



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015. Ambavadi, Ahmedabad-380015



☎ : 079-26305065

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- क फाइल संख्या (File No.): V2(84)23/Ahd-II/Appeals-II/ 2017-18
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 261 -17-18
 दिनांक (Date): 08/01/2018 जारी करने की तारीख (Date of issue): 23/1/2018
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)
- ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II), अहमदाबाद- II, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No. MP/04/Dem/AC/2017/PKS Dated: 07/03/2017
 issued by: Assistant Commissioner Central Excise (Div-II), Ahmedabad-II
- घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s V.R. Valves Private 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।

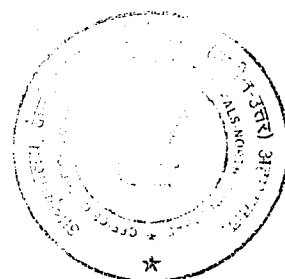
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

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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-380013.

- (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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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।

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.

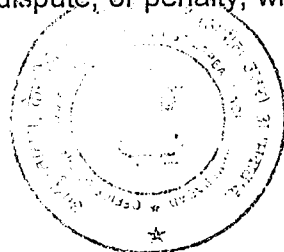
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

This appeal is filed by M/s. V R Valves Private Limited, Plot No. A/21-A/22, S.P.6, Maruti Industrial Estate, Opp. Naroda Fire Station, Naroda Road, Ahmedabad 382 345 [for short – ‘appellant’] against CIO No. MP/04/Dem/AC/2017/PKS dated 7.3.2017, passed by the Assistant Commissioner, Central Excise, Division II, Ahmedabad-II Commissionerate [for short – ‘adjudicating authority’].

2. Briefly, the facts are that based on a specific information, an inquiry was initiated against M/s. Orbeet Alloys Cast P Limited, Prantej, Ahmedabad, for evasion of Central Excise duty. Inquiry revealed that their buyers, the appellant, had availed CENVAT credit on their raw materials viz *SS Round bars*, on the strength of invoices issued by M/s. Orbeet Alloys Cast P Limited, without actually receiving the said inputs/raw materials.

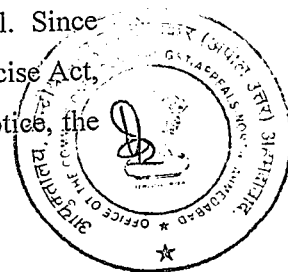
3. After the completion of the investigation, a notice dated 7.9.2016, was issued to the appellant *inter alia*, asking them to show cause as to why the central excise duty short paid of Rs. 15,81,066/- on the wrong availment of CENVAT credit on fake invoices should not be recovered along with interest. Penalty was also proposed on the appellant under Section 11AC(c) of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004. This notice was adjudicated vide the impugned OIO dated 7.3.2017, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty on the appellant.

4. Feeling aggrieved, the appellant has filed this appeal, raising the following averments:

- (a) that the impugned order is passed in a routine and superfluous manner without taking the facts into consideration;
- (b) department has grossly failed to establish their case with regard to fraudulently availed CENVAT credit by the appellants; that the allegation was made on a confessional statement, without any corroboration;
- (c) that the department has not made any allegation to the effect that appellant had procured quantity of raw materials mentioned in central excise invoice in respect of which CENVAT credit was fraudulently availed from any other sources;
- (d) that except confessional statement, department has not carried out any independent investigation to establish fraudulent availment of CENVAT credit;
- (e) that the order of the adjudicating authority be set aside and consequential relief may be granted.

5. Personal hearing in the matter was granted on 5.10.2017, 1.11.2017, 1.12.2017 and 20.12.2017. However, no one turned up for the hearing on the aforementioned dates. The appellant has not filed any request for adjournments. Therefore, in view of proviso to Section 35(1A) of the Central Excise Act, 1944, I take up this appeal for decision.

6. I find that the appellant has sought a condonation of delay in filing appeal. Since delay in filing appeal is of 7 days, in terms of proviso to Section 35(1) of the Central Excise Act, 1944, I condone the delay in filing the appeal. I have gone through the show cause notice, the



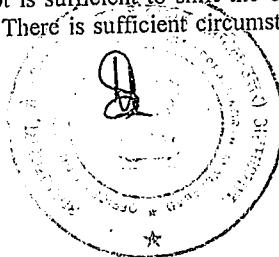
impugned order and the grounds raised by the appellant. The issue to be decided is whether the appellant is liable to pay duty of Rs. 15,81,066/- on the wrongly availed CENVAT credit, taken on fake invoices, issued by M/s. Orbeet Alloys Cast Private Limited or otherwise.

