



सत्यमेव जयते

**::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद**

**शुल्क::**

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,  
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7<sup>th</sup> Floor, Central Excise  
पोलिटैकनिक के पास, Building,  
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,  
Ambavadi,  
Ahmedabad:380015



रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(76)94/Ahd-II/Appeals-II/ 2015-16 /1545 to 1549  
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-103-16-17**

दिनांक (Date): **28.03.2017** जारी करने की तारीख (Date of issue): **10/04/17**

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No. **11/AC/D/AP/2015** Dated: **30/11/2015**

issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad-II

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

**M/s Raviraj Foils 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।

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।

*Cr. file*



- (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 हों।

- (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 दिनोंक 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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) 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.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-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 वहाँ 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 वहाँ 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 जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 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 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 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।

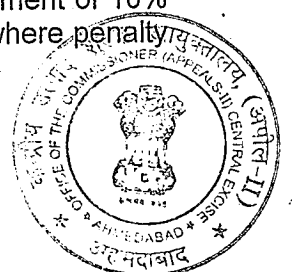
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में, 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 subject appeal is filed by M/s. Raviraj Foils Ltd, S. No. 169 P.O. Chharodi Farm, Tal. Sanand, Ahmedabad (Hereinafter Referred To As 'The Appellant') Against the Order in Original No.11/AC/D/AP/2015 (hereinafter referred to as 'the impugned order') passed by the Asstt.Commissioner, Central Excise,div-III, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). They are engaged in the manufacture of Aluminum Foils under Chapter 76 of the First Schedule to the Central Excise Tariff Act, 1985.The appellant avails Cenvat credit under the Cenvat Credit Rules, 2004 (Hereinafter referred to as CCR, 2004)

2. Brief facts of the case is that the appellant has availed Cenvat Credit of Service Tax amounting to Rs.165351/-for maintenance & repairs charges in respect of the windmill situated away from their factory. Since the services were received outside the factory premises and electricity generation has no nexus with the manufacturing activity and so the credit not available, under Rule 2(1) of the Cenvat Credit Rules, 2004. It appeared that the Cenvat Credit of service tax used in relation to the manufacture of electricity exempted. That they have violated the provision under Rule 3, Rule 4 and Rule 6(1) of the CCR 2004. The Cenvat Credit to be recovered with interest and penalty under Cenvat Credit Rules,2004; show cause notice issued and same was decided vide above OIO and confirmed .

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following main grounds.

There is no pre-condition regarding the receipt of the services within the factory premises to take the cenvat credit in respect of input service under Rule 4(7) of CCR, 2004 and the credit be allowed on or after the day on which the invoice, bill or challan referred in Rule 9 is received.

The definition of input service as incorporated in Rule 2(1) of the Cenvat Credit Rules, 2004, does not contemplate that in order to qualify as 'input service' particular service must be received within the factory premises .

They relied on the case laws of 1. M/s. Parry Engineering & Electronics P Ltd V CCE, Ahmedabad II, Interim order No 344-353/2015 dated 29.07.2015.and 2. Endurance Technologies Pvt. Ltd. vs. CCE, Aurangabad -2015-TIOL-1371-HC-MUM-ST

Since the electricity generated at Wind Mill is used for manufacturing the final Products and hence it is very well covered in the definition of input services.

4. Personal hearing was accorded on 20.12.2016.Shri Devashish Trivedi, Advocate attended personal hearing on behalf the appellant. He reiterated the submissions made in their GOA and invited attention towards following case laws: 1. 2015-TIOL-1371-HC-MUM-ST (Endurance Tech) 2. Parry Engineering and Electronics Limited V CCE-II, Ahmedabad, Interim order No 344-353/2015 dated 29.07.2015. I have carefully gone through the subject show cause notice, documents available on record. Written Submissions made in their appeal as well as submissions made during Personal Hearing.

