



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



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)7/EA-2/North/Appeals/2019-20/1431 T 014316

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-017-2019-20
दिनांक Date : 27-02-2020 जारी करने की तारीख Date of Issue 18/03/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No Div-VII/GST-Refund/241/vasudev-feb/2018 दिनांक:
30.10.2018 & Div-VII/GST-Refund/237/vasudev-oct/2018 दिनांक: 30.10.2018 issued by
Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Vasudev Exports
Ahmedabad

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 issued under the Central Excise Act 1944, 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 प्रकिया 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.

(b) 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।

... 1 ...



(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।

(b) 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।

(c) 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।

(d) 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 जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 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 अनुसूचि-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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act-2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority.



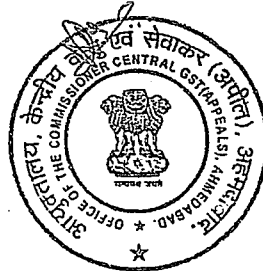
ORDER IN APPEAL

The Joint Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') has filed the present appeals against RFD-06 Refund Order No. Div-VII/GST-Refund/241/Vasudev-Feb/2018 dated 30.10.2018 (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as 'the adjudicating authority') in the matter of refund claims filed by M/s. Vasudev Exports (GSTIN: 24AECPM2297R1ZX), 504, Rajvi Arcade, Opp. Gurukul Drive-In Road, Memnagar, Ahmedabad-380052 (hereinafter referred to as 'respondent').

2. The facts of the case, in brief, are that the respondent, had filed a refund claim of Rs. 90,613/- for CGST and Rs. 90,613/- for SGST for the month of February, 2018 on account of input tax credit(ITC) accumulated due to Zero rated supply of goods and services. On scrutiny of the refund claim by the adjudicating authority, it was observed that the respondent was eligible only for refund of Rs. 85,760/- for CGST and Rs. 85,760/- for SGST in view of the formula mentioned in Rule 89 for refund on zero rated supply of goods and services. Hence the adjudicating authority has sanctioned an amount of Rs. 85,760/- for CGST and Rs. 85,760/- for SGST in place of Rs. 90,613/- for CGST and Rs. 90,613/- for SGST.

3. On the refund claim being sent for post audit, it was observed that, in some cases, input tax credit was not admissible to the respondent as per the copy of purchase invoices as well as summary statement of purchase invoices and as per Para 2.4 and 4.1 of Circular No. 59/33/2018. Hence, audit observed that the adjudicating authority had sanctioned the refund claims, in excess. Thereafter on the impugned order, having been examined for its legality and propriety, the Pr. Commissioner, CGST & C.Ex., Ahmedabad North Commissionerate, vide Review Order No. 05/2019-20 dated 23.05.2019 authorized the appellant to file an appeal against the impugned order raising the following grounds:

- that the respondent is not eligible for ITC amounting to Rs. 684/ for CGST and Rs. 684/- for SGST(Total Rs. 1,368/-) for purchase of tyres in view of Section 17(5) of the CGST Act, 2017. As such the said ITC has to be deducted from the Net ITC before calculating the maximum refund claim i.e. Rs. (90,856.5-684)= Rs. 90172.5/- for CGST and Rs. Rs. (90,856.5-684)= Rs. 90172.5/- for SGST. Accordingly, the respondent is eligible for refund of Rs. 85,114/- for CGST and Rs. 85,114/- for SGST in view of the formula given in Rule 89 for refund of zero rated supply of goods and services;
- that the adjudicating authority has sanctioned the refund claim amounting to Rs. 85,760/- for CGST and Rs. 85,760/- for SGST. The adjudicating authority has erred by sanctioning the excess refund claim amounting to Rs. 646/- for CGST and Rs. 646/- for SGST for the period February, 2018.
- that the excess refund sanctioned of Rs. 646/- for CGST and Rs. 646/- for SGST needs to be recovered along with interest.



4. As regard the personal hearing in the matter was fixed on 16&17/07/2019, 30&31/07/2019, 01/08/2019, 06/11/2019 and 18/02/2020 and intimated under letters dated 11/07/2019, 23/07/2019, 15/10/2019 and 10/02/2020 respectively. Considering that appellant has failed to appear on any dates, I presume that appellant is not desirous of personal hearing and therefore I proceed to decide the case based on records available.

5. I have carefully gone through the facts of the appeals, the department's grounds of appeal in the Review Orders. I find that the date of receipt of the impugned order as mentioned in the review orders is 26.11.2018 and the above appeals have been filed on 24.05.2019. As per Section 107 of the CGST Act 2017, the review of the order and the consequent filing of appeal by the subordinate has to be done within a period of six months from the date of communication of the order. I find that the above appeal have been filled within time limit.

6. In the present case, I find that the appellant has filed the appeals on the ground that the excess refund has been sanctioned erroneously to the respondent, whereas the respondent was not eligible to avail the Input Tax Credit under sub-section (5) of Section 17 of the CGST Act, 2017 for purchase of tyres. The appellant has argued that the respondent does not satisfy any of the conditions as mentioned in sub-section (5) of Section 17 of the CGST Act, 2017 and therefore, the above mentioned Input Tax Credit should be deducted from the Net ITC before calculating the maximum refund claim.

7. It shall be apt to reproduce the relevant part of sub-section (5) of Section 17 of the CGST Act, 2017 which reads thus :-

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;



8. It is evident from the above that input tax credit shall not be available on purchase of tyres subject to the exceptions given therein. I also find that the respondent did not satisfy any of the conditions for exemption as mentioned under Section 17(5) of the CGST Act, 2017 and it is also evident that input tax credit shall not be available in respect of the purchase of tyres.

I find that the CGST Act, 2017 has been amended vide the CGST (Amendment) Act, 2018 and the amendments have been made effective only from 1st February 2019. The present appeals pertain to the period for February, 2018 and therefore it would not be legitimate to discuss these amendments and its applicability in the pretext of this case. Hence, I find that this would not help the respondent in any manner.

9. In view of the foregoing, I find that adjudicating authority has erroneously sanctioned the excess refund to the respondent and therefore the excess refund amount should be recovered with appropriate interest. Hence, the appeal filed by the appellant is allowed.

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

10. The appeals filed by the appellants stand disposed of in above terms.

मुकेश राठौर
27/02/2020

(मुकेश राठौर)

संयुक्त आयुक्त (अपील्स)



Date : .02.2020

Attested

(D.A. Parmar)
Superintendent (Appeals),
Central Tax, Ahmedabad

To,

M/s. Vasudev Exports (GSTIN: 24AECPM2297R1ZX),
504, Rajvi Arcade, Opp. Gurukul Drive-In Road,
Memnagar, Ahmedabad-380052 C.G. Road,
Navrangpura, Ahmedabad-380009.

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Pr. Commissioner, Central GST, Ahmedabad North.
- (3) The Assistant Commissioner, Central GST, Division-VII, Ahmedabad North.
- (4) The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
- (5) The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.
(for uploading the OIA on website)
- (6) Guard file
- (7) P.A. file.