



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 : 20220264SW000000C6D3

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1389/2021 / 6107 - 11
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-98/2021-22
दिनांक Date : 10-02-2022 जारी करने की तारीख Date of Issue 11.02.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 39/AC/MEH/CGST/20-21 दिनांक: 12.02.2021 issued by Assistant Commissioner, CGST & Central Excise, Division Mehsana, Gandhinagar Commissionerate
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Cargo Motors Private Limited
Near Janpath Hotel, Opp RTO Office,
Mehsana

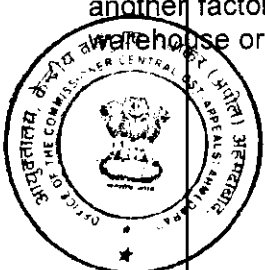
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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) केंद्रीय 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 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 हानिकार खाने 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 मामलों 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 दिनोंक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष 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 होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

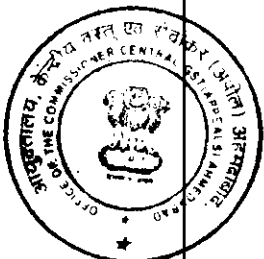
सीमा शुल्क केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 2ndमाला, 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट)के प्रतिअपीलो के मामले में कर्तव्यमांग(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 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.

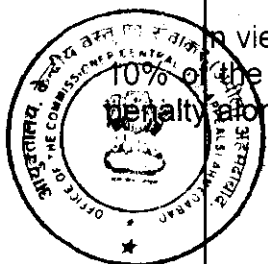
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (iv) amount determined under Section 11 D;
- (v) amount of erroneous Cenvat Credit taken;
- (vi) 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."

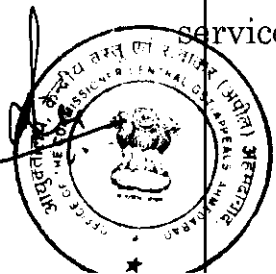


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Cargo Motors Private Limited, Near Janpath Hotel, Opposite RTO Office, Mehsana, Gujarat – 384 002 (hereinafter referred to as the appellant) against Order in Original No. 39/AC/MEH/CGST/20-21 dated 12-02-2021 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant are holding Service Tax Registration No. AAACC2744CST008 and are engaged in providing repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle. During the audit of the records of the appellant for the period from April, 2016 to June, 2017 conducted by the officers of Central GST Audit, Ahmedabad it was noticed that the appellant had incurred security and legal expenses for workshop/unit and availed cenvat credit of the service tax paid on such expenses. It was further noticed that the appellant are providing taxable services as well as carrying out trading activities (sale of spare parts, lubricants, vehicles etc.) from the said workshop/unit. It appeared that the security and legal services availed by the appellant are common input services for providing taxable services as well as trading activities and they had not maintained separate records for the receipt, consumption etc. of the common input services received by them. Therefore, the appellant was liable for reversal of proportionate cenvat credit in terms of Rule 6 (3D) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004).

2.1 As per Rule 2 (e) of the CCR, 2004, exempted services includes service on which no service tax is leviable under Section 66B of the Finance Act, 1994. Trading of goods is one of the services listed in the Negative List of Services as per Section 66D of the Finance Act, 1994. Further, since trading activity is specifically included in the exempted services, the appellant was liable to reverse proportionate cenvat credit



amounting to Rs.3,09,615/-. The appellant was issued a Show Cause Notice bearing No. VI/1(b)-195/Cargo Motors Pvt Ltd/IA/18-19/AP-61 dated 11.12.2019 seeking to recover the proportionate cenvat credit amounting to Rs.3,09,615/- under the proviso to Section 73 (1) of the Finance Act, 1994 read with Rule 14 (1) (ii) of the CCR, 2004 along with interest under Section 75 of the Finance Act, 1994 read with Rule 14 (1) (ii) of the CCR, 2004. Imposition of Penalty was also proposed under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

3. The said SCN was adjudicated vide the impugned order and the demand for service tax was confirmed along with interest. Penalty was also imposed under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

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

- i. They are using the services mainly for providing taxable services. The security service is used exclusively for providing workshop services which is taxable.
- ii. As per Rule 6 of the CCR, 2004, it is important to determine the credit which are used for both exempted as well as taxable service and accordingly apply formula laid down in the rules.
- iii. Before going for any option under rule, it is important to determine common credit which only come under formula of proportionate reversal of credit. In the present matter, the audit party has not verified facts but demanded reversal of credit based on nature of transaction which is evident from the wording of the Audit Memo.
- iv. There are so many transactions which attributes to available common credit which has already been reversed or not claimed by them. They have various transaction on which excise or service tax has been levied and part of common credit like tools, machineries. DMS expenses, Bank Charges etc. The formula applied required all

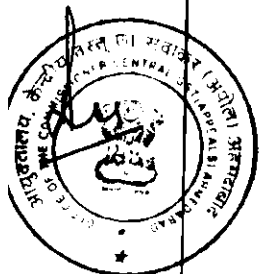


input/input service to be considered rather than the credit claimed in the service tax return.

