



सत्यमेव जयते

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



DIN : 20211064SW0000318943

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXD/34/2020 / 3995 TO 3999

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-42/2021-22**
 दिनांक Date : **11-10-2021** जारी करने की तारीख Date of Issue 21.10.2021

आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **DC/D.Khatik/14/CEX/Kadi** दिनांक: **22.09.2020** issued by the
 Deputy Commissioner, CGST, Division Kadi, Gandhinagar

ध नाम एवं पता Name & Address

Appellant: The Deputy Commissioner,
 CGST & C.Excise, Kadi Division,
 4th Floor, Janta Super Market, Kalol-382721

Respondent: M/s Vardhman Stampings Pvt Ltd,
 Irana Road, S.No. 132/C, Budasan,
 Kadi-Chattral Road, Ta-Kadi, Mehsana,
 Gujarat

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 :

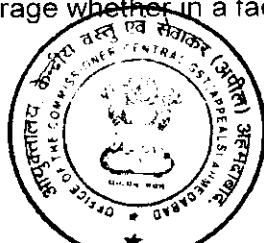
Revision application to Government of India :

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अततनीचे 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 जोड़यूटीक्रेडिटमान्य 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 ईए-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। इसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 बालान 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 कर एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न कर 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.

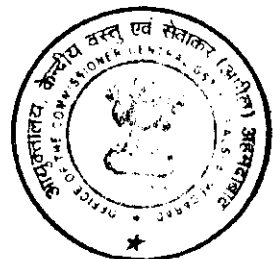
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) उक्त लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेशमें से प्रत्येक की एक प्रतिपर 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 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 contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (20) 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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेन वैट क्रेडिट की राशि;
- (iii) सेन वैट 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:

- (xliii) amount determined under Section 11 D;
- (xliv) amount of erroneous Cenvat Credit taken;
- (xlv) 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."



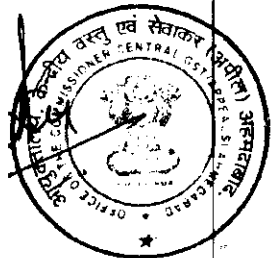
ORDER-IN-APPEAL

The present appeal has been filed by the Deputy Commissioner, Central GST & Central Excise, Kadi Division, Commissionerate- Gandhinagar (hereinafter referred to as the appellant), on the basis of Review Order No. 12/2020-21 dated 13.10.2020 of the Commissioner, Central GST & C.Ex., Gandhinagar Commissionerate, against Order in Original No. DC/D.KHATIK/14/CEX/KADI dated 22.09.2020 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, Central GST & C.Ex., Kadi Division, Commissionerate- Gandhinagar [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Vardhaman Stampings Pvt Ltd, Irana Road, S.No. 132/C, Budasan, Kadi-Chhatral Road, Kadi, Taluka : Kalol, District : Mehsana - 382 721 [hereinafter referred to as the respondent].

2. The facts of the case, in brief, is that the respondent is engaged in the manufacture of goods falling under Chapter 85 of the Central Excise Tariff Act, 1985 and are holding Central Excise Registration No.AAACV7624GXM001 and availing Cenvat facility under the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). During the course of CERA audit on the records of the respondent for the period from F.Y. 2013-2014 to F.Y. 2016-2017, it was noticed that the respondent had availed Cenvat Credit of the CVD amounting to Rs.13,52,545/- on 11.11.2014 and Cenvat Credit of the SAD amounting to Rs.5,06,799/- was availed on 11.03.2015 on the strength of Bill of Entry No. 6371809 dated 07.08.2014 which is beyond the time limit of six months and, therefore, such availment of Cenvat credit was in contravention of Rule 4 (1) of the CCR, 2004.

2.1 Therefore, the respondent was issued SCN dated 04.03.2020 proposing to :

- i) deny and recover Cenvat Credit amounting to Rs.5,06,799/- under Rule 14 of the CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944 by invoking the extended period of five years;
- ii) Recovery of Interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Central Excise Act, 1944;
- iii) Impose penalty under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944; and
- iv) Confiscate the goods valued at Rs.1,10,82,804/- under Rule 15 of the CCR, 2004.



