



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : **V2/(GST)29/EA2/North/Appeals/2019-20/14623 to 14628**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-002-APP-03/20-21**

दिनांक Date : जारी करने की तारीख Date of Issue: **15.04.2020**

08.06.2020

श्री **अखिलेश कुमार** आयुक्त (अपील) द्वारा पारित

Passed by **Shri Mukesh Rathore**, Joint Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original Div – VII/GST-Refund/34/LHDPL/2019 , Issued by:
05.03.2019 by Assistant Commissioner ,CGST, Div. – VII , Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Lesso Home IT Development pvt. Ltd..

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।

I. 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर 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.

(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.

ध 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 उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 **दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016**

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 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 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(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।

(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 TO THE APPELLATE TRIBUNAL WHENEVER IT IS CONSTITUTED WITHIN THREE MONTHS FROM THE PRESIDENT OR THE STATE PRESIDENT ENTER OFFICE.

ORDER IN APPEAL

The Assistant 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/34/LHDPL/2019 dated 03.05.2019(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. Lesso Home IT Development(India) Private Limited (GSTIN: 24AADCL4182C1ZV),3,Capital Park Co.Op.H.Soc. Ltd., Behind Devkinandan Soc., Stadium Road, Ahmedabad-380014(hereinafter referred to as 'respondent').

2. The facts of the case, in brief, are that the respondent has filed a refund claim of Rs. 10,63,767/- (IGST Rs. 81767/- +CGST Rs. 490655/- + SGST Rs. 490655/-)on dated 05.04.2019 for the month of May-2018 to November-2018 on account of input tax credit(ITC) accumulated due to Zero rated supply of goods and services and the same has been sanctioned by adjudicating authority vide impugned order in view of the formula mentioned in Rule 89 for refund on zero rated supply of goods and services.

3. On the refund claim being sent for post audit, it was observed that, the respondent has availed ITC on health Insurance services on the strength of the following purchase invoices :-

Name of supplier	Ref.No.	Date	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Religare health Insurance Company Limited	BNG/RHICL/SEP/17/2018/28	17.09.2018	-	-	5013/-
	BNG/RHICL/AUG/21/2018-19/30-7	21.08.2018	-	-	2920/-
	BNG/RHICL/JULY/11/2018/27	11.07.2018	-	-	1486/-
	BNG/RHICL/JUN/25/2018/44	25.06.2018	-	-	11022/-
	BNG/RHICL/MAY/22/2018/31-2	22.05.2018	-	-	41967/-
Total					62408/-

Above mentioned ITC availed pertains to Health Insurance which is not eligible as per Section 17(5) of the CGST Act, 2017. Hence, the respondent has claimed IGST of Rs. 62408/- which is blocked credit as per Section 17(5) of the CGST Act, 2017. 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 Commissioner, CGST & C.Ex., Ahmedabad North Commissionerate, vide Review Order No. 28/2019-20 dated 27.11.2019 authorized the appellant to file an appeal against the impugned order raising the following grounds:

- that the respondent is not eligible for ITC which pertains to Health Insurance amounting to Rs. 62408/- for IGST in view of Section 17(5) of the CGST Act, 2017. Claim to that extent may be reduced.
- that the adjudicating authority has erred by sanctioning the excess refund claim amounting to Rs. 62408/- for IGST.
- that the excess refund sanctioned of Rs. 62408/- for IGST needs to be recovered along with interest.

5. Personal hearing in respect of the appeal was held on 17.03.2020, wherein Shri Amar Devari, Accounts Executive of the respondent appeared before me on behalf of respondent in appeal no. V2(GST)29/EA2/North/Appeals/19-20.

6. I have carefully gone through the facts of the appeals, the department's grounds of appeal in the Review Orders mentioned *supra* and the oral averments raised during the course of personal hearing. I find that the date of receipt of the impugned order as mentioned in the review orders is 31.05.2019 and the above appeals have been filed on 28.11.2019. 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.

7. 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 Health Insurance services. 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 blocked.

8. 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;

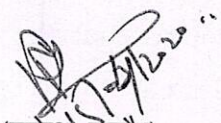
9. It is evident from the above that input tax credit shall not be available on Health Insurance services. I also find that the respondent did not satisfy any of the conditions as mentioned under Section 17(5) of the CGST Act, 2017 and it is also evident that input tax credit shall not be available in respect of the for Health Insurance services.

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 May, 2018 to November-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.

10. 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.

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

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


(मुकेश राठौर)
संयुक्त आयुक्त(अपील्स)

Date : 15.04.2020

Attested

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

To,

M/s. Lesso Home IT Development(India) Private Limited

(GSTIN: 24AADCL4182C1ZV),

3, Capital Park Co.Op.H.Soc.Ltd.,

Behind Devkinandan Soc., Stadium Road,

Ahmedabad-380014

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.

