



सत्यमेव जयते

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

शुल्क::

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



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84) 37/Ahd-II/Appeals-II/ 2015-16 / 1958 — 1962
 स्थगन आवेदन संख्या(Stay App. No.):
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 039 -16-17
 दिनांक (Date): 23.09.2016, जारी करने की तारीख (Date of issue): 27/09/2016
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
 Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद- II, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No.614/AC/15-16/Refund Dated: 11-05-2015
 issued by: Assistant Commissioner.,Central Excise (Div-I), Ahmedabad-II

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

M/s Ingersoll Rand (India) 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 अंतत 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 ।

Ground file



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- (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) 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 मेटल 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 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 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 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 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. 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. Ingersoll Rand (India) Limited, Plot No. 21-30, GIDC Estate, Naroda, Ahmedabad (herein after referred to as "the Appellant") against OIO No. 614/AC/15-16/refund Dtd. 11/5/2015(hereinafter referred to as 'the impugned order) Passed by The Assistant Commissioner, Central Excise,div-I Ahmedabad-II,(hereinafter referred to as 'the adjudicating authority') engaged in the manufacture of goods falling under chapter 84 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. Briefly stated the fact of the case is, the appellant has filed Refund Application on 16.12.2014 for refund/re-credit of Cenvat Credit Rs.1,52,89,933/- on going through the refund application, it appeared that the refund claim is stated to be aroused out of Excise Duty paid on the goods within the plant movement (from one store to other store within the same plant) due to incorrect selection of wrong Tax code. This amount of excise duty got debited between 17.12.2013 to March, 2014. The said claim has been verified & found that the appellant has not mentioned any brief facts for which they have claimed refund. They have also not given any details of duty paid whether paid on finished goods or raw materials. The supportive document on the strength of the said refund has not submitted. the appellant was asked to clarify the queries; The appellant vide letter dated 17.02.2014 has submitted Para wise reply and Range superintendent vide letter dated 05.02.2015 has also furnished the comments; The appellant has again taken support of a certificate dated 06.02.2015 given by Shri J. M. Shah, Chartered Accountant under which it has been certified that there has been no sale in respect of Invoices generated on Interplant transfer of goods during the period of 17.12.2013 to March, 2014. It appears that the certificate issued by said C.A. does not contain the nature of goods & evidence of payments of excise duty on the cleared goods as well as rectification of mistake, if made any. that the transaction was made between December, 2013 to March, 2014 & the appellant has noticed the said transaction in the month of July, 2014. In reply of Query no. 6, the appellant has failed to submit any inventory register by location showing issuance and receipt of goods from one store to another store and thereby decreasing inventory at one store and increasing inventory at another store. Therefore, the said refund claim is not admissible and to be rejected as per provision under Section 11 B of the Central Excise Act, 1944. SCN was issued and vide above order rejected said refund claim.

3. Being aggrieved by the above order the appellant filed an appeal on the following main grounds;

That "Naroda Trading Org." is the name given to one of their internal stores which is within their factory premises. In this store material is stored and issued against their production requirement. This is also confirmed by JRO as stated in the SCN against this point that address, CST No. and TIN No. of this org. as mentioned in "Bill To" and "Consignee" are the same. This reaffirms their claim that there was



no dispatch of goods outside factory and these Invoices got wrongly generated for in house movement due to wrong Tax Setup. They are attaching herewith Infra plant material transfer movement report with reference to these Invoices as extracted from their system. This report clarify that movement of material against these Invoices were internal in plant and there was reduction of inventory at one Store and increase in other Store with "NIL" net movement outside plant. The material movement was of raw material and so it did not have any impact on RGI. Though, the value of Excise Duty as appeared on Invoice has wrongly been reported in ERI under "Home Clearance", there was no mistake with reference to the quantity produced and cleared. Invoices got generated only due to wrong set up of Tax Category on movement of material within factory. Excise duty got calculated on Invoice and got reported under "Air Compressor for Home Clearance" in ER1.

they have summarized month wise correct duty amount which should have been shown in ER1 as against Home clearance, Duty on Inter plant movement and the amount shown in ERI. Amount of duty adjusted for Feb Invoices as well as amount of duty relating to similar incorrect invoices of March was shown under Remarks in March ERI return They deal with their Customers on different payment terms and they vary as Net 08 — Payment within 8 days from the date of Invoice Net 15- Payment within 15 days from the date of Invoice Net 30- Payment within 30 days from the date of Invoice etc. Again they submitted that they have already mentioned that material movement under these Invoices was within the plant premises. Also said invoices mention "Bill to and "Consignee" address & Sales Tax No. are of their Plant only. And they were within the pant there was no sales tax charged on the Invoice. They have mentioned the duty recoverable in audited balance sheet on Page no. 56 Notes no. 14.

Further, they submitted that they received just one query in this regard before this SCN on dated 06.02.15 and was replied by them on 18-02-15.

