
	<b>केन्द्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय उत्पाद शुल्क/भवन, 7 <sup>th</sup> Floor, Central Excise Building, सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic, आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
 079-26305065		टैलेफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(48)135 /Ahd-II/Appeals-II/ 2016-17 /10206 to 10211

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 144-17-18

दिनांक (Date): 26.10.2017 जारी करने की तारीख (Date of issue): 28-11-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals)

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

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No. 88/DC/D/2016/RK Dated: 22.12.2016 issued by:  
Deputy Commissioner Central Excise (Div-IV), Ahmedabad-II

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

**M/s Astron packaging 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) केन्द्रीय 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 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 :-

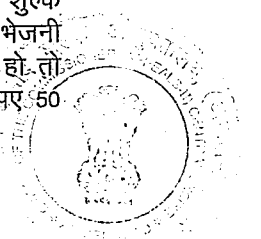
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मैन्टल 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 रूपर 5 लाख या उससे कम है वहां रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहां रूपर 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 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।

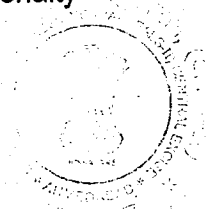
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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."

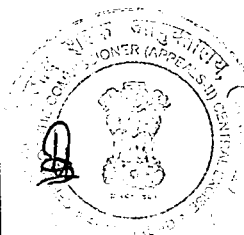


**ORDER IN APPEAL**

M/s. Astron Packaging Ltd., Plot No. 22, 23 & 24, Mahagujarat Industrial Estate, Sarkhej- Bavla Road, Village Moraiya, Taluka Sanand, District- Ahmedabad- (AAEC A0093L XM006) (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number 88/DC/D/2016/RK dated 22.12.2016 (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, C. Ex., Div-II, Gokul Dham Arcade, Ahmedabad-II (hereinafter referred to as 'adjudicating authority').

2.1 The facts of the case, in brief, are that, appellant, engaged in manufacturing Excisable product, had availed cenvat credit in respect of input services during July-2001 to October-2013 which, as per department, were not admissible to them as said services were not covered by input service definition provided in Rule 2(l) of CCR, 2004 (definition post 01.04.2011). Cenvat credit of Rs. 3,77,496/- in respect of input service i.e Construction service and Motor Vehicle service, has been disallowed u/s 11A(5) with interest liability u/r 14, CCR, 2004 r/w Section 11AA(5) of CEA, 1944, along with penalty of Rs. 1,88,748/- u/r 15(2) of CCR, 2004 r/w Section 11AC(e) vide impugned OIO.

Service Provider	CENVAT	Reason for Disallowing credit
M/s Arti Engineering	69,146/- construction service	RCC work and Fabrication cum Erection work provided is excluded in definition. Appellant could not provide invoice or other evidence, so as to establish that said service is used directly or indirectly in Manufacturing Activity
M/s Nexus Infratech P. L.	3,08,350/- Erection and installation	Service Supply and installation of self supported roofing system received. Self supported roofing is related to construction activity and form a part of construction service. Said service is no way used directly or indirectly in Manufacturing Activity.
Mahalaxmi Automobiles	62/- Motor Vehicle	Service of general insurance business, servicing, repair and maintenance, in so far they relates to motor vehicle is not admissible as per exclusion clause.
total	3,77,496/-	



3. Being aggrieved with the impugned order, the appellants preferred an appeal on 23.02.2017 before the Commissioner (Appelas)-Ahmedabad wherein it is contended that, the CENVAT availed and demanded in SCN totally relates to period prior to 01.04.2011; that said services were received and utilized well before 01.04.2011; that the services were billed to applicant prior to 01.04.2011; that the case is governed by the definition input service as laid in rule 2(l) in force up to 31.03.2011 and that the availment of Cenvat Credit after 01.04.2011 on the invoices/bills issued prior to 01.04.2011 would not alter the facts that the service were availed prior to 01.04.2011.

4. Personal hearing in the case was granted on 05.10.2017. Shree Gopal Krishna Laddha, CA, and Shri Kandarp Dholakiya, Consultant appeared before me and reiterated the grounds of appeal. They submitted written submission dated 05.10.2017 and further stated that service received prior to 01.04.2011 is eligible as per Circular No. 943/4/2011 dated 29.04.2011 and all invoice dated are of prior to 01.04.2011.

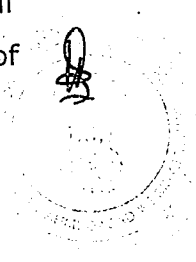
#### DISUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by appellants at the time of personal hearing.

6. Question to be decided is whether the appellant had received the above disputed services prior to 01.04.2011 and whether the cenvat credit is available to them when credit is taken after 01.04.2011.