3. The SCN was adjudicated by the impugned order and the adjudicating authority dropped the proceedings initiated against the respondent.

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

- i. The contention of the adjudicating authority that the Notification No.21/2014-CE(NT) is applicable from 01.09.2014 and the bill of entry was issued on 7.8.2014, which is prior to the applicability of the said notification is not legal and proper.
- ii. The adjudicating authority finding merit in availment of Cenvat Credit in terms of Notification No. 06/2015 w.e.f. 01.03.2015 is not acceptable as the said notification came into effect from 01.03.2015. In the instant case, Notification No. 21/2014-CE (NT) limiting the time limit of six months was in force when the bill of entry was issued.
- iii. The time limit extended later on w.e.f. 01.03.2015 does not merit enforcement in the instant case. It is a settled proposition that any notification , unless specified, comes into force prospectively.
- iv. The time limit of six months would be applicable as per Notification No. 21/2014 dated 01.09.2014 which was in force.
- v. When the bill of entry was issued on 07.08.2014, the law was that the Cenvat Credit ought to be taken within six months of the date of issue of the document. The respondent had initially taken Cenvat Credit of the CVD and later on when the time limit was extended they took credit of the SAD.

5. The respondent filed their cross-objections to the appeals vide their letter dated 03.03.2021 wherein they, inter alia, submitted that :

- i. In the grounds of appeal the facts of the case have been wrongly stated. The bill of entry was dated 7.8.2014 and as such it is factually wrong to say that notification No. 21/2014-CE (NT) was effective when the bill of entry was issued. The said notification was effective from 01.09.2014.
- ii. On the date of issue of the bill of entry, Notification No. 21/2014 was not in force at all as it came into force on 01.09.2014. They had availed Cenvat Credit when no time limit was prescribed for taking credit. The restriction of six months was made effective from 01.09.2014 by Notification No. 21/2014. As such, the said notification cannot be invoked to disallow the cenvat credit. They rely upon the decision in the case of : 1) Indian Potash Ltd Vs. CCGST, Meerut reported at 2019



(369) ELT 742 (Tri.- All); 2) Sanghvi Marmo Pvt Ltd Vs. CGST, Jodhpur reported at 2020 (33) GSTL-232 (Tri.-Del); 3) Global Ceramics Pvt Ltd Vs. Principal Commissioner of C.Ex., Delhi-I reported at 2019 GSTL 470 (Del.)

- iii. When initially cenvat credit on the bill of entry was taken within the stipulated period of six months, the remaining credit or partial credit taken after six months cannot be construed to have been taken beyond the period of six months. They rely upon Circular No. 990/14/2014-CS-8 dated 19.11.2014 issued by the CBIC. They also rely upon the decision in the case of Ammarun Foundries Vs. CESTAT reported at 2013 (298) ELT 194 (Mad.).
- iv. Part Cenvat Credit was taken on 11.11.2014 and the remaining amount of Cenvat credit was taken on 11.03.2015. There was no malafide intention on their part and it was only a clerical lapse. Therefore, the notice issued on 04.03.2020 was hit by limitation.

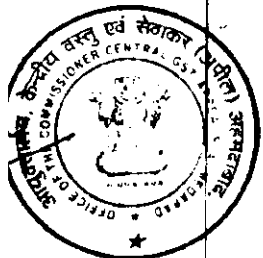
6. Personal Hearing in the case was held on 16.09.2021 through virtual mode. Shri P.G.Mehta, Advocate, appeared on behalf of the respondent. He reiterated the submissions made in cross-objection to the appeal.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and the cross-objection of the respondent, the submissions made by them at the time of personal hearing and evidences available on records. The issue which requires to be decided in the case is whether the respondent are eligible to avail Cenvat Credit on 11.03.2015 on the strength of a Bill of Entry dated 07.08.2014.

7.1 As per Rule 4 (1) of the CCR, 2004 as it stood before its amendment on 11.07.2014, "*The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer...*". By virtue of Notification No. 21/2014-CE (NT) dated 11.07.2014, a third proviso was inserted to Rule 4(1) of the CCR, 2004 w.e.f. 01.09.2014, which reads as :-

"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9".