- v. The adjudicating authority has not discussed the factual aspect of the issue. They submit that they have tried to comply with the provision of the act and have filed service tax returns regularly and the taxable value has been shown correctly.
- vi. The credit claimed in the return is exclusively used for taxable service and eligible for credit against output service.
- vii. They had no intention to evade the tax payment and have tried to comply with the provision of the act based on their understanding and claimed cenvat credit. They have never claimed credit which is not eligible or wrongly taken. They rely on the judgment in the case of Hindustan Steel Vs. State of Orissa – 1978 ELT (J159) wherein it was held that penalty would not be ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations.
- viii. There is no suppression of fact and it is interpretation of provision of act. They had claimed credit which is on record and was verified by the audit team.

5. The appellant filed additional written submissions on 30/12/2021 wherein it was inter alia submitted that :

- In terms of Rule 6 of the CCR, 2004 reversal of proportionate credit is applicable only where common credit is availed. In the present case they have not availed/utilized any such common credit like telephone, mobile, professional fees, courier charge etc. Hence, reversal on proportionate basis does not arise.
- As per the rule, where eligible credit is identified separately and utilized for the purpose, provision of proportionate reversal is not applicable. They have availed credit applicable to workshop i.e. security service and have maintained record of the credit. The adjudicating authority has concluded that it is utilized for common purpose, which is wrong and incorrect. The certificate of the service



provider clarifies the purpose/nature of service and the same was utilized for taxable service only.

6. Personal Hearing in the case was held on 28.12.2021 through virtual mode. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He also submitted relevant documents as part of additional written submission.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. The issue before me for decision is whether the appellant are liable to reverse proportionate cenvat credit in respect of the common input service, i.e. Security Service, used for providing taxable service as well as trading activity, which is not leviable to service tax.

7.1 I find that the appellant are providing taxable services of repair, reconditioning, restoration etc. of any motor vehicle from their workshop. They are also engaged in trading of spare parts, lubricants, vehicles etc. As per Rule 2 (e) of the CCR, 2004, exempted service includes a service on which no service tax is leviable under Section 66B of the Finance Act, 1994. Trading of goods is covered in the Negative List of Services in terms of Section 66D (e) of the Finance Act, 1994 and, therefore, the same is not leviable to service tax. Accordingly, trading of goods falls within ambit of exempted services, and therefore, the appellant are not eligible to avail cenvat credit in respect of the exempted service i.e. trading of goods.

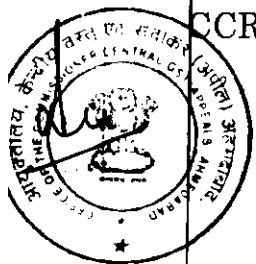
7.2 As per the provisions of Rule 6 (1) of the CCR, 2004, cenvat credit shall not be allowed on input services used for provision of exempted services. The service provider has the option of either following the procedure laid down in Rule 6 (3) of the Rules and pay an amount equal to seven percent of the value of the exempted services or reverse the credit calculated in terms of Rule 6 (3A) of the CCR, 2004. I find that in the



instant case, the appellant have not followed the procedure set out in either of the said rules and have not reversed any cenvat credit availed in respect of common input services. It is the contention of the appellant that the security service, which the department has alleged, was used for both taxable and exempted services, was used exclusively for taxable services. I find that the appellant have not come forward with any evidence to substantiate their claim except for a certificate of the security service provider. However, I am of the view that the so called certificate of the service provider is not a valid evidence to substantiate the contention of the service having been used only for provision of taxable services.

7.3 From the records, I find that the activity of the appellant involves repair, reconditioning, restoration etc. of any motor vehicle from their workshop as well as sale of spare parts, lubricants, vehicles etc. There is nothing on record to indicate that the trading of goods carried on by the appellant is from a distinctly separate premises from that of the workshop from where taxable services are being provided by them. The appellant have also not claimed that the trading of goods is being carried out by them from a premises which is separate from the premises housing the workshop. Such being the case, I do not find any merit in the contention of the appellant that the security service is being used only for provision of taxable services from the workshop. I am, therefore, of the considered view that the appellant are not eligible to avail cenvat credit in respect of the input service used in exempted service i.e. trading of goods. Consequently, they are liable to reverse the proportionate credit in terms of Rule 6(3)/(3A) of the CCR, 2004.

8. The appellant have also contended that penalty is not imposable on them as there was no intention to evade payment of tax and that there was no suppression. I, however, do not find any merit in the contention of the appellant. The appellant are registered with the service tax department and are paying service tax on the taxable services provided by them and are also availing the facitity of cenvat credit. The provisions of CCR, 2004 do not leave any room for doubt regarding the inadmissibility

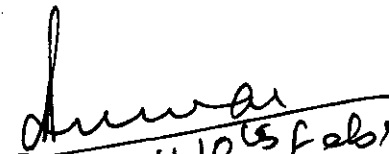


of cenvat credit in respect of the exempted services. However, rather than complying with the provision of the CCR, 2004 and reversing that part of the cenvat credit attributable to the exempted services, the appellant availed the cenvat credit even in respect of the exempted services. It was only in the course of the audit of the records of the appellant that the wrong availment of cenvat credit was unearthed. Therefore, I do not find any infirmity in the imposition of penalty upon the appellant.

9. In view of the facts discussed herein above, I uphold the impugned order and reject the appeal filed by the appellant.

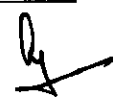
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar) 10th February, 2022..
Commissioner (Appeals)
Date: 02.2022.



Attested:


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

BY RPAD / SPEED POST

To

M/s. Cargo Motors Private Limited,
Near Janpath Hotel,
Opposite RTO Office,
Mehsana, Gujarat – 384 002

Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division- Mehsana,
Commissionerate : Gandhinagar

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.