



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



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टेलिफैक्स 26305136 - 079 :

DIN-20210964SW000000BDFB

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/18/2020-Appeal / 3024 TO 3029
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-003-APP-021/2021-22**
दिनांक Date : 30.07.2021 जारी करने की तारीख Date of Issue : 10.09.2021
- आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 01/Supdt/HMT/BSK/2020-21
dated 24.04.2020 passed by the Superintendent, Central GST & Central Excise,
Range-I, Division-Himmatnagar, Gandhinagar Commissionerate.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Oracle Granito Ltd.,
Block No.286, Sabar Dairy-Talod Road,
Gadhoda, Himmatnagar,
District Sabarkantha.

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।

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 :

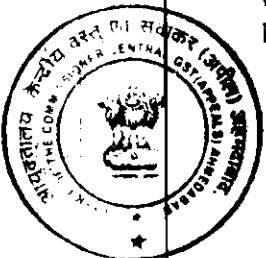
Revision application to Government of India :

(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 हों।

(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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई-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/- की 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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.



- (2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 Appellate 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 adjudicating 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 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 contained 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।

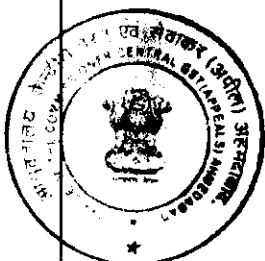
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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 Oracle Granito Ltd., Block No. 286, Sabar Dairy-Talod Road, Gadhoda, Himmatnagar, District: Sabarkantha (hereinafter referred to as the “*appellant*”) has filed the present appeal against the Order-in-Original No.01/SUPDT./HMT/BSK/2020-21 dated 24.04.2020 (hereinafter referred to as the “*impugned order*”) passed by the Superintendent, Central GST & Central Excise, Range-I, Division-Himmatnagar, Gandhinagar Commissionerate (hereinafter referred to as the “*adjudicating authority*”).

2. The facts of the case, in brief, are that the appellant is engaged in manufacture of Vitrified Tiles falling under Chapter Sub-Heading No. 69071010 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as “*CETA*”) and was holding Central Excise Registration No. AAACO6238PXM001. During the course of audit of the records of the appellant, it was observed that they were availing cenvat credit of Service Tax paid on the rent paid by them to certain establishments wherein their goods were displayed. The cenvat credit so availed appeared to be inadmissible on the ground that the services received did not qualify as input services as defined under Rule 2(l) of Cenvat Credit Rules, 2004 (hereinafter referred to as “*CCR*”) for they being not in or in relation to manufacture and clearance of their final product and not falling under any of the categories of service listed in the inclusive definition. Accordingly, the appellant was issued with periodical Show Cause Notices (in short “*SCN*”) proposing for disallowing and recovery of cenvat credit availed by them on the such services received. Two such periodical SCNs issued for the period from February 2015 to December 2015 and from January 2016 to June 2017 involving cenvat credit of service tax amounting to Rs.1,59,261/- and Rs.5,24,141/- respectively are under reference in the present appeal which were decided by the adjudicating authority vide the impugned order wherein he had confirmed the demands along with interest and imposed penalty under Rule 15 of CCR.

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

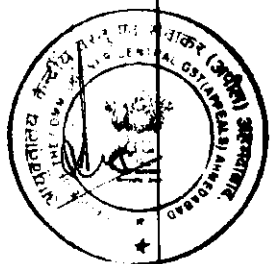
- The adjudicating authority has not appreciated the facts and circumstances of the case;
- The order passed by the adjudicating authority is not proper, legal and correct in as much as the said authority has not given any findings on the judgment relied upon by the appellant;
- The appellant has paid rent to certain establishment which is used for displaying the excisable goods manufactured by the appellant. This is an activity relating to



enhancement of sale of goods manufactured by them and pertaining to business promotion. Therefore, the said activity is covered under the definition of "Input Service" and service tax paid on rent is admissible to the appellant;