7.2 The third proviso was subsequently amended by Notification No. 6/2015-CE (NT) dated 01.03.2015 and the words 'six months' was substituted with 'one year'.



7.3 It, therefore, emerges from the above that prior to Notification No. 21/2014-CE (NT) dated 11.07.2014, there was no time limit for taking Cenvat Credit in terms of Rule 4 (1) of the CCR, 2004. I find that the Bill of Entry on the basis of which the credit has been availed by the respondent is dated 07.08.2014 i.e. prior to amendment made in Rule 4 (1) of the CCR, 2004, providing for a time limit of six months of the date of issue of the documents.

7.4 The respondent have relied upon a number of judgements in their support. I find that the same are applicable to the facts involved in the present appeal. In the case of Voss Exptech Automotive Pvt Ltd. Vs. Commissioner of C.Ex., Pune-I reported at 2018 (363) ELT 1141 (Tri.-Mumbai), it was held by the Hon'ble Tribunal that :

“On careful consideration of the submissions made by both the sides, I find that for denial of the credit, the Notification No. 21/2014-C.E. (N.T.), dated 11-7-2014 was invoked wherein six months period is available for taking credit. As per the facts of the case credit was taken in respect of the invoices issued in the month of March & April 2014 in November 2014. On going through the Notification No. 6/2015-C.E. (N.T.), dated 1-3-2015 the period available for taking credit is 1 year in terms of the notification, the invoices issued in the month of March and April 2014 become eligible for Cenvat credit. I also observed that the Notification No. 21/2014-S.T. (N.T.), dated 11-7-2014 should be applicable to those cases wherein the invoices were issued on or after 11-7-2014 for the reason that notification was not applicable to the invoices issued prior to the date of notification therefore at the time of issuance of the invoices no time limit was prescribed. Therefore in respect of those invoices the limitation of six months cannot be made applicable. Moreover for taking credit there is no statutory records prescribed the assessee's records were considered as account for Cenvat credit. Even though the credit was not entered in so-called RG-23A, Part-II, but it is recorded in the books of accounts; it will be considered as Cenvat credit was recorded. On this ground also it can be said that there is no delay in taking the credit. As per my above discussion, the appellant is entitled for the Cenvat credit hence the impugned order is set aside. The appeal is allowed.”

7.5 A similar view as taken by the Hon'ble Tribunal in the case of Indian Potash Ltd. Vs. Commissioner of CGST, Meerut reported at 2019 (369) ELT 742 (Tri.-All); Sanghvi Marmo Pvt Ltd. Vs. Commissioner of CGST, Jodhpur reported at 2020 (33) GSTL 232 (Tri.-Del). Further, the Hon'ble High Court of Delhi had in the case of Global Ceramics Pvt Ltd., Vs. Principal Commissioner of C.Ex., Delhi-I reported at 2019 (26) GSTL 470 (Del.) held that :

“22. Consequently, in the present case, the Court is satisfied that the Amendment to Rule 4(1) CCRs prescribing a time limit for claiming Cenvat Credit will not apply to the consignments in the present case where the import took place prior to the date of the amendment and the deemed manufacture took place when the MRP was altered, which also happened prior to the amendment. In other words, the CVD paid by the BRCPL will



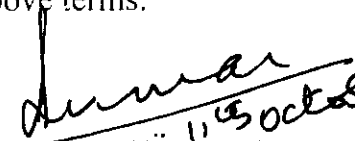
have to be permitted to be adjusted against the CE duty settled as will the service tax paid on the input services.”

8. In view of the above facts and the judicial pronouncements on the issue, I am of the considered view that the time limit of six months, in terms of the proviso to Rule 4 (1) of the CCR, 2004, would not apply to the Bill of Entry dated 07.08.2014, which was issued prior to the insertion of the time limit and the respondent had rightly availed Cenvat Credit on 11.03.2015.

9. In view of the above discussions and the material available on record, I reject the appeal filed by the appellant and uphold the impugned order.


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)

Attested:

Date: 10.10.2021.


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

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Appellant

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Budasan, Kadi-Chhatral Road,
Kadi, Taluka : Kalol,
District : Mehsana - 382 721

Respondent

Copy to:

- 1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar.
- 3) The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)

- ✓ 4) Guard File.
- 5) P.A. File.