



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN :20210164SW000091969E

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(CEX)21/GNR/2020-21
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-049/20-21**
दिनांक Date : **28-12-2020** जारी करने की तारीख Date of Issue 11.01.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **10/D/GNR-DK/20-21** दिनांक: **08.05.2020**,
issued by Deputy Commissioner (Prev.), CGST and Central Excise, Gandhinagar
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

**M/s Circuit Systems(India) Ltd.,
B-24, Sector-25, GIDC Electronic Industrial Estate,
Gandhinagar-382044.**

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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.



- (क) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) 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.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- 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।
- (c) 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-बी/35-इ के अंतर्गत:-

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

- (क) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

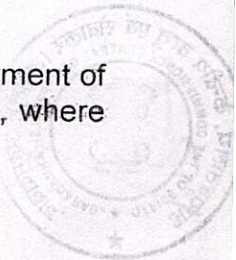
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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

M/s. Circuit System (India) Ltd., B-24, Sector-25, GIDC Electronic Industrial Estate, Gandhinagar-382044 (hereinafter referred to as the “*appellant*”) has filed the present appeal against the Order-in-Original No.10/D/GNR-DK/20-21 dated 08.05.2020 (hereinafter referred to as the “*impugned order*”) passed by the Deputy Commissioner (Prev.), CGST & Central Excise, Gandhinagar Commissionerate (hereinafter referred to as the “*adjudicating authority*”).

2. The facts of the case, in brief, are that the appellant is holding Central Excise Registration No.AAACC7706JXM001 for the manufacture of Printed Circuit Boards (PCB) and also holding Service Tax Registration No.AAACC7706JST001. During the course of audit of financial records of the appellant for the period April-2016 to June-2017, it was noticed that the appellant dispatched some of their manufactured goods to the customers by courier and had availed the cenvat credit on such service availed by them. Such cenvat availment was ascertained at Rs.8,47,294/- [Rs.6,69386/- for the year 2016-17 and Rs.1,77,908/- for the year 2017-18 (upto June-2017)] by the audit officers. It appeared to the audit team that the courier service has been used after sale of goods from the factory gate which is the ‘place of removal’ in their case. Such discrepancy was communicated under Revenue Para-5 of the Final Audit Report No. EX-1414/2018-19 dated 26.03.2019 issued by the Assistant Commissioner(Circle-VIII) of Central Tax, Audit Commissionerate, Ahmedabad.

3. This resulted into issuance of a Show Cause Notice No.79/2018-19 dated 28.03.2019 under F.No.VI/1(b)-383/IA/C-VIII/AP-56/18-19 (hereinafter referred to as “*SCN*”) by the Assistant Commissioner (Circle-VIII) of Central Tax, Audit Commissionerate, Ahmedabad proposing (i) demand and recovery of an amount of Rs.8,47,294/- under provisions of Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 by invoking extended period; (ii) charging interest at the prescribed rate on such demand under Section 11AA of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004; and (iii) imposition of penalty under Section 11A(1)(c) of the Central Excise Act, 1944 read with Rule 15(3) of the Cenvat Credit Rules, 2004. The said SCN was adjudicated vide the impugned order, under which the proposal made in the SCN was confirmed.

4. Being aggrieved with the impugned order, the appellant has filed the present appeal on following grounds:

- (i) the Hon’ble CESTAT of Ahmedabad has decided the same issue for bunch of appeals (including Appellant’s own Appeal No. E/11932/2015) in their favour vide Order No. A/12001-12015/2017 dated 31.08.2017 by relying upon its earlier order in case of M/s.



- Haldyn Glass Ltd. in Appeal No. E/10383/2014 (reported under 2017-TIOL-3967-CESTAT-AHM);
- (ii) they rely upon the decision of Hon'ble Rajasthan High Court in case of M/s. Sakata INX (India) Ltd. reported at 2018(16)GSTL 416 (Raj);
 - (iii) the impugned order does not incorporate the reasoning for not accepting the order of Hon'ble CESTAT, Ahmedabad in their own case for earlier period;
 - (iv) the larger period was invoked for the demand of prior period, and therefore, larger period could not have been invoked in subsequent demand because all the facts were within the knowledge of the Department;
 - (v) the decision of higher authority is binding and it is not open to subordinate officer to not follow the same;
 - (vi) reliance is place upon the Circular No.341/43/96-TRU dated 31.10.1996 issued by CBEC, Trade Notice No.114/96 dated 01.11.1996;
 - (vii) the reliance cannot be placed upon the decision of Hon'ble Kolkata High Court since the decision in the similar issue has been decided by the Hon'ble Gujarat High Court and therefore the decision of Gujarat High Court will hold the field;
 - (viii) there cannot be any suppression as the issue and facts were within the knowledge of the Department and since the issue was already decided by Higher Authority in their favour there cannot be any intention to evade payment of duty;
 - (ix) since there is no violation on their part, there cannot be any penalty.

5. Opportunity of Personal Hearing was accorded to the appellant on 26.11.2020. Shri Amal Dave, Advocate, represented the appellant and reiterated the submissions made in appeal memorandum and those made in additional written submission dated 25.11.2020.

