



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(ST)09-11/North/Appeals/ 2019-20 /14607 to 14611

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-JC-04-06/19-20

दिनांक (Date): 28-04-2020 जारी करने की तारीख (Date of issue): 05/06/2020

, आयुक्त (अपील) द्वारा पारित

Passed by Shri Mukesh Rathore, Joint Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-Now I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No Div - VII/GST/320-318/NEETY/2018 Dated:

28/01/2019

issued by: Assistant Commissioner, Central Excise (Div: VII), Ahmedabad,

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Neety Euro Asia Solar Energy

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया 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 मामले 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 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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 to the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



ORDER IN APPEAL

The below mentioned three departmental appeals have been filed by the Assistant Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') under Section 107 of the Central Goods and Services Tax Act, 2017, against the following Orders-in-Originals (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North (hereinafter referred to as 'adjudicating authority') in the matter of refund, the details of which are as follows:

Sr. No	Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Pr. Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.	Amount Under Dispute (inRs.)
1	2	3	4	5	6
1	M/s. Neety Euro Asia Solar Energy, 4, Shree Nagar Society, Opp. Goldan Triangle, Nr. S.P. Stadium, Ahmedabad-380014	Div-VII/GST-Refund/320/Neety/2018 dated 28.01.2019	10/2019-20 dtd 19.07.2019	V2(GST)11/EA2/North/Appeals/19-20	5025/- IGST
2	24AAHFN8684J1Z P (GSTIN)	Div-VII/GST-Refund/319/Neety/2018 dated 28.01.2019	09/2019-20 dtd 19.07.2019	V2(GST)10/EA2/North/Appeals/19-20	2474/- IGST
3		Div-VII/GST-Refund/318/Neety/2018 dated 28.01.2019	08/2019-20 dtd 19.07.2019	V2(GST)9/EA2/North/Appeals/19-20	17986/- IGST

2. The facts of the cases, in brief, are that the respondent, had filed three refund claims for the month of February & January-2018 and December-2017 on account of input tax credit (ITC) accumulated under Inverted Duty Structure and the same has been sanctioned by adjudicating authority vide impugned order in view of the formula given in the Rule 89(5) of the CGST Rules, 2017.

3. On the refund claim being sent for post audit, it was observed that, "as per Annexure-A/summary statement of ITC invoices and copy of purchase



invoices submitted by the assessee with their claim files, on the basis of which input tax credit availed, it appears that in some cases, the suppliers have rendered services to the claimant and ITC availed in such cases included by the claimant in the eligible ITC. Further, they also included ITC availed on ineligible inputs/Capital Goods viz. fine gold, mobile phone, etc. As per above provisions, "Net ITC" excludes ITC availed on services and Capital Goods, however, the same was not taken into consideration while sanctioning refund claims. It appears that proper verification/scrutiny of such ITC invoices have not been carried out to the above extent; therefore, it may be complied as per the provisions of CGST Act and Rules read with Para 2.4 and 4.1 of Circular No. 59/33/2018-GST dated 04.09.2018".

Hence, audit observed that the adjudicating authority had sanctioned the refund claims, in excess. Thereafter on the impugned orders, having been examined for their legality and propriety, the Commissioner, CGST & C.Ex., Ahmedabad North Commissionerate, vide above mentioned Review Orders authorized the appellant to file appeals against the impugned orders raising the following grounds:

- That As per above provisions, "Net ITC" excludes ITC availed on services and Capital Goods, however, the same was not taken into consideration while sanctioning refund claims.
- that the Adjudicating Authority has erred by sanctioning the excess refund and the same is required to be recovered along with interest.

4. The respondent vide his cross objections dated 16.03.2020, submitted the following

- that they had claimed the excess refund by wrong classification of Input Credit at the time of filing for RFD-01 for the month of Dec-17, Jan-18 and Feb-18.
- That they have paid the tax dues that was refunded to them due to erroneous classification of credit as 'input' in place of 'capital goods' or 'input service'.
- That they have already paid the refund so availed along with the interest thereon via DRC-03.

5. Personal hearing in respect of all three appeals was held on 17.03.2020, wherein Shri Khilan Patel, C.A. appeared before me on behalf of respondent.



6. I have gone through the facts of the case, the impugned original orders, the grounds raised in the review orders mentioned *supra* and the cross objections filed by the respondent and the oral averments raised during the course of personal hearing. I find that the only question to be decided is whether the excess refund granted to the respondent vide the impugned OIO, is erroneous or otherwise.

7. I find that the whole dispute of amount of refund, for which appeal has been preferred, arose on account of Rule 89(5) of the CGST Rules, 2017, which is reproduced below:

89(5) *In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula :-*

*Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x **Net ITC** ÷ Adjusted Total Turnover} - tax payable on such invertedrated supply of goods and services.*

Explanation : - *For the purposes of this sub-rule, the expressions -*

(a) **Net ITC shall mean input tax credit availed on inputs during the relevant period** other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) ["Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).]

8. It is evident from the above that the Net ITC means input tax credit availed on inputs during the relevant period but it excludes ITC availed on Services and Capital Goods. The primary ground raised by the department in the review order is that the respondent wrongly arrived at the value of 'Net ITC'. Further, I find that ITC availed on Services and Capital Goods has to be deducted from the Net ITC before calculating the maximum refund claim according to Rule 89(5) of the CGST Rules, 2017. 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. Further, the respondent is not contesting the review order on merits and he has already been paid the said excess sanction refund amount through DRC-03.



9. In view of the foregoing, the departmental appeals are allowed and the impugned orders are set aside to the extent it has erroneously sanctioned the excess refund as mentioned in above table.

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

10. All the three appeals filed by the appellant stands disposed of in above terms.

मुकेश राठौर
28/04/2020
(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : .04.2020

Attested

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

By R.P.A.D.

To,
M/s. Neety Euro Asia Solar Energy,
4, Shree Nagar Society, Opp. Goldan Triangle,
Nr. S.P. Stadium, Ahmedabad-380014

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional /Joint Commissioner, Central Tax (System), Ahmedabad-North.
4. The Assistant Commissioner, CGST Division-VII, Ahmedabad-North.
5. Guard File.
6. P.A. File