*(Handwritten signature)*



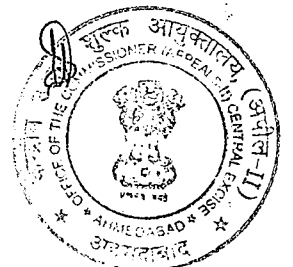
5. I find that appellant have their factory situated at Sarand, Dist: Ahmedabad. they also have a wind mill which is located away from their factory premises, wherein they generates electricity. The electricity so generated is supplied to the Gujarat elctricity Board (GEB) and the GEB in turn makes available electricity which is supplied to their manufacturing unit at Sanand. The appellant availed certain services by M/s Suzlon Gujarat Windpark Limited. provided to the windmills and took credit of the service tax at their factory premises. The issue to be decided is whether said services qualify to be 'input services' for availment of cenvat credit or not.

6. I find that the impugned order have been issued with respect to the Cenvat Credit of service tax paid on repairs & maintenance etc. of Wind Mills as per provision of Rule 2 of CCR,2004. Since the services were used in or in relation to manufacture of final products and thus, it is covered under the Rules. Further, I rely on the following decisions. 1. Endurance Technologies Pvt. Ltd. v. CCE, Aurangabad [ 2011 (273) ELT [248 ] Tribunal- Mumbai. 2. Maharashtra Seamless Ltd. v. CCE,Raigad[ 2012 (276) ELT 2009 (Tri.-Mum/

7. I find that, wind mill can be installed only at place where there is heavy wind available and hence Wind Mill is located at remote place far from the factory. It is pertinent to note that looking into the above issue, the Cenvat Credit Rules were amended vide Notification No. 03/2011-CE (NT) dt. 01.03.2011, w.e.f. 01/04/2011 Capital Goods includes the goods used outside the factory for manufacturer of the final product for generation of electricity for captive use within the factory. Since the electricity generation plant outside the factory is hence service used for running and maintaining of it is also eligible as Input Services. As far as nexus of generation of electricity with manufacturing is concerned, it is pertinent to note that electricity generated at Wind Mill is wheeled through GETCO line and Electricity Board use to give credit of unit generated after wheeling in the electricity bill charged from the assessee. In electricity bill, unit generated after wheeling is shown separately. Since the electricity generated at Wind Mill is used for manufacturing the final products, hence it is very well covered in the definition of input services as defined under Rule 2(1) of Credit Rules and CENVAT credit would be available on the said input services.

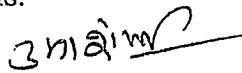
8. I find that, the appellant was filing Monthly returns regularly before Range Officials. Hence it cannot be said that it is not ascertainable as Cenvat credit availed without support of invoice/bills. I rely on the case law in the case of M/s.Shah Alloys Ltd. V. CCE,Ahmedabad-III in which it was held by the Hon'ble Tribunal that "*Once ER-1 Return is filed,..... it is held that show cause notice which has been issued by the lower authorities demanding reversal of cenvat credit by invoking extended period of limitation is set aside*".

9. I find that, since the demand is not maintainable and hence interest is not applicable. Since the credit of input service was based on decisions given by various Tribunals in which it was held that service tax paid on the running & maintenance of wind mill is eligible for cenvat credit and on the basis of these decisions,

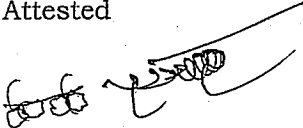


they have availed the cenvat credit and thus they have not violated any of the Provisions of Central Excise Act,1944 or Rules made there under. Therefore, I hold that, no penalty imposable under Rule 15 of Cenvat Credit Rules'2004.I rely on the decision passed by Hon'ble CESTAT Ahmedabad in the case of CCE Daman vs. Paras Motor Mfg. Co.[ 2013 (31) STR 811.

10. In view of the foregoing discussion and findings, I set aside the impugned order, and allow the appeal filed by the appellant.
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stand disposed off in above terms.

  
(उमा शंकर)  
आयुक्त (अपील्स - II)

Attested



[K.K.Parmar )

Superintendent (Appeals-II)  
Central excise, Ahmedabad.

By Regd. Post Ad.

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Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Div-III, AhmedabadII
4. The Asstt.Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.