- The disputed credit availed by the appellant was of the amount of tax mentioned in the invoices raised by the service provider and the credit was availed after making the payment. Therefore, all the conditions regarding the availment of input service credit has been fulfilled by the appellant and the input service credit ought not to be disallowed;
- As per the definition of 'input service', whatever the services are used in or in relation to or used for business activity is admissible as input service tax credit and therefore, the allegation made in the notice that the said service is not used in the manufacturing unit does not appear to be correct;
- The issue already stand settled in their favour by the Hon'ble Tribunal Order No.A/10325 & 10326/WZB/AHD/2013 & M/10988/WZB/AHD/2013 dated 15.02.2013 and the Commissioner (Appeals), Ahmedabad Order-in-Appeal No.AHM-EXCUS/003/APP/084/14-15 dated 19.09.2014 in their own case. They rely on the case law in the case of Bharat Fritz Werner Ltd. Vs. Commissioner of Central Excise, Bangalore [2011(22) STR 429] based on which the above decisions were rendered;
- The authority has decided the case adversely despite the above said orders on same issue in their favour which is against the principles of judicial discipline. They rely on the case law in the case of Kamlakshi Finance Corporation Ltd. [1991 (55) ELT 433 (SC)]; and
- Since the appellant has taken the credit of input service within the parameter of definition, no interest is payable and no penalty is imposable. Further, it is a question of interpretation of law and even on this count, the penalty is not imposable.

3.1 The appellant further vide their written submission dated 23.03.2021, submitted through email, has stated that for the past period the department had issued SCNs and the Hon'ble Tribunal vide Order No. A/10325 & 10326/WZB/AHD/2013 & M/10988/WZB/AHD/2013 dated 15.02.2013-[2013 (30) STR 357] has given benefit to the appellant and on the basis of above decision rendered by the Hon'ble Tribunal, Ahmedabad, the Commissioner of C.Ex.(Appeals), Ahmedabad vide Order-in-Appeal No.AHM-EXCUS/003/APP/084/2014-15 dated 19.09.2014 has allowed the appeal filed by the appellant. They also submitted a CA's certificate for the period 2014-15 and for 2015-16 to 2017-18 certifying that rent expenditure is incurred as part of the selling and distribution overhead and above expenditure is also reflected in statement of Profit and



Loss of the company and is included while calculating the amount arrived at for the purpose of manufacturing/production expenses.

4. Personal hearing in the matter was held on 23.06.2021 through virtual mode. Shri Naimesh Oza, Advocate, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum and additional written submission.

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5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum, additional submissions and oral submissions made at the time of personal hearing. The issue to be decided in the case is whether the cenvat credit availed by the appellant in respect of service tax paid by them, on the rent paid to establishments wherein their goods were displayed, is legally admissible in terms of the provisions of Cenvat Credit Rules, 2004 or not.

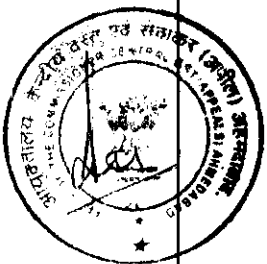
6. After going through the facts on records, it is observed that the issue under dispute in the case had been raised in the past period also against the appellant and it stand settled in their favour on merits by the Orders of Hon'ble Tribunal and Commissioner (Appeals). The present demand in fact is in continuation and with reference to the demands issued in the past and is issued in terms of Section 11A(7A) of the Central Excise Act, 1944. The adjudicating authority in the impugned order has also clearly discussed the above facts. However, while deciding the issue under the periodical notices before him, he did not consider the decisions of the Hon'ble Tribunal and Commissioner (Appeals) on the same issue for the past period against the very same appellant and decided it afresh again on merits seemingly on the reason that the said orders of the Hon'ble Tribunal and the Commissioner (Appeals) were accepted by the department on monetary grounds and not on merits. The adjudicating authority in his order has neither brought on records any change in facts or legal position in the case compared to previous cases decided nor did he distinguish how the previous decisions are not applicable to the present demand. It is observed that the said act of the adjudicating authority is not legally correct as the fact of accepting the Orders of Hon'ble Tribunal or Commissioner (Appeals) on monetary grounds does not *ipso facto* give him any authority or option, as adjudicating authority, to overlook the ratio of the decisions of the higher appellate authority. It is more so when there was no material change on the facts of the case or the legal position of the case for both the period of dispute. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. This view has been consistently emphasized by the various judicial forums including the apex court in catena of decisions. The CBEC has also issued an Instruction F.No.201/01/2014-CX.6 dated 26.06.2014 in this regard directing the all adjudicating authorities to follow judicial discipline scrupulously. The Hon'ble High Court of Gujarat in their decision in the case



