



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(84) 68/Ahd-II/Appeals-II/ 2015-16/2009 to 2013  
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 044 -16-17  
दिनांक (Date): 26.09.2016, जारी करने की तारीख (Date of issue): 29/09/16

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.09/ADC/2015/DSN Dated: 08-09-2015  
issued by: Additional Commissioner.,Central Excise (Div-I), Ahmedabad-II

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

**M/s Apex Fluidomatics 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।

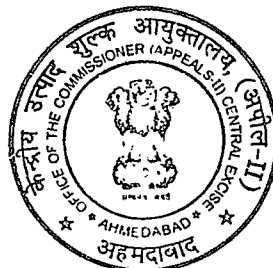
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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।

C. file



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 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.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 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 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 मांग 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

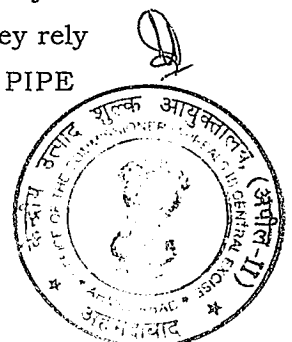
The subject appeal is filed by M/s. Apex Fluidomatics Ltd.(Unit-II), 909/A Phase-IV, GIDC, Naroda, Ahmedabad (hereinafter referred to as 'the appellant') against the Order in Original No.09/ADC/2015/DSN (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of Hydraulic Cylinders and Parts falling under Chapter 84 of the Central Excise Tariff Act 1985,. They are availing CENVAT credit of inputs and input services under Cenvat Credit Rules, 2004.

2. The facts in brief of the case is ,during the course of audit it was observed that the appellant had availed CENVAT credit received in the name of other unit namely, M/s. Apex Fluidomatics Pvt. Ltd. (Unit-I), 1216/39, GIDC, Phase-IV, Naroda, Ahmedabad ,for the period 2011-12to 2013-14, credit of Rs.10,94,830/- has been wrongly availed by them actually pertaining to their other unit. In this case the appellant has availed the cenvat credit on the strength of invoices, which does not contain name and address of the appellant as consignee. Therefore such invoice cannot be proper invoice In terms of Rule 9(2) of Cenvat Credit Rules, 2004, It was only during the course of audit, the Department came to know that they had availed CENVAT credit of duty paid on inputs received in the name of other unit. The appellant had contravened the provision of Rule 9(2) of Cenvat Credit Rules, 2004 read with Rule 9(1), Rule 9(6) and Rule 9(7) of the Cenvat Credit rules 2004 in as much as they had failed to file the correct monthly return showing the details of CENVAT credit. The appellant had suppressed the material facts regarding taking of CENVAT credit in the name of the other unit by way of not indicating the same in their monthly returns or in any other manner. Said CENVAT Credit to be disallowed in terms of the provisions of Rule 14 of the CCR 2004, They are also liable for penal action. Issued SCN Issued and decided vide above OIO and confirmed the demand.

3. Being aggrieved by the impugned order, the present appeal has been filed by the appellant on the following main grounds:

Denial of credit is on technical reasons only and proposal to recover/disallow such valid credit is not justified, when the. Inputs are received and payment was made by them. For interest and penalty, there is no justification, when the Cenvat credit taken is not recoverable. That they have not availed the above credit with malafide intention to evade duty. cannot result in liability like penalty and interest.They place reliance upon Hon'ble Supreme Court in the case of *AU-India Federation of Tax Practitioners and ors v/s Union of India, which is reported in 2007 (7).S.T.R. 625 (S.C.)*

That they do have another unit at the said address, but the goods covered under the said Invoices were not meant for utilization in that unit .The supplier of the goods has inadvertently mentioned wrong address and wrong number of factory in the Invoice for which the legitimate right of taking credit cannot be denied. They rely upon the decision in 1. 2010(260)ELT381(Guj)- CE v/s EUPEC-WELSPUN PIPE



COATINGS INDIA LTD. 2. 2011 (266) E.L.T. 67 (TH. - Del.)-CCE, Ludhiana v/s Parmatma Singh Jatinder Singh Alloys Pvt. Ltd. 3.2009 (244) E.L.T. 65 (TH. - Ahmd.)-CCE Vapi V/ s DNH SPINNERS.

