



केंद्रीय कर आयुक्त (अपील)



सत्यमेव जयते

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015

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रजिस्टर डाक ए .डी .द्वारा

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क फाइल संख्या (File No.): V2(73)91-92 /Ahd-II/Appeals-II/ 2015-16

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 24 & 25-17-18

दिनांक (Date): 25.07.2017, जारी करने की तारीख (Date of issue):

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

18/8/17

Passed by Shri Uma Shanker, Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No. 21-22/ADC/2015/MKR Dated: 17/11/2015 issued

by: Additional Commissioner Central Excise (Div-), Ahmedabad-II

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

M/s AIA Engineering 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:

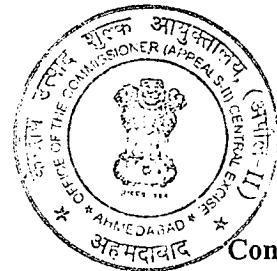
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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।



Cont...2

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 Appellate 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."



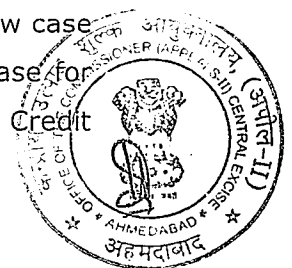
ORDER-IN-APPEAL

M/s AIA Engineering Ltd (Unit-7), Plot No. 70-77, Survey No. P-423/426/427, Mahagujarat Industrial Estate, Sarkej- Bavla N.H. 8-A, Village-Moraiya, Post-Changoder, Tal-Sanand, Ahmedabad-382213 (hereinafter referred to as "the Appellant"), has filed the present appeals against the Order-in-Original No 21-22/ADC/2015/MKR dated 17.11.2015 (*hereinafter referred to as 'impugned orders'*) passed by the Additional Commissioner of Central Excise, Ahmedabad-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, the appellant are register with the Central Excise Department having registration no. AABCA2777JXM007 and engaged in Manufacturing of Grinding Media Balls, Machined Alloy Steel Casting and Casting & Other cast Article of Steel falling under chapter 73 & 85 of Central Excise Traiff Act, 1985. The Internal Audit party of the department has audited the appellant records for the period December-2011 to October-2013. The audit party on the basis of records available proposed to deny Service Tax Credit taken on two services namely (i) Banking and Financial Service and (ii) Legal Consulting Service. On the basis of Audit Para, the department issued two show cause notices. The same was adjudicated vide impugned order. The adjudicating authority rejected the following service tax credit as the same is not in the preview of the definition of the Input Services. Equivalent penalty was also imposed and interest was also demanded.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that the above services are valid input services as they are used directly or indirectly in or in relation to manufacture of final product. They further submitted that they have availed "Banking and Financial Service", in respect of inward remittance & outward remittance. The Bank has not charged any Service Tax on forward contract. The service rendered was in relation to foreign exchange brokering. The second service "Legal Consulting Service" was used in relation to intellectual property rights dispute held outside the country. Further the service was also used in filing patent & patent search. The said Service Tax was paid under reverse charge mechanism. The appellant further submitted that the adjudicating authority has wrongly invoke extended period as appellant have already shown in the ER-1 that they have taken Service Tax Credit on "Banking and Financial Service" & "Legal Consulting service". The department on the identical issue has already issued SCN on 06.01.2014. Therefore extended period cannot be invoked in subsequent SCN.

4. Personal hearing in the case was granted on 20.04.2017 which was attended by appellant representative. During the personal hearing they have submitted few case laws. On 06.06.2017 they submitted the CESTAT order copy in their own case for earlier period which decision was in their favour in respect of Service Tax Credit taken on "Banking and Financial service" & "Legal Consulting service".

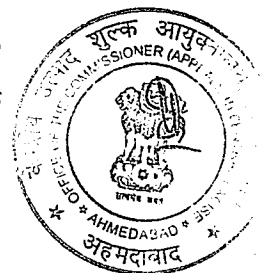


5. I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

6. Now issue to be decided is whether all such credit which are taken by the appellant are eligible or otherwise.

In the instant case, I observe that the appellant has filed the present appeal on the ground that adjudicating authority while deciding the SCN have not considered the fact that the services are valid input services as they are used directly or indirectly in or in relation to manufacture of final product. The adjudicating authority has relied upon the OIA No AHM-ExCUS-001-APP-001-2015-16 which was decided by my predecessor. In which it was held that both the service are not valid input service and therefore the Service Tax Credit is denied. The Appellant had filed an appeal before CESTAT. The same has been submitted by the Appellant on 06.06.2017. In its Order No A/10822-10837/2017 dated 01.05.2017, the issue has been decided in appellants favour as :

(7) In principal, there is no dispute on the issue that the Service Tax paid on commission towards foreign remittance is eligible to Cenvat Credit in view of the Judgment of this Tribunal in the case of Meghmani Dyes & Intermediates, Vishal Malleables Ltd and Flamm Minda Automotive Ltd (Supra) case. The dispute relate to charges paid by the appellant on receipt of Banking and Financial Service from State Bank of India, which the revenue claims to be in relation to forward contract charges. I do not find merit and substance in the allegation of Revenue in as much as ongoing through the specimen bills issued by the Bank and enclosed with the Appeal Paper Book, I find that invariably in all the bills Service Tax was paid on Banking Commission Charges in relation to foreign remittance and no where the charges in the said bills were collected relating to forward contract entered into between the appellant and the Bank. In these circumstances, the Service Tax paid on Commission Charge on foreign remittance is eligible to the Cenvat Credit under the category of "Banking and Forward Service". With regard to Cenvat Credit availed on "Legal Services", I find that the issue is more of less covered by the Judgment of Hon'ble Allahabad High Court in the case of CCE Vs HCL Technologies Ltd (Supra) case. In the result, the impugned orders are set-aside and the appeals are allowed with consequential relief, if any, as per law.



Respectfully following the order of Hon'ble Tribunal, I hereby allow the appeal filed by the appellant and the OIO is set-aside. The appeal stands disposed of in above terms.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

SS Chowhan
12/8/2015

(S S Chowhan)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s AIA Engineering Ltd (Unit-7),
Plot No. 70-77, Survey No. P-423/426/427,
Mahagujarat Industrial Estate,
Sarkej- Bavla N.H. 8-A, Village-Moraiya,
Post-Changoder, Tal-Sanand, Ahmedabad-382213

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II, Ahmedabad.
3. The Additional Commissioner, Central Excise, Ahmedabad-II, Ahmedabad.
4. The Dy. /Assistant Commissioner, Central Excise Division-IV, Ahmedabad-II, Ahmedabad.
5. The Assistant Commissioner(Systems), Central Excise, Ahmedabad-II, Ahmedabad
6. Guard File.
7. P.A. File.

