



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

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Near Polytechnic,

Ambavadi, Ahmedabad-

380015



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- क फाइल संख्या : File No : **V2/23/GNR/2019-20/14665 70 14669**
- ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-72-19-20**
दिनांक Date : **18-03-2020** जारी करने की तारीख Date of Issue: **08/06/2020**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad
- ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **48/CE/Ref/DC/2015** दिनांक : **23/12/2015** से सृजित

Arising out of Order-in-Original: **48/CE/Ref/DC/2015**, Date: **23/12/2015** Issued by: Deputy Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

- घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
Name & Address of the **Appellant** & Respondent
M/s. Archon Engicon 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.

घ 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- ण0बी/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, बहूमाली

भवन, असारवा, अहमदाबाद, गुजरात 380016

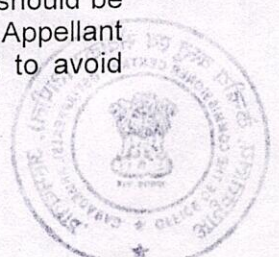
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत 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 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 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 filled 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 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 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."

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 Archon Engicon .Ltd., Plot No.1,2,3 & 5, Navkar Industrial Estate, SantejKhatraj Road, PO:Santej, Taluka-Kalol, District Gandhinagar (Gujarat) [hereinafter referred to as "appellant"] has filed an appeal against Order-in-Original No.48/CE/Ref/DC/2015 dated 23.12.2015 [hereinafter referred to as "impugned order"] passed by Assistant Commissioner of CGST, Kalol Division, Gandhinagar Commissionerate [hereinafter referred to as "adjudicating authority"].

2. Facts of the case, in brief, are that the appellant is engaged in the manufacture of excisable goods falling under Chapter 72 and 73 of the Central Excise Tarff Act, 1985. They are also holding Service Tax Registration. Search was conducted by the jurisdictional Central Excise Officers in the factory premises of the appellant on 11.09.2013, based on an intelligence about wrong availment of Cenvat Credit, and an offence case was booked against them for evasion of Central Excise duty/Service Tax. During investigation of the case, the appellant deposited an amount of Rs.4,79,00,000/- on various dates voluntarily and willingly towards their duty/service tax liability. However, the appellant filed a refund claim of the amount deposited during investigation on 30.09.2015 before the jurisdictional Assistant Commissioner. Vide impugned order, the adjudicating authority has rejected the said refund claim on the grounds that the investigation in the matter was under process of finalization and in the absence of any outcome of the investigation, it was not feasible to hold that the whole or part of the duty/service tax paid was refundable.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- There was no confirmed demand against the appellant and the department cannot retain the payment made under duress.
- The amount in question deposited by them during investigation was under pressure and got made forcibly; that no reasons were offered by the officers as to why such payment was required to be made and no such reasons has put forth till.
- Even assuming that the payment was made willingly, as contended by the department, the same cannot be retained when the appellant request for return of that payment especially in light of the fact that there is no confirmed dues against them.
- They relied on the decision of [i] Hon'ble High Court of P & H in the case of M/s Century Metal Cycling P Ltd [2009 ELT (234) 243]; [ii] M/s Bhagwati International [2005 (190) ELT 300]; [iii] Hon'ble Tribunal's decision in the case of M/s Honda Siel Cars Ltd [2007 (208) ELT -Del].

There is no violation of Section 11 B of the Central Excise Act, 1944 in the instant case for filing the refund claim in question.



4. Personal Hearing in the matter was held on 20.02.2020. Shri R.R.Dave, Consultant, appeared for the hearing. He requested to decide the case on the basis of documents submitted by the appellant.

5. I have carefully gone through the facts of the case and submissions made by the appellant in Appeal Memorandum. The limited issue to be decided in the matter is relating to admissibility of refund of an amount Rs. 4,79,00,000/- deposited during investigation of the case booked against the appellant.

6. In the instant case, I find that the appellant has paid the amount in question during investigation of a case registered against them relating to wrong availment of Cenvat Credit. They had filed the said refund claim on 30.09.2015 which was deposited in the month of September 2013, mainly on the grounds that the amount so deposited during investigation was under pressure and till filing of the claim, no reasons were given by the department for recovery of such payment. I find on records that during September 2013 to July 2015, the appellant has never approached or represented to the department or any other authority that they had deposited such amount due to harassment or pressure/threat. Therefore, such argument of the appellant appears an afterthought and not acceptable. I find that the adjudicating authority has rejected the refund claim by holding that since the investigation of the case was under process, the refund of the amount deposited during investigation is premature.

