



सत्यमेव जयते

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

शुल्क::

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



7th Floor, Central Excise
Building,
Near Polytechnic,
Ambavadi,
Ahmedabad:380015

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(40)136 /Ahd-II/Appeals-II/ 2016-17 2840
2844
स्थगन आवेदन संख्या(Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-13-17-18
दिनांक (Date): 20.06.2017, जारी करने की तारीख (Date of issue): 29/6/17
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/AC/2012-DEMAND Dated: 19/10/2012
issued by: Deputy Commissioner Central Excise (Div-I), Ahmedabad-II

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

M/s Lathia Industries Supplies Co. Pvt 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।

Co 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 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 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 वहां 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 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम



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।

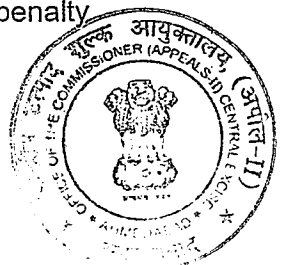
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 Lathia Industrial Suppliers Co. Pvt. Ltd. GIDC, Naroda, Ahmedabad (hereinafter referred to as '*the appellant*') against OIO No. 09/AC/2012 dated 19.10.2012 (hereinafter referred to as '*the impugned order*') issued by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-II (hereinafter referred to as '*the adjudicating authority*').

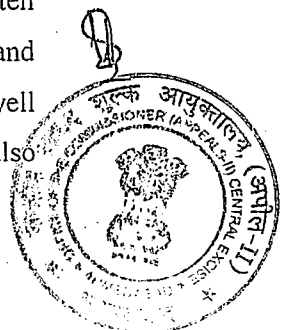
2. The facts in brief of the case is the appellant is manufacturing goods like Rubber Roll, Rubber Sleeve, etc. and clearing the said goods duty free by virtue of SSI exemption. The dispute is during Oct-2011 to March-2012 with regard to availment of Cenvat Credit in contravention of Rule 11(2) of Cenvat Credit Rules. The issue is whether the availment of credit was illegal on the ground that no credit was available as the final products were cleared under the exemption available to SSI units. Therefore, SCN was issued for recovery of cenvat credit taken along with interest. Vide above OIO, confirmed the demand with interest and penalty.

3. Being aggrieved by the impugned order the appellant filed this appeal on the following main grounds;

That the impugned order is based on Rule 11 (2) However, that the said rule has no application as the goods in relation to which the Cenvat credit should lapse under the said rule are not the goods on which such credit was taken. The goods in question on which such credit was taken were utilized for job work manufacturing, on which no exemption is claimed or availed of by the company, and hence there is no question of breach of the said Rule.

That the issue has been settled by Hon'ble Tribunal A'bad, has allowed the appeals filed by the appellant vide its order no. A/1738/WZB/AHD/2011 dated 20.10.2011 and Order no. A/600/WZB/AHD/2012 dated 30.04.12 for the same dispute. In a similar situation, Lathia Rubber Mfg. Co. Pvt. Ltd. situated at Sakinaka, Mumbai, this controversy was considered and it was adjudicated in favour of the Company vide order dated 31/12/08. They relied on the decisions rendered by the Tribunals, 1. Sterlite Industries (I) Ltd. V/s. CCE Pune reported in 2005 (183) ELT 353 (Tri.-LB) . and 2 .Bharat Fritz Warner Ltd. - 2005 (191] ELT 1099 (Tri.-Bang.) 3. Kinetic Engg. Ltd. - 2007 (208) ELT 526: 4. 2009 (235) E.1.T 332 between CCE Vadodara - I Vs. J.H Kharwala (p) Ltd.

4. Personal hearing was granted on 16-3-17. Shri Dhaval K. Shah advocate, attended on behalf of the appellant. He requested to consider the submission made in their written grounds of appeal. They placed reliance on relevant decisions and filed copies and requested to allow the appeal. I have carefully gone through the records of the case as well as the written submissions and copies of a few decisions submitted by the appellant. I also



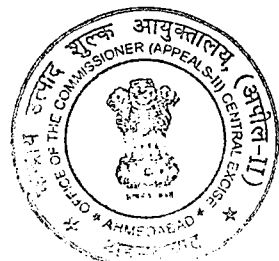
find that, the appellant had filed an appeal SCA NO. 151&1/2014 in the Hon'ble High Court Of Gujarat. Hon'ble High Court vide judgment dated 16-10-16 has ordered that, *the matter is remanded back, to be heard by the Commissioner (Appeals)-I Central Excise, Ahmedabad.* Therefore, I take up this appeal for decision in this case. I find that the appellant are manufacturers as well as service providers. They also undertake job work under Rule 4(5)(a) and Notification No. 214/86-CE dt. 25 03.1986. They are availing SSI exemption under Noti. No. 8/2003-CE. They are maintaining separate inventories under Rule 6 as they have exempted as well exempted products and taxable output service; and also records for raw material used in job work.