When all the facts were within the knowledge of the Department, the show cause notice would be illegal and extended period limitation would not be available to the Revenue. in caselaws 1.Lovely Food Industries V/s CCE, Cochin -2006 (195) 2. ELT 90, Decent Enterprises V/s CCE, Hyderabad - 2006 (73) RLT 262, 3. Jetex Carburetors Pvt. Ltd. V/ s CCE, Vadodara - 2007 (3) STR 446, All these transactions were reflected in statutory records, the allegation as regards suppression of facts does not arise.They relied on case laws of - *India Tin Industries V/ s. Commissioner of Central Excise, Bangalore* - 1994 (70) ELT 731 (Trib.), 2. *D.J. Vora, Batliboi & Co. Ltd. V/ s Collector of Central Excise, Surat* - 1999 (30) RLT 223.in cases of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) ELT 195 (SC) and 1989 (40) ELT 276 (SC) respectively.

4. Personal hearing was granted to them on 18-7-16, Shri P.P. Jadeja.Conslt. Attended on behalf of the appellant. He requested to consider the submissions made in their grounds of appeal, and written submission filed on 01-8-2016. I have carefully gone through the records of the case as well as the written submissions made by the appellant. I find that, the issue to decide is whether the cenvat credit is admissible on input invoices which contained address of other unit of the appellant.

5. I find that the said appellant has two manufacturing units which are located at 1216/39, Phase IV, GIDC, Naroda, Ahmedabad (Unit I) and at 909/A, Phase IV, GIDC, Naroda, Ahmedabad (Unit II). The present SCN, which was issued to the unit II, I find that, no credit under sub-rule (1) of Rule 9 shall be taken unless the inputs are received in the factory on the basis of invoices or other duty paying documents as prescribed in the said rule. In this case the appellant has availed the cenvat credit on the strength of invoices, which does not contain name and address of the appellant as consignee. no cenvat credit under sub-rule (1) of the rule 9 of the Cenvat Credit Rules, 2004 shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 are contained in the said document.

6. I find that, the goods covered under the said Invoices were not meant for utilization in that unit .The supplier of the goods has inadvertently mentioned wrong address and wrong number of factory in the Invoice for which the legitimate right of taking credit cannot be denied.I rely upon the decision in case of 1. 2010(260)ELT-381(Guj)- CE v/s EUPEC-WELSPUN PIPE COATINGS INDIA LTD. 2. 2011 (266) E.L.T. 67 (TH. - Del.)-CCE, Ludhiana v/s Parmatma Singh Jatinder Singh Alloys Pvt. Ltd.

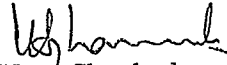
7. I find that, the notarized affidavit is submitted by the appellant under which it is reconfirmed that the goods in question were received in unit-II, accounted for in the unit-II, utilized in unit-II only to manufacture goods cleared on payment of duty. Thus, we again state on oth that credit is taken correctly in unit-II'. In view of the circummanstances and genuiness of the plea it is directed that, the divisional officers should write to the central excise division of the other unit about the utilization of cenvat at this end. I think this will sufficiently safeguard revenues interest as well as the appellant's interest.



8. I find that, from the verification of RG-23 A Part-II register that the appellant has availed Cenvat Credit on the basis of invoices/duplicate for transport copies which were addressed to the other unit of appellant. Denial of credit is procedural laps only and recovery of such valid credit is not justified, when the Inputs are received and payment was made by the appellant. Therefore, demand of interest and penalty, is not justified. I rely on case law of *AU-India Federation of Tax Practitioners and ors v/s Union of India, which is reported in 2007 (7).S.T.R. 625 (S.C.)*

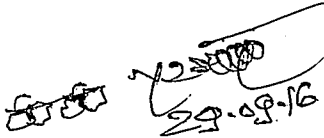
9.. I find that, when all the facts were within the knowledge of the Department, the show cause notice would be illegal and extended period limitation would not be available to the Revenue. All these transactions were reflected in statutory records, the allegation as regards suppression of facts does not arise .I relied on case laws of - *India Tin Industries V/ s. Commissioner of Central Excise, Bangalore - 1994 (70) ELT 731 (Trib.)*, *2. D.J. Vora, Batliboi & Co. Ltd. V/ s Collector of Central Excise, Surat - 1999 (30) RLT 223*.in cases of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) ELT 195 (SC) and 1989 (40) ELT 276 (SC) respectively. Therefore, the penalty imposed is not sustainable.

10. In view of the foregoing discussion and findings, I reject the impugned order and allow the appeal of the appellant. The appeal stands disposed of as above.

  
[Uma Shanker]

Commissioner(AppealsII)  
Central Excise, Ahmedabad

Attested

  
29.09.16

[K.K.Parmar]

Superintendent (Appeals-II)  
Central excise, Ahmedabad.

By Regd. Post A. D

M/s. Apex Fluidomatics Ltd.(Unit-II),  
909/A Phase-IV,  
GIDC, Naroda,  
Ahmedabad- 382330

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.

