



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎: 079-26305065

टैलेफैक्स : 079 - 26305136



- क फाइल संख्या : File No : **V2/85/GNR/2019-20/15485 TO 15490**
- ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-003-APP-33-2020-21**
दिनांक Date : 20.08.2020 जारी करने की तारीख Date of Issue: **24/08/2020**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad
- ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-CEX-003-ADC-PMR-005-19-20** दिनांक : **22/08/2019** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-PMR-005-19-20**, Date: **22/08/2019**
Issued by: Additional Commissioner, CGST, Gandhinagar Commissionerate, Ahmedabad.

- घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
Name & Address of the **Appellant** & Respondent
M/s. Kalp Corporation
H/260, Sardardham, Modern Road, Mehsana-384002.

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 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.

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- 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, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

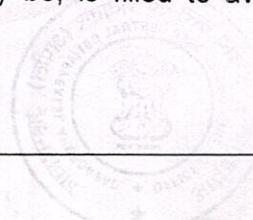
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र 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 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 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 scripitoria 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, 1998 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

This appeal has been filed by M/s Kalp Corporation, 432-433, G.I.D.C-II, Dediyanan, District: Mehsana, Gujarat- 384002 (hereinafter referred to as "the appellant") having present address as H/260, Sardardham, Modera Road, Mehsana – 384002, against the Order-in-Original No. AHM-CEX-003-ADC-PMR-005-19-20 dated 22.08.2019 (hereinafter referred to the as the "impugned order") passed by the Additional Commissioner, Central GST & Central Excise, Gandhinagar Commissionerate (hereinafter referred to as "the adjudicating authority").

2. The appellant is engaged in the manufacture of PP/HDPE Tapes, PP/HDPE Woven Fabrics, PP/HDPE Woven Sacks and PP/HDPE Waste, falling under Chapter 39 of First Schedule of the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAFFK3008HXM002, and also availing facility of Cenvat credit under Cenvat Credit Rules, 2004.

3. Facts of the case, in brief, are that the during the course of audit of the records of the appellant by the department, it was observed that they had availed Cenvat Credit of Rs.11,06,477/- during the period from June,2008 to February, 2011 on the strength of Cenvatable invoices issued by M/s Reliance Industries Limited, which were in the name of M/s Kalp Corporation, 222/3-4, G.I.D.C, Phase-I, Nagalpur, Mehsana, another unit of the said appellant who had already surrendered the Central Excise Registration on 17.11.2008. It was also observed from the ledger of M/s Reliance Industries Limited that payment of the said invoices have been made by M/s Kalp Corporation, 222/3-4, G.I.D.C, Phase-I, Nagalpur, Mehsana, and not by the appellant. Therefore, the said credit availed by the appellant appeared to be not admissible and accordingly, a show causes notice dated 09.07.2013 was issued to them for recovery of the said Cenvat credit wrongly availed with interest and for penalty under the relevant provisions of law. The Notice so issued was adjudicated by the Joint Commissioner, Central Excise, Ahmedabad-III vide Order-in-Original No. AHM-CEX-003-JC-001-13-14 dated 26.02.2014 wherein he had confirmed the demand with interest and imposed penalty. Aggrieved with the said Order, the appellant preferred an appeal before the Commissioner (Appeals), Ahmedabad who vide Order-in-Appeal No. AHM-CEX-003-APP-100-14-15 dated 19.11.2014 had allowed the appeal of the appellant by holding that the cenvat credit taken on the invoices in the name of the appellant's registered office and subsequently endorsed by the registered office was correct and that there was no dispute about the receipt of the entire consignments in the appellant's factory in original packed condition duly endorsed by the registered office to that effect and that substantive benefit could not be denied on the procedural grounds. The department had subsequently filed an appeal before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad against the said order of the Commissioner (Appeals) on the ground that without analyzing the

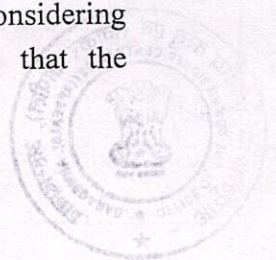


evidences on record, the Commissioner (Appeals) had recorded that the 'inputs' were duly received in the factory of the respondent and utilized in the manufacture of final products. The said appeal was decided by the Hon'ble CESTAT, Ahmedabad vide their Order No.A/13511/2017 dated 08.11.2017 wherein the appeal was allowed by way of remand to the adjudicating authority to verify the facts of receipt of inputs in the factory and their utilization in the manufacture of the finished goods.

