight on imported goods during the period from 25.04.2017 to 30.06.2017 under reverse charge mechanism in the month of February 2019 and the service availed by them was covered under the definition of input service. Hence they were eligible to avail Cenvat credit of the Service Tax paid but due to implementation of GST w.e.f 01.07.2017, they were not in a position to take Service Tax credit and filed the said refund claim under section 11B of Central Excise Act, 1944.

3. It appeared to the adjudicating authority that the ocean freight would have been paid by the appellant during the Service Tax regime and was eligible for availment of input tax credit upto the date of 27.12.2017 i.e extended date of filling of TRAN-1 but the payment was made on 26.02.2019. Therefore, non-payment of service tax at the material of time and non-inclusion of the same in their regular/revised returns, the appellant claim was not considered under Section 11B of the Central Excise Act, 1944 read with Section 142(3) & Section 142(8)(a) of the CGST Act, 2017 and the provision of Rule 120A of the





CGST Rules, 2017 wherein the tax paid by the appellant under RCM did not qualify as credit. So, the appellant was not eligible for refund of service Tax liability paid after the extended period of filing revised returns and not claimed in TRAN-1. A show cause Notice dated 20.06.2019 was issued to the appellant for the rejection of refund claim. Thereafter, the adjudicating authority has rejected the entire claim of refund vide impugned order dated 30.07.2019.

3. Being aggrieved with the impugned order the appellants have preferred the present appeal. They stated that Service Tax along with interest was paid by them on Ocean Freight on 26.02.2019 as per existing Service Tax law under RCM but they were not in a position to utilize the same, the appellant has filed refund claim under the provision of 11B of CEA, 1944. The appellant has pleaded that the refund was rejected by the adjudicating authority based on GST Act 2017 which was legally not tenable and required to be quashed and set aside as the refund claim was filed under Central Excise Act, 1944.

4. Hearing in the matter was granted and held on 11.10.2019. Shri. Sanjay Nayak, Authorized Signatory, appeared on behalf of the appellants and reiterated the contents of appeal memo.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of hearing. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 2,67,955/- is correct, legal and proper or not.

6. I find that the appellant has paid the service tax on Ocean freight along with interest under reverse charge mechanism on 26.02.2019 for the period from 25.04.2017 to 30.06.2017 on the basis of Circular No. 206/2017-ST dated 13.04.2017 against importation of





goods and the appellant had filed a refund of said tax paid as they were not in a position to avail credit and utilize the same under the existing law. I also find that if the tax would have been paid during the material of time i.e service tax regime , then there was a provision to avail the Cenvat credit of the same for further utilization and even though they could have transferred the credit to TRAN-1 with a extended time limit of 27.12.2017 in GST regime. In this case the appellant has failed to pay the tax on Ocean Freight at the material time under existing Law and to avail the said input tax credit or transfer the same in TRAN-1. Then the refund would have been admissible to them under the provision of Section 142(3) of CGST Act, 2017 due to non utilization of the said credit. The Section 142(3) of CGST Act, 2017 is reproduced below:-

**Section 142(3):** *Every claim for refund filed by any person before ,on or after the appointed day, for refund of any amount of CENVAT Credit ,duty, tax, interest or any other amount paid under the existing law , shall be disposed of in accordance with the provision of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provision of existing law other than the provision of sub-section 2 of Section 11B of the Central Excise Act,1944.*

**Provided that** *Where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse.*

**Provided further** *that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*

In this case, the appellant has not followed the procedure under the existing law and tax paid does not qualify as refund in erstwhile existing law or in GST Act, 2017. Thus, refund in question is not admissible to them .



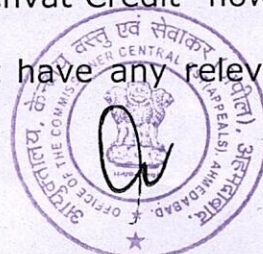


7. Further, I find that the appellant had paid the service tax on Ocean freight under RCM voluntarily on the basis of self assessment after lapse a period of two years from the date of actual payment and even not disclosed the liability of tax due in their regular returns or revised returns of the service tax at the material of time. In this contest, I can refer the section 142(8)(a) of CGST Act, 2017 which is reproduced below:-

*a) Where in pursuance of an assessment on adjudication proceedings instituted, whether before on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this act;*

According to above said provision, the payment of tax recovered/paid on the basis of assessment is to be considered as arrears of tax and the same is not admissible to them as input tax credit. Thereby the refund of tax paid under self assessment was not refundable to them. Therefore, the rejection of refund by the adjudicating authority under above said statutory provisions is proper & legal and I uphold the impugned order.

8. The appellant has relied upon the case law in respect of CCE Pune Vs. Dai Ichi Karkaria Ltd. wherein it has been held that "the Cenvat credit cannot be simply allow to lapse, as it is equal to as good as tax paid." Since the above referred statutory provision clearly provides that the appellant was not eligible for input tax credit against the tax paid on Ocean freight under RCM as per existing law in GST regime, then the question of word "Cenvat Credit" how could be arise. Therefore the said case law does not have any relevancy with the instant case.

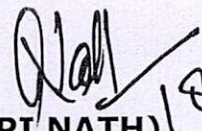




9. Therefore, in view of the discussion held above, I uphold the impugned order and reject the appeal filed by the appellant.

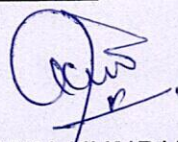
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the appellant stands disposed off in above terms.

  
(GOPI NATH)  
COMMISSIONER  
CGST (Appeal),  
AHMEDABAD.



ATTESTED

  
(ATANU KUNDU)  
SUPERINTENDENT,  
CGST (APPEAL), AHMEDABAD.

To,

M/s. Enviro Plastech Pvt. Ltd.,  
Plot No. 595P, Kalol-Vamaj Road,  
Piyaj, Ta. Kalol Dist. Gandhinagar

**Copy to:**

- 1) The Principal Chief Commissioner, CGST , Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar.
- 3) The Dy./Asst. Commissioner, CGST, Div-Kalol, Gandhinagar
- 4) The Asst. Commissioner (System), CGST, Gandhinagar.
- 5) ☒ Guard File.
- 6) P. A. File.