7. Adjudicating authority has disallowed cenvat credit as construction service, Erecting/Fabrication service and motor vehicle service is not eligible as input service as per new definition w.e.f 01.04.2011 and more so invoices were not produced before him. Adjudicating authority was of view that since the cenvat credit has been taken during July 2001 to October 2013, the input service definition in force during the said period is applicable to evaluate admissibility of cenvat during said period.

8. Appellant had produced before me invoices on which credit has been taken after 01.04.2011 but services were received prior to 01.04.2011. I have perused the invoices submitted in respect of above three service provider and find that said invoices were issued prior to 01.04.2011 but credit has been taken after 01.04.2011. I find that CBEC has issued Circular No. 943/4/2011-CX dated 29.04.2011 in wake insertion of new definition of



input service from 01.04.2011. At point No. 12 of issue of present case is clarified which is reproduced as below-

S.No.	Issue	Clarification
12	Is the credit available on services received before 1.4.11 on which credit is not allowed now? e.g. rent-a-cab service	The credit on such service shall be available if its provision had been completed before 1.4.2011.

9. No where in OIO adjudicating authority held that services were receive and utilized after 01.04.2011 except that credit has been taken after 01.04.2011. From above discussion, I conclude that the case is covered by definition existed prior to 01.04.2011. Now next question to be decided is whether above three services were eligible or not, for credit, for period prior to 01.04.2011.

10. Construction and works contract services used for building or civil structure are not eligible input service after 01.04.2011 but are excluded w.e.f. 01.04.2011. Further services used for modernization, renovation or repair of factory or office premises were eligible as input service prior to 01.04.2011 and even after 01.04.2011, however.

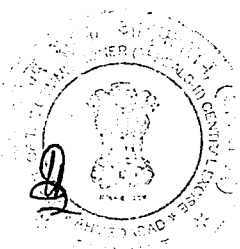
11. During the period prior to 01.04.2011, the definition of input service as given in Rule 2(I) of Cenvat Credit Rules, 2004 was as under:-

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 factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

12.1 It is only with effect from 01.04.2011 by amendment to the Rule 2(I) that words setting up were omitted. The period of dispute in this case is the period prior to 01.04.11 when the definition of input service specifically



included the services used in relation to setting up, modernization, repair or restoration of the factory or premises of the provider of output service. Thus the services, in question, used for setting up, modernization, repair or restoration of factory have to be treated as input service and would be eligible for Cenvat Credit, as the factory has been setup for manufacture of final products which are liable to Central Excise duty.

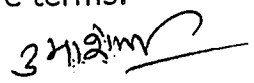
12.2 Input services used for "setting up" new factory is not admissible w.e.f. 01.04.2011. I find that no where it is concluded by adjudicating authority that service rendered by M/s Arti Engineering and M/s Nexus Infratech P. Ltd. is used for "setting up" of new factory. Said services are most likely to be used for modernization, renovation or repair of factory therefore it is admissible even if new definition is taken in to consideration. Therefore denial of Cenvat Credit, in question, is contrary to the provisions of Rule 2(l) of Cenvat Credit Rules, 2004 existed prior to 01.04.2011 or after 01.04.2011.

13. I find that the same view has been taken by the Tribunal in the case of Bellsonica Auto Component India Pvt. Ltd.[2015 (40) STR 41 (P & H)] and Madhusudan Auto Ltd.[2011(231)-STR-277 (Tri. Del.) , Suzuki Motorcycle (I) Pvt. Ltd. Vs. CCE, [2011(267) ELT-216(Tri.-Del.)] and Honeywell International Pvt. Ltd.[2016(45) STR 304 (Tri. Chan.)]

14. I hold that credit in respect of invoices of M/s Arti Engineering (Rs.69,146/-) and invoices of M/s Nexus Infratech P. Ltd. ( Rs. 3,08,350/-) is eligible for cenvat. Cenvat credit of Rs. 62/- in respect of Mahalxmi is not eligible as input service is used for maintenance of Motor Vehicle. Having allowed all cenvat credit (except Rs. 62/-), I am inclined to set aside penalty Rs. 1,88,748/- imposed.

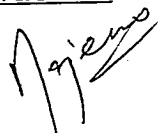
15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

15. The appeals filed by the appellant stand disposed off in above terms.

  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

  
(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s. Astron Packaging Ltd.,

Plot No. 22, 23 & 24,

Mahagujarat Industrial Estate,

Sarkhej- Bavla Road,

Village Moraiya, Taluka Sanand,

District- Ahmedabad

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST North,,Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST North, Ahmedabad
- 4) The Asst. Commissioner, C.Tax., Div-II, Ahmedabad-II(old jurisdiction).
- 5) The Asst. Commissioner(System), GST North, Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File