5. The appellant is not availing cenvat credit on inputs used in manufacturing of excisable goods till they cross the clearance limit of Rs. 150 lacs for home consumption; that they avail cenvat credit on inputs/ raw material used in provision of output service; that they also take credit on inputs to be used in job work under Noti. No. 214/86-CE dt.01.03.86 and U/R 4(5)(a) of CCR, 2004. I find that, on careful reading of Notification No.8/2003 with Not. No. 67/03 dt.11.08.2003 it is clear that the clearances of job work under Notification No.214/86-CE or U/R 4(5)(a) are not considered for determining the aggregate value of clearances for home consumption.

6. The appellant along with the activity of manufacturing its own products, is also doing job work of coating M.S. Shell supplied by the Principal manufacturer of Textile and Paper Machineries; that appellant receive shells as input for manufacture of Rubber Rollers of these principal manufacturers under Rule 4(5)(a) of CENVAT Credit Rule 2004; that these principal manufacturer avail Cenvat Credit on said Shell. That Rubber Rollers after coating are cleared under rule 4(5)(a) to the principal manufacturers, without paying duty; the appellant purchase all the raw materials in their own name and use the same in the job work; the appellant avails Cenvat Credit on such inputs used in the process of job work and clears the Rubber Roller to principal manufacturers without payment of duty. The issue involved in this case is whether the appellant can concurrently avail SSI exemption and Cenvat Credit on inputs used in the manufacture of goods on job work .

7. I find that, the appellant has relied on the decision of Larger Bench of Hon'ble Tribunal passed in the case of Sterlite Industries (I) Ltd. Vs CCE, Pune (2005 (183) ELT 353).

8. I have perused order No. A/1738/ WZB/AHD/2011 dated 19.08.2011 of Hon'ble CESTAT, WZB, Ahmedabad, in a similar case, decided in their favour. Further, I find that the aforesaid decision had subsequently been followed by the Hon'ble Tribunal in its Order No. A/600/ WZB/ Ahd/ 2012 and S/743/ WZB/ AHD/ 2012 dated 30-4-2012 and have allowed appellant's Appeal involving identical issue and in



relation to the demand confirmed for the subsequent period. I rely on the judgment of Hon'ble High Court Of Gujarat in the Case of LUBI INDUSRTIES LLP V. UOI reported at 2016[337] ELT 179[Guj], wherein it was held that,

“Adjudication- judicial discipline- Identical issue already been decided by CESTAT in favour of petitioner ,despite which the adjudicating authority had once again given a decision against the petitioner – HELD. Assistant commissioner committed a serious error in ignoring the binding judgment of superior court that too in case of the same assessee- departmental authorities would be bound by the judicial pronouncements of the statutory tribunals - Even if decision of tribunal was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision-only choice open for the adjudicating authority was to decide the case in consonance with the judgment of tribunal and there after leave it to departmental authorities to decide the question of filing appeal against such an order, if otherwise permissible in law- Impugned order set aside- Sections 35 and 35E of Central Excise Act, 1944.[paras 6,7].”

Respectfully following the decision of Hon'ble High Court Of Gujarat in the Lubi Industries case, and Hon'ble Tribunal's decision in party's own case, supra, I hold that the appellant is entitled to said Cenvat Credit in view of tribunal's order dated 30-04-2012.

9. In view of foregoing discussion and findings, I set aside the impugned order and allow the appeal filed by the appellant.

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

10. The appeal filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

Attested

K.K. Parmar

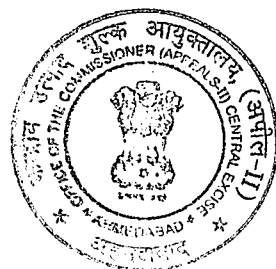
(K.K.Parmar)

Superintendent (Appeals-II)

Central Excise, Ahmedabad.

By Regd. Post A.D.

M/s. Lathia Industrial Suppliers Co. Pvt. Ltd.
108/110, Naroda Ind.Estate,
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, Div-I, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.