5.1 In the additional written submission, it has been submitted that the impugned order has been passed in violation of Circular No.1065/4/2018-CX dated 08.06.2018 wherein it has been clarified that in the cases where there has been a dispute about availment of Cenvat Credit and place of removal, the extended period of limitation is not invocable. Hence, the demand for period other than March, 2017 to June, 2017 is barred by limitation. Even otherwise, it has been recorded in the impugned order that the appellant was served with a similar SCN on 12.03.2009, which was ultimately decided by the CESTAT in their favour. It is settled legal principle that when one SCN on a subject matter has been issued to an assessee, then subsequent SCN cannot invoke extended period of limitation.

5.2. It has been further contended that the decision of Tribunal, Calcutta reported at 2014 (34) STR 26 is a decision applicable to outward transportation and has been wrongly relied by adjudicating authority in as much as that said decision considers the place of removal in context of GTA Services. The Hon'ble Tribunal, Mumbai in the case of Raymond UCO Denim Pvt. Ltd. reported at 2020 (23) GSTL 207 (Tri.-Mumbai) has held that courier services are different from GTA Services and therefore decisions applicable to GTA Services are not applicable, while deciding eligibility of availing CENVAT of courier services. The Tribunal, Mumbai has allowed the availment of CEVAT on courier services.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum and the records/documents available in the matter. It is observed that the



issues to be decided in the present appeal is whether the cenvat credit is available on the courier service used by the appellant for sale of manufactured product and further, whether the demand for extended period of limitation is sustainable or not.

7. It is observed that the adjudicating authority has confirmed the demand based on the decision of Hon'ble High Court of Kolkata in case of Commissioner of Central Excise, Kolkata-VI Vs. Vesuvius India Ltd. reported at 2014 (34) STR 26 (Cal.). The Hon'ble High Court had held that the services rendered to the customer for the purpose of delivering the goods at the destination was not covered by the definition of input service prior to 1st April 2008 as well as after 1st April, 2008. Accordingly, the claim of CENVAT in respect of service tax paid by the manufacturer for outward transportation of goods up to the point of delivery to the customer was disallowed. I find that the applicant has contended that the decision relied was in relation to the GTA Service and could not have been applied to the case in hand, where CENVAT was claimed on courier service for dispatch of goods.

7.1. It is observed that during the relevant period, the term "input service" contained under Rule 2 (1) of the Cenvat Credit Rules, 2004 meant any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance up to the place of removal. It also included services, inter-alia, used in relation to outward transportation up to the place of removal. It is also observed that the issue in hand has already been decided by the Hon'ble CESTAT, Ahmedabad in favour of appellant itself for earlier period. The Hon'ble Tribunal vide their Order No.A/12001-12015/2017 dated 02.08.2017 allowed the cenvat credit of service tax paid on courier service by following their decision in the case of CCE& ST, Vadodara Vs. Haldyn Glass Ltd & Others. In their decision in the case of CCE& ST, Vadodara Vs. Haldyn Glass Ltd & Others, the Hon'ble Tribunal has held that:

Service Tax paid on the 'Courier Services' for various purposes viz., Sending Samples, Documents, finished goods, etc., would be eligible to Cenvat Credit before and even after amendment to the definition to the 'input services' with effect from 01.04.2011.

7.2. It is further observed that the appellant has also drawn attention towards the judgement of Hon'ble High Court, Rajasthan in the case of Commissioner of Customs, Jaipur - I Vs. Sakata INX (India) Limited 2018 (16) GSTL 416 (Raj) where the Hon'ble High Court has distinguished between the GTA Service and Courier Service to allow CENVAT credit of service tax paid on courier service availed by the assessee for speedy removal of final products to their customer. Similar view has been expressed by the Hon'ble Tribunal, Mumbai in the case of Raymond UCO Denim Pvt. Ltd. Vs. Commissioner, Central Excise, Nagpur 2020 (33) GSTL 207 (Tri.-Mum).

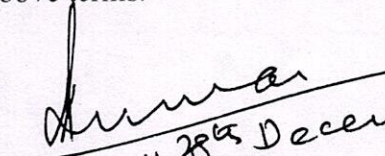


7.3. There is no evidence on record to suggest that these judgements have been reversed by judicial pronouncements. Once the higher authority/forum has decided the issue, that too in favour of the same assessee, the subsequent demand cannot be sustained on the same issue unless there is some change in the law or situation or facts. The judgement passed in the case of the appellant for the earlier period is having binding precedence on lower authority. In view of the above, the demand cannot be sustained and the same is set aside. Since the demand is set aside, the question of charging interest and penalty does not arise.

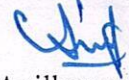
8. In view of the foregoing discussion, the impugned order is set aside and the appeal is allowed.

9. 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: 28.12.2020

Attested


 (Anilkumar P.)
 Superintendent
 CGST (Appeals),
 Ahmedabad.



BY R.P.A.D. / SPEED-POST TO :

M/s. Circuit System (India) Ltd.,
 B-24, Sector-25, GIDC Electronic Estate,
Gandhinagar-382044.

Copy to:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Assistant Commissioner, HQ (System), CGST & Central Excise, Gandhinagar Comm'rate.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Gandhinagar Divn, Gandhinagar Comm'rate.
5. Guard File.
6. P.A. File.

