



सत्यमेव जयते

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

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7th मंजिल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास,
आम्बवाडी, अहमदाबाद : 380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(28) 35/Ahd-II/Appeals-II/ 2015-16 /1384 to 1388
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 0033 -16-17
दिनांक (Date): 11.08.2016, जारी करने की तारीख (Date of issue): 12/08/16

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.03/ADC/ 2015/DSN Dated: 14/05/2015
issued by: Additional Commissioner.,Central Excise,(Div-IV), Ahmedabad-II

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

M/s Finar Limited

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:

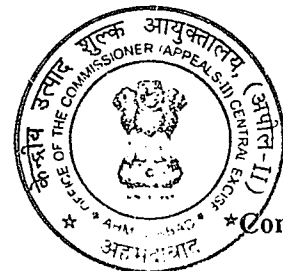
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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।



Cont...2

- (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.100 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) 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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैनटल 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस प्रत्येक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी बैंक के नाम से बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



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 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 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।

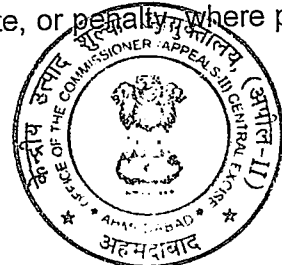
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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. Finar Ltd. (formerly known as M/s. Finar Chemicals Ltd.), 184/P-186/P, Sarkhej Bavla Highway, Vill. Chacharwadi Vasna, Tal- Sanand, Dist.: Ahmedabad (herein after referred to as "the Appellant") against OIO No No.03/ADC/2015/DSN Dtd. 14/5/2015 (hereinafter referred to as "the impugned order") Passed By The Additional Commissioner, Central Excise, Ahmedabad-II, (hereinafter referred to as "the adjudicating authority") engaged in the manufacture of chemicals falling under chapter 28, 29, 31 and 32 of the first schedule to the Central Excise Tariff Act, 1985 [hereinafter referred as CETA-1985]. They are availing benefit of cenvat credit as per Cenvat Credit Rules, 2004.

2. During the course of audit, it was observed that the appellant had taken Service Tax credit on the invoices issued by SMPS Consultants Pvt. Ltd. for civil construction work of factory building, compound wall, etc. under Works Contract Services, which is not covered under the definition of "Input Service." As per Rule 2 (1) of Cenvat Credit Rules, 2004. The appellant has availed credit of Rs. 11,29,987/- and Rs. 4,76,562/- for the year 2010-11 and 2011-12 respectively. Said wrongly availed credit to be recovered under Rule 14 of CCR 2004 with interest. SCN was issued and vide above OIO demand was confirmed for Rs. 4,76,562/- with interest and penalty of Rs. 238281/-.

3. Being aggrieved by the above said OIO the appellant files an appeal on the following grounds;

That said services are covered under the ambit of input service. That comm./industrial construction services used in the setting up/renovation of the factory. that cenvat credit has been sought to be recovered referring to definition of input service vide notification No. 3/2011-CE(NT) dated 1-3-2011 w.e.f. 1-4-2011, whereby said services have been excluded from the definition of input service. That exclusion was made effective from 1-4-2011 and cenvat credit Rs. 11,29,987/- was availed prior to 1-4-2011, when said services were not excluded from the definition of input service.

They have regularly filed monthly returns, showing therein all the details and details pertaining to availment of cenvat credit on input services are available on record. they rely on the decision of Hon'able Tribunal in the case of Indian Plastics Limited And Others V/s. CCE, Bombay And Others cited at 1998(35)ELT-434(T) 2. CCE, Ahmedabad-II V/s. Cadila Healthcare Ltd. 2013(30)STR-3(Guj.) 3. YKK India P. Ltd. V/s. CCE, Delhi-III cited at 2013(30)STR-200(Tri. - Del.)

There is no suppression of facts and invocation of extended period is not justified. They relied on the decision of Hon'able Tribunal in the case of GAC Shipping (India) Pvt. Ltd. V/s. CCE&C, Cochin cited at 2008(9)STR-524(Tri. - Bang.) 2. Lear Automotive India Ltd. V/s. CCE, Vadodara-II cited at 2013(29)ELT-444(Tri. Ahmd)] , it was also submitted that penalty is not impossible.