7. I find that the investigation of the case booked against the appellant was subsequently transferred by the jurisdictional Central Excise Officer to the Directorate General of Goods & Service Tax Intelligence, Regional Unit, Vadodara [for short-DGGSTI] and final investigation was done by them and an amount of Rs. 1.29 Crores was also recovered by the DGGSTI during their investigation. I further find that a Show Cause Notice No.DGCEI/AZU/36-01/2017-18 dated 03.07.2017 was issued to the appellant by DGGSTI wherein it was proposed to disallow and recover Cenvat Credit amounting to Rs.50,81,22,157/-, fraudulently availed by them along with proposal to appropriate of amount of Rs.4,79,00,000/- paid during investigation by jurisdictional Central Excise office, Ahmedabad and Rs.1,29,00,000/- paid during investigation by DGGSTI against the demand.

8. It observe that the period of demand of duty involved in the fraudulent case booked against the appellant appears to be from 2012 to 2017 and the Show Cause Notice was issued to them on 03.07.2017, by invoking extended periods. Hence, the refund in question is part of quasi-judicial proceedings and is subject to outcome of the adjudication proceedings. Therefore, I do not find any merit in the appeal made by the appellant towards rejection of refund claim for an amount of Rs.4,79,00,000/- by the adjudicating authority.

9. I find that the appellant has relied on various case laws viz. [i] Hon'ble High Court of P & H in the case of M/s Century Metal Cycling P Ltd [2009 ELT (234) 243]

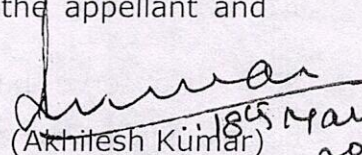


which was affirmed by the Hon'ble Supreme Court; [ii] M/s Bhagwati International [2005 (190) ELT 300]; [iii] Hon'ble Tribunal's decision in the case of M/s Honda Siel Cars Ltd [2007 (208) ELT -Del]. On perusal of the decisions in above cases, I find that the said case is pertained to situation where the payment/deposit was made under coercion. In the case of M/s Century Metal Cycling Ltd, I observe that the petitioner has argued that there is no amount outstanding against them but still under duress and threat, the partners of the petitioner were forced to deposit the amount and the Hon'ble High court held that whatever is the position, either coercion or voluntarily, unless there is assessment and demand, the amount cannot be appropriated and no justification has been shown in retaining the amount deposited, since it was voluntarily deposited. The Hon'ble Supreme Court has affirmed the said decision by holding that "when these matters are pending for the last almost 10 years and no adjudication has taken place, it may not be appropriate to interfere with the directions of the High Court to refund the amount to the respondents". However, in the instant case, situation is different. It has been alleged by the department that the appellant has fraudulently availed Cenvat Credit amounting to Rs.50 Crores and assessment or determination of credit so fraudulently availed was determined in the time bound frame by issuance of Show Cause Notice.

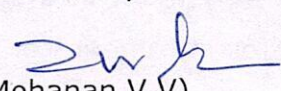
10. Further, the amount in question deposited by the appellant during investigation of fraudulent case booked against them was proposed to be appropriated in the Show Cause Notice against their duty liability. Since the adjudication proceeding is yet to be completed by the proper authority, I find that the sanction of refund of amount deposited during investigation at this stage is a premature consideration. It is subject matter of the adjudicating proceedings. Under the circumstances, I find that the adjudicating authority has rightly denied the refund claim vide impugned order dated 23.12.2015.

11. Looking into the facts of the instant case, where duty has been determined in the stipulated period by way of issuing show cause notice and is part of adjudication process, sanction of refund of amount paid by the appellant during investigation/adjudication in the instant case is premature and the adjudicating authority has rightly rejected the refund claim.

12. In view of above discussion, I reject the appeal filed by the appellant and uphold the impugned order.


(Akhilesh Kumar)
Commissioner (Appeals)
/03/2020

Attested by


(Mohanan V.V)
Superintendent (Appeals)
CGST, Ahmedabad.



By RPAD

To

M/s Archon Engicon Ltd.,
Plot No.1,2,3& 5, Navkar Industrial Estate,
SantejKhatraj Road, PO, Santej, Taluka-Kalol,
District Gandhinaga (Gujarat)

Copy to:

1. The Principal Chief Commissioner of CGST, Ahmedabad Zone.
2. The Commissioner of CGST, Gandhinagar
3. The Additional Commissioner of CGST, System, Gandhinagar
4. The Assistant Commissioner of CGST, Mehsana Division
5. P.A File
- ✓ 6. Guard file.