4. The adjudicating authority, on remand proceedings directed by the Hon'ble CESTAT, has decided the matter afresh vide the impugned order wherein he, based on available records, confirmed the demand with interest and imposed penalty, as no records were produced by the appellant before him to establish the receipts and consumption of raw materials and manufacture of goods out of that material.

5. Being aggrieved with the said Order, the appellant has filed the present appeal on the following grounds:

- (a) Due to closure of the factory premises, notice of hearing had not been received by the appellant and under these circumstances, they could not attend the personal hearing on the dates fixed by the adjudicating officer. Therefore, the decision taken by the adjudicating officer is apparently violative of principles of natural justice in as much as that no proper opportunity of personal hearing granted to produce the evidences and to defend the case properly and so bad in law;
- (b) The findings of the adjudicating authority, that no records were produced before him by the appellant to establish the receipts and consumption of raw materials and manufacture of goods out of that material, is apparently baseless and far from the actual facts in as much as they have explained and produced all the relevant documents earlier before the adjudicating officer under letter dated 11.12.2014 and the adjudicating officer has neither discussed nor given any findings on this issue;
- (c) Though the license of their unit at Nagalpur is surrendered because of discontinuance of manufacturing activities in that unit, the office situated in this unit was continued as head office. Therefore, the purchase orders were placed from the Head Office for purchase of raw materials from Reliance Industries for another unit, which is proper and correct in the eyes of law. Therefore, the findings of the adjudicating officer, that the unit at Nagalpur continued to purchase raw material till Feb-2011 and transferred the same to unit of the said assessee at Dediyanan (more than 2 years after surrendered registration) and the said assessee has availed credit on such raw materials, which shows their malafide intentions, is apparently erroneous, incorrect, illegal and without authority and jurisdiction; and
- (d) The Commissioner (Appeals) under earlier order dated 19.11.14, after considering all the documentary evidences produced before him, clearly held that the



appellant is eligible to avail the cenvat credit of duty paid goods received under invoices issued by M/s Reliance Industries. Therefore, in absence of any other contrary evidences produced by the department against the order of the Commissioner (Appeals) dated 19.11.14, the same is required to be upheld.

6. Personal hearing in the matter was held on 17.08.2020. Shri M.A. Patel, Consultant, appeared on behalf of the appellant and stated that as their factory was closed, they could not receive the personal hearing memo and requested to remand the case back to the adjudicating authority so that they can produce the records for verification.

7. I have gone through the facts of the case, the submissions made in the Appeal Memorandum and the oral averments raised during the course of personal hearing. However, before deciding the matter on merits, I find that the appellant had received the impugned OIO on 22.09.2019 while the appeal is filed on 27.12.2019. The appellant had filed a condonation of delay application in the matter on the grounds that due to monetary crisis they could not make the payment of pre-deposit required for filing appeal and their partner was under treatment for 40 days due to an accident.

8. I find that the aforementioned appeal have been filed beyond the stipulated 60 days time limit specified under Section 35 (1) of the Central Excise Act, 1944. Relevant extracts of Section 35 of the Central Excise Act, 1944, is reproduced below for ease of reference:

SECTION 35. Appeals to [Commissioner (Appeals)]. —

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the [Commissioner (Appeals)]] [within sixty days] from the date of the communication to him of such decision or order :

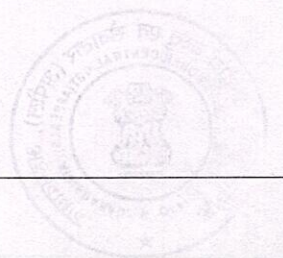
[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

[(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

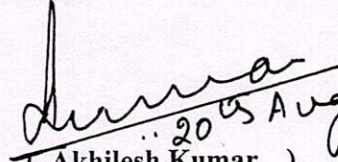
[emphasis added]




9. I find that the aforementioned appeal has been filed beyond the prescribed time limit of 60 days. The delay in filing the said appeal is also more than 30 days after the prescribed time limit of 60 days. As such I am not empowered to condone the delay in this appeal, as it was filed after 90 days from the date of communication of the impugned order. In view of the foregoing, I reject the appeal on limitation as provided under Section 35 of the Central Excise Act, 1944.

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

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


 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 20.08.2020.

Attested:


 (Anilkumar P.)
 Superintendent
 CGST Appeals
 Ahmedabad.



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3. The Additional Commissioner, CGST & C.Ex., Gandhinagar Commissionerate.
4. The Dy./Asst. Commissioner, CGST & C.Ex., Division – Mehsana, Gandhinagar.
5. The Asst. Commissioner (System), CGST & C.Ex., Gandhinagar Commissionerate. (for uploading the OIA)
6. ~~Guard File.~~
7. P. A. File.