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4. Personal hearing was held on dated 08.06.2016, wherein Shri P.G Mehta, Advocate, appeared and reiterated the grounds of appeal. He also submitted citations 1.CARRIER AIRCONDITIONG &REFR. LTD. V CCE, DELHI IV 2016[41]STR 824 [TRI.CHAN.] 2.CCE DELHI-III V BELLSONICA AUTO COMPONENTS INDIA P. LTD. 2015[40]STR 41 [P&H] 3. INFOSYS LTD. V CST B'LORE2015[37]STR 862[TRI.BANG] I have gone through all records placed before me in the form of the impugned order and written submissions as well as submissions made during personal hearing. I have to examine the issue of admissibility of Cenvat credit on Works Contract services, availed by the Appellant. Said service has been availed in relation to civil construction work of factory building, compound wall, etc. In this connection, the definition of input service in Cenvat Credit Rules, 2004, as it existed up to 31.03.2011 is reproduced below:

Rule 2(1) - "Input service" means any service -

- (i) *used by a provider of taxable service for providing an output service; or*
- (ii) *used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal;*

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,the place of removal.

In view of the clear provision in the rules permitting the credit, I conclude the services of Works Contract, relating to the construction of the factory or related premises are admissible for the period up to 31-3-11. Hence, demand of credit amounting to Rs 11,29,987/- for the period 2010-11, is not sustainable.

5. Further, I find that the definition of the term "input service" in the rules was changed with effect from **01.04.2011** vide Notification No. 3/2011 -Central Excise (N.T.) dated 1st March 2011, which is reproduced as below:

"input service" means any service, -

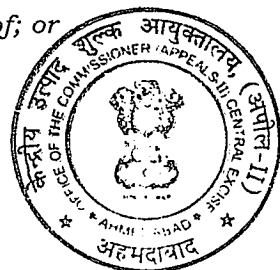
- (i) *used by a provider of taxable service for providing an output service; or*
- (ii) *used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,up to the place of removal;

but excludes (emphasis provided) services, -

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), insofar as they are used for-

- (a) *construction of a building or a civil structure or a part thereof; or*

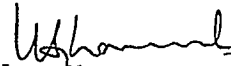


(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services;

6. I find that the change in the rules, with effect from 01.04.2011, excluded the services of Works Contract, in so far as they are used for construction of a building or a civil structure or a part thereof, or laying of foundation or making structures for support of capital goods, from the definition of "input service". In view of the clear position of law denying credit of works contract service relating to construction, it was not proper on the part of the appellant to avail the cenvat credit. I therefore hold that, the credit availed amounting Rs 4,76,562/- during the period 2011-12, is to be recovered from the appellant.

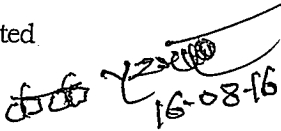
7. Further, I find that, the appellant has disregarded the provisions of the Cenvat Credit rules while taking credit of said service in the year 2011-12, in the face of clear exclusion of such service from the definition. In the present case, the wrong availing of credit has been disclosed by the department and the appellant is guilty of deliberately taking wrong credit. With reference to the penalty imposed, I find that they have disregarded the definition of input service while taking the credit and violated the rules. therefore; I hold that penalty Imposed is legal.

8. In view of the foregoing discussion and findings, I uphold the impugned order and disallow the appeal. The appeal stands disposed of as above.

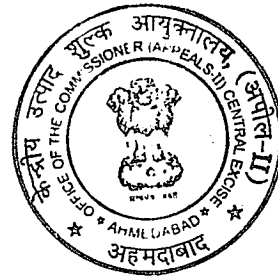


[Uma Shanker]
Commissioner (Appeals-II)
Central Excise, Ahmedabad

Attested


16-08-16

[K.K. Parmar]
Superintendent (Appeals-II)
Central Excise, Ahmedabad



By Regd. Post A. D

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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, Divi-IV, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.