4. Personal hearing was granted to the appellant on dated 03-8-16, which was attended by Shri Ishan Bhatt Advocate on behalf of the Appellant. He reiterated the grounds of appeal filed by them earlier. I have gone through all records placed before me in the form of the impugned order and written submissions .I have to examine the issue of admissibility of refund claim filed by the appellant. I have carefully gone through the facts of the case and the submissions made by them in their written reply. It appears that in reply of Query no. 1, the appellant has failed to explain status and working of "Naroda Trading Org". In reply of Query no. 2, the appellant has also failed to produce any documentary evidence like inventory register by location showing issuance and receipt of goods from one store to another store and thereby decreasing inventory at one store and increasing inventory at another store. In reply of Query no. 4, the submission made by the appellant is not satisfactory that the material movement was of raw material and so it did not have any impact on RG1, that the value of Excise Duty as appeared on Invoice has wrongly been reported in ERI under "Home Clearance", that there was no mistake with reference to the quantity produced and cleared. Invoices got generated only due to wrong set up of Tax



Category on movement of material within factory that Excise duty got calculated on Invoice and got reported under "Air Compressor for Home Clearance" in ER1 for the period from December, 2013 to march 2014, I find that the said Submission is contradictory as the goods on which excise duty has been paid was "Air Compressor" cleared under Home clearance as declared in ER1 filed with department, on the other side they submitted that the goods were raw material & they have neither intimated to the department that the such type of mistake have been occurred, nor they have rectify the mistake in ER1 for relevant period. The submission of the appellatant that it did not have any impact on RG1 is not acceptable because as & when the appellatant has shown "Air Compressor" cleared under Home clearance, and then the opening balance, quantity manufactured & closing balance of the product i.e. "Air Compressor" would also been affected in RG1 register. Vide Rule 10 of central Excise Rules; every assessee shall maintain proper records on a daily basis indicating the particulars regarding description of the goods manufactured, opening balance, and quantity produced or manufactured; quantity removed. In my view, when "Air Compressor" cleared under Home clearance as declared in ER1, then the quantity should be entered in RG1 register & if not so, it should be presumed that the appellatant has cleared the above said goods without entering in RG1(finished goods stock register). The appellatant could not furnished the satisfactory reply & unable to produce the proper documents in support of their submission.

5. In reply of Query no. 5, the appellatant has submitted that the invoices carry the default payment term as "Net30" on the invoices & default instruction to make the payment in their bank account situated at Bangalore. I find that the said claimant has not produced any document that how the payment term as "Net30" has been terminated or otherwise? The said claimant has submitted a certificate dated 06.02.2015 given by Shri J. M. Shah, Chartered Accountant under which it has been certified that there has been no sale in respect of Invoices generated on Interplant transfer of goods during the period of 17.12.2013 to March, 2014. It appears that the said claimant has not submitted any documentary evidence to support the claim except the said certificate of C. A. The certificate issued by the above said C.A. does not contain the nature of goods & evidence of payments of excise duty on the cleared goods as well as rectification of mistake, if made any subsequently. I further find also that the transaction was made between December, 2013 to March, 2014 & the said claimant has noticed the said transaction in the month of July, 2014. The question is aroused here, whether the Audit of Accounts/ Balance sheet made by the Auditor has raised any observation/ notes in the Balance Sheet for the accounting financial year 2013- 14 or otherwise. The appellatant has failed to clarify it completely. The said claimant has again submitted a certificate dated 11.04.2015 given by Shri J. M. Shah, Chartered Accountant under which it has been certified that there was a balance of Rs 404.08 millions with excise authorities as per audited annual balance sheet of Fin. Year 2013-14 which has been shown under Short term Loans & Advances. The said balance is bifurcated as rebate on excise, deposit in sales tax etc, out of which Rs 1,52,89,933/-is shown as infra plant duty amount which is wrongly debited. I find that the said certificate have not any contents which prove the

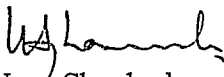


reasons of wrongly debited entry & what are the documentary evidence on the basis of the said certificate has been issued. I further find that the claim of such huge amount of refund, a certificate is not merely a relevant document & without the proper relevant documents & proper clarification, it is very difficult to come out the conclusion to accept the genuiness of the said refund claim. The appellant has failed to clarify it completely.

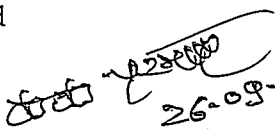
6. In reply of Query no. 6, I find that, the appellant has failed to submit any inventory register by location showing issuance and receipt of goods from one store to another store and thereby decreasing inventory at one store and increasing inventory at another store. Similarly, they have also failed to submit any finished goods stock register as well as raw material register in support of their claim that the material movement was of finished goods/raw material and there have not any impact on RG1. Neither the appellant nor the chartered accountant has clarified that how the central excise duty has been paid in respect of invoices generated on inter plant transferred of goods during said period.

7. Further, I find that, the appellant has disregarded the provisions of the cenvat credit rules while taking credit of said refund, and the appellant is guilty of deliberately taking cenvat credit.

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


26-09-16
[K.K. Parmar]
Superintendent (Appeals-II)
Central Excise, Ahmedabad

By Regd. Post A. D

M/s. Ingersoll Rand (India) Limited,
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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-I, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
- ✓ 5. Guard file.
5. PA file.



