



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/378/2022-APPEAL / 2177-87
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-043/2023-24 and 31.05.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	12.06.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/EX/PARAS MANI TRIPATHI/123/2021-22 dated 24.05.2022 passed by the Deputy Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vishal Containers Ltd (Corrugated Box Division), Plot No. 310/312/313, Phase-I, GIDC, Chhatral, Gandhinaga, Gujarat - 382729

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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।

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।

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।

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 हों।

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.

(2) 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 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होती 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 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 :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में 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 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) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(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।

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. Vishal Containers Ltd. (Corrugated Box Division), Plot No. 310/312/313, Phase-I, GIDC, Chhatral, Gandhinagar, Gujarat- 382729 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. KLL DIV/EX/PARAS MANI TRIPATHI/123/2021-22 dated 25.05.2022, (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Kalol Division, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in manufacture of corrugated box, corrugated roll, corrugated partitions. They were holding Central Excise Registration No. AABCV8510EST002.

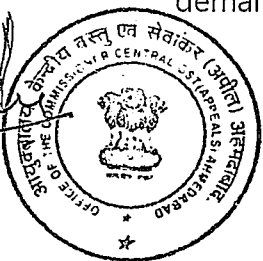
2. The facts of the case, in brief, are that during the course of EA 2000 Audit on the records of the appellant and as per Revenue Para-4 of the FAR No. 802/2018-19 dated 17.01.2019, issued by the Assistant Commissioner, CGST Circle-X, Ahmedabad Audit Commissionerate, it was observed that the appellant had sold various machineries/capital goods at the transaction value but paid the central excise duty on depreciated value instead of paying the duty on the transaction value. It is observed that in terms of Rule 3(5)(a) of the CENVAT Credit Rules (CCR), 2004, if the capital goods on which CENVAT credit has been taken are removed after being used, then the manufacturer shall pay an amount equal to CENVAT credit taken on the said capital goods reduced by the percentage point calculated by straight line method as specified therein for each quarter from the date of taking Cenvat credit. If the amount so calculated is less than the amount of duty leviable on transaction value, then the amount to be paid shall be equal to the transaction value. As the duty leviable on the transaction value was higher than the duty calculated in term of Rule 3(5A)(a) of the CCR, 2004, the appellant were liable to pay Central Excise duty amount of Rs. 5,24,701/- on the transaction value alongwith applicable interest and penalty.

2.1 A Show Cause Notice (SCN) No. 62/2018-19/CGST (Audit) dated 14.03.2019, issued from F. No. IV/1(b)-18/AP-70/CIR-X/18-19 was therefore issued to the appellant proposing demand of central excise duty amounting to Rs. 5,24,701/- under provisions of Rule 3(5A)(a) of the CCR, 2004 read with Section 11A(4) of the CEA, 1944; interest and penalty under Section 11AA and Section 11AC of the CEA, 1944 was also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the demand of Rs. 5,24,701/- proposed in the SCN was confirmed alongwith interest and penalty of Rs. 5,24,701/- was also imposed on the appellant.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- In the present case transaction is of capital goods from a unit to its sister concern where one unit reverses the credit, while another sister concern unit shall be eligible to get such credit which is a revenue neutral situation. The machinery was used and not new, hence the reversal of credit at depreciated value is correct. Since it was transfer of used capital goods from Chhatral to Irana, no excise invoice was issued as sale of excisable goods was not involved. Hence, the demand of duty on transaction value is baseless and unsustainable.



- The adjudicating authority has quoted few lines stating it has been held in the case of M/s. Sundaram Fasteners Ltd.- 2009 (237) ELT 55 (Tri-Bang) however, the said quoted lines were not found in the decision hence the adjudicating authority has erred in relying on the above decision for imposing penalty.
- It is settled legal position that when any tax or credit when paid or reversed becomes eligible as credit to the sister unit, then a revenue neutral situation comes in picture and resultantly extended period of limitation cannot be invoked in such cases. Reliance placed on following decisions;
 - Alembic Ltd – 2014 (308) ELT 535
 - Lanco Industries – 2010 (255) ELT 275
 - Moser Baer India Ltd. – 2010 (250) ELT 79
- There is no suppression of facts with intent to evade payment of duty hence the demand is not sustainable in law.
- Penalty under Section 11AC also deserves to be dropped as there is no violation of any nature committed by the appellant.
- Interest under Section 11AA is also not leviable as there is no short payment, short levy of non-payment of duty.

5. Personal hearing in the matter was held on 17.04.2023. Shri Sudhanshu Bissa, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is whether excise duty payment on deprecated value of capital goods instead of transaction value, on clearance made by the appellant to sister concern, is legal and proper or otherwise?

The demand pertains to the period April, 2016 to June, 2017.

6.1 The adjudicating authority held that in indirect taxation in B2B transactions, the duty paid is allowed as input tax credit and there is a neutral effect but that does not mean that one can make short payment of duty and take a plea that such short payment is revenue neutral. He held that as per the provision of Rule 3(5A) (a) of the CCR, 2004, the appellant was required to discharge duty on transaction value, which was higher. He has, therefore, confirmed the demand alongwith interest and penalty.