of M/s Lubi Industries LLP Vs. Union of India [2016 (337) ELT 179 (Guj.)] has made the legal position unambiguously clear that even if the decision of the Tribunal in a case was not carried further in appeal by the department on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision and as long as a judgment of the Tribunal stands, it would bind departmental authorities taking up such an issue. The above legal position is equally applicable to decisions of appellate authorities also. For that settled view of the matter, the impugned order passed by the adjudicating authority by not following the principles of judicial principles is bad in law and is liable to set aside on that count alone.

7. Further, the issue under dispute on merits clearly stand settled in favour of the appellant in view of Hon'ble Tribunal vide Order No. A/10325 & 10326/WZB/AHD/2013 & M/10988/WZB/AHD/2013 dated 15.02.2013 [2013 (30) STR 357] in their own case and the Commissioner of C.Ex.(Appeals), Ahmedabad's Order-in-Appeal No.AHM-EXCUS/003/APP/084/2014-15 dated 19.09.2014 for the subsequent period relying on the above decision. It is observed that the activity of displaying excisable goods is indisputably with a purpose to promote their sales and thereby their business. The services of renting received by the appellant in relation to said activity is therefore an activity relating to business and is covered under the definition of 'input services' as defined under Rule 2(l) of the CCR. The Hon'ble Tribunal in their above decision has held that the services received in the case was used for business purpose and hence it was an input service on which the appellant was entitled to credit of Service Tax paid by them. While allowing the cenvat credit of service tax paid on rent paid for displaying goods, the Hon'ble Tribunal also took in to consideration the Chartered Accountant's certificate which stated that the expenses are considered under the selling and distribution overhead which, understandably, goes into the costing of the final product. The appellant in the present course of proceeding has also submitted Chartered Account's Certificate of similar nature for the period under dispute certifying that rent expenditure is incurred as part of the selling and distribution overhead and above expenditure is also reflected in statement of Profit and Loss of the company and is included while calculating the amount arrived at for the purpose of manufacturing/production expenses. Therefore, the above decision of the Hon'ble Tribunal is squarely applicable on the facts of the present case also and the appellant is rightly eligible for the cenvat credit of the service tax paid on the rent paid by them for the display of their goods.

8. In view of the facts discussed above, I find that the disallowing of cenvat credit of service tax in the case and the confirmation of demand thereto vide the impugned



order is not legally sustainable and is liable to be set aside for being not legal and proper for reasons discussed hereinabove. Consequently, the demand in the matter fails to survive and when the demand fails, there does not arise any question of interest and penalty in the matter.

9. Accordingly, the impugned order passed by the adjudicating authority is set aside and the appeal of the appellant is allowed.

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.

(Signature)
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 30 July, 2021
07.2021

Attested

(Signature)
(Anilkumar P.)
Superintendent (Appeal)
CGST, Ahmedabad.

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

M/s Oracle Granito Ltd.,
Block No.286, Sabar Dairy-Talod Road,
Gadhoda, Himmatnagar,
District Sabarkantha.

Copy to:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Asstt/Dy. Commissioner, CGST & Central Excise, Himmatnagar Division, Gandhinagar Comm'rate.
4. The Superintendent, Central GST, AR-I, Division-Himmatnagar, Gandhinagar Comm'rate.
5. The Asstt. Commissioner, System, CGST & Central Excise, Gandhinagar Comm'rate.
6. Guard File.
7. P.A. File.