6.2 The appellant, on the other hand, have contended that the capital goods were transferred to its sister concern and since the machineries were not new, the reversal of credit was made on their depreciated value as per the Income Tax Act, 1964. They also contended that as no sale of excisable goods was involved, no invoice was issued. Therefore, the demand of duty on transaction value is baseless and unsustainable.

6.3 To examine appellant's claim, relevant Rule 3(5A) is reproduced below. This rule was introduced into the Cenvat Credit Rules, 2004 *vide* Notification No. 18/2012-C.E. (N.T.), dated 17-3-2012 with effect from 1-4-2012:-

RULE 3. CENVAT credit.



(5A) (a):- If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely :-

(i) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

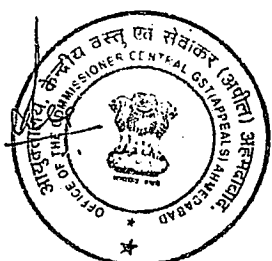
(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.]

6.4 It is not in dispute that the capital goods cleared by the appellant were removed after being used. In terms of aforesaid rule, when capital goods are cleared after use, the assessee is required to reverse Cenvat credit on depreciated value or pay duty on transaction value whichever is higher. It is the claim of the appellant that the cenvat credit was reversed on depreciated value, as the capital goods cleared were used goods does not hold any merit, as the rule clearly stipulates that the assessee is required to pay on the depreciated value or the transaction value whichever is higher.

6.5 In reply to the SCN, the appellant have stated that they have paid duty amounting to Rs. 28,65,175/- on transfer of capital goods to their other unit. This amount they claim was derived on normal value for each capital goods on the basis of the formula laid down under the Income Tax Act. They have also claimed that as per calculation of Rule 3(5A) of the said rule, they were required to reverse an amount of Rs. 24,68,179/-, which would be less than the amount already paid. However, I find that this claim is not supported by any calculation sheet or documentary evidence to establish that the amount paid is more than the transaction value. Hence, I reject such argument made by the appellant.

7. Further, the appellant have placed reliance on following decision in support of their argument that clearance of capital goods to inter-unit transfer should be treated as revenue neutral as duty paid by one unit shall be admissible as credit to the other unit. Resultantly the extended period of limitation cannot be invoked.

- o Sundaram Fasteners Ltd – 2009 (237) ELT 55 (Tr-Bang)
- o Alembic Ltd – 2014 (308) ELT 535
- o Lanco Industries – 2010 (255) ELT 275
- o Moser Baer India Ltd. – 2010 (250) ELT 79



7.1 I have gone through the above case-laws and I find that in the case of Sundram Fasteners Ltd, the demand based on value adopted for sale to inter-unit transfer was set-aside on the contention of revenue neutrality. In the case of Alembic Ltd also, it was held that non-payment of duty in revenue neutral situation cannot be attributed to any fraud, collusion or willful misstatement under Section 11A of Central Excise Act, 1944. Similar view was taken in the case of Lanco Industries & Moser Bear wherein it was held that if the other unit being eligible to avail credit of duty demanded in present proceedings, entire exercise would be revenue neutral hence futile.

7.2 Further, it is also observed that Hon'ble Tribunal in the case of **Mahindra & Mahindra Ltd- 2019** (368) E.L.T. 105 (Tri. - Mumbai), held that the demand of differential duty on clearances of I.C. Engines made to sister unit by including in its value the Head Office admin expenses, R&D expenses and royalty, was not sustainable on the ground of revenue neutrality inasmuch as such differential duty would be available as Cenvat credit to the recipient unit even though it was paying duty from PLA. This decision was upheld by Hon'ble Apex Court as reported at *Commissioner v. Mahindra & Mahindra Ltd- 2019 (368) E.L.T. A41 (S.C.)*.

7.3 Similarly, in the case of **Anglo French Textiles-2018** (360) E.L.T. 1016 (Tri. - Chennai), the demand was held un-sustainable. There the appellant was transferring unprocessed fabrics to own sister unit on payment of duty but not on 115% of cost as statutorily required. But it was held revenue neutral as the said sister unit would be eligible to avail credit of duty paid. This decision was also upheld by Hon'ble Apex Court in the case of *Commissioner v. Anglo French Textiles - 2018 (360) E.L.T. A301 (S.C.)*.

7.4 In the present case, the appellant have removed the capital goods to their own sister concern, who would be eligible to avail the credit of duty demanded in the present case. Considering the facts of the present case and the above judicial pronouncements, I find that the entire exercise is revenue neutral. Therefore, the duty demand of Rs. 5,24,701/-, interest and penalty are not warranted on the ground of revenue neutrality.

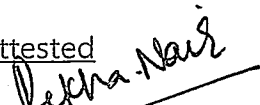
8. In view of above discussion and the decisions of the various judicial forum, I set-aside the impugned Order-in-Original and allow the appeal filed by the appellant.

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

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


(Akhilesh Kumar)
Commissioner (Appeals) 2023

Date: 31.05.2023

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
 M/s. Vishal Containers Ltd.
 (Corrugated Box Division),
 Plot No. 310/312/313,
 Phase-I, GIDC, Chhatral,
 Gandhinagar, Gujarat- 382729

Appellant

Deputy Commissioner,
 CGST, & Central Excise, Division-Kalol,
 Gandhinagar

Respondent**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad Gandhinagar.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad Gandhinagar.
 (For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. Guard File.