7. The appellant, I find has questioned the impugned OIO and has also raised questions on the investigation. However, I find that the appellant's approach during the course of investigation was not only of acceptance of the allegations but infact the appellant had also made payments of certain portion of the amount involved. The amount paid, as is evident was without any protest. Further, as is recorded in the impugned order, in para 7, the consultant of the appellant during the course of personal hearing before the adjudicating authority, assured him that they will pay the remaining duty along with interest and penalty, on the receipt of the adjudication order. Now taking an exactly different line, the appellant has questioned the impugned order, the investigation, etc., raising various averments. At best this stand can be termed as an afterthought.

8. I find that the law in this matter is very clear. What is admitted need not be proved. Shri Ashish Rajendra Kumar Bhatt, Director, of the appellant in his statement dated 21.11.2014, on being asked regarding the details of goods purchased/received from M/s. Orbeet Alloys Cast Pvt Ltd., Prantij, [as mentioned in Annexure B of the panchnama dated 21.11.2014] stated that that no materials were received physically with the invoices; that they were receiving only invoices from M/s. Orbeet, since June 2013 to avail CENVAT credit; that they issued cheques against the said invoices and on realization of the cheques, the supplier, returned the amount in cash after deducting the tax amount plus 3% extra of cheque amount, to meet miscellaneous cash transactions of their firm. Thus, on account of the clear cut admission on the part of the Director of the appellant, which till date has not been retracted, added to the consultant's assurance to the adjudicating authority of paying the remaining amount of the demand being along with interest and penalty, I find that this to be a clear cut case wherein the demand needs to be confirmed more so since the admission of guilt on the part of the appellant and his subsequent assurance, was without any rider.

9. I find that the Hon'ble Tribunal in the case of N.D. Textiles[2004 (168) E.L.T. 381 (Tri. - Mumbai)] has held as follows:

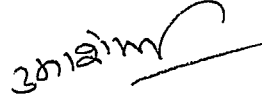
6. It is a cardinal precept of law that a fraud overrules all. In the present case, the department through the statements made by the owner of the fabrics, established the non-duty paid nature of the goods. Every lead given by the owner of the seized goods was followed up. When the lead did not take the officers any further, they approached him (the shopkeeper) again and he stated that he had spoken lies when he gave the names of the processors and that he had already paid the duty on the non-duty paid fabrics. The proprietor of M/s. N.D. Textiles has the peculiar knowledge of the nature of fabrics in his possession but he refuses to part with that knowledge except saying that the fabrics are non-duty paid. In such a situation are the officers expected to leave the fabrics in question alone on the sole ground that they are not able to establish who manufactured them even though there is a clear admission on the part of the person that the fabrics are non-duty paid, is the question. Such an action may lead to absurd results. More over what is admitted need not be proved aliunde. Proof of a fact in issue may be by direct evidence as well as by circumstantial evidence. By circumstantial evidence is meant, proof of other relevant facts from which the fact in issue may be inferred. In quasi criminal cases *prima facie* doubt is sufficient to shift the onus to the assessee or accused (AIR 1949 Madras 116 in *Narasinga Muthu Chettiar*). There is sufficient circumstantial evidence in this case to establish the non-duty paid character of the fabrics.



10. Therefore, the appellant's raising new averments at the appellate stage consequent to admitting his guilt at the investigation stage and during the proceedings before the original authority, is not tenable, simply because nothing prevented him from raising these averments before the adjudicating authority. After admitting and giving assurance to the adjudicating authority, of paying of the demanded amount, along with interest and penalty, the appellant appears to have backtracked, without any plausible reason.


11. In view of the foregoing, I do not find any merit in the grounds raised and hence the appeal is rejected and the impugned OIO is upheld.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeal filed by the appellants stands disposed of in above terms.


(उमा शंकर)
आयुक्त (अपील्स)

Date : .1.2018

Attested


(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.

To,

M/s. V R Valves Private Limited,
Plot No. A/21-A/22, S.P.6,
Maruti Industrial Estate,
Opp. Naroda Fire Station,
Naroda Road,
Ahmedabad 382 345

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad North.
3. The Deputy/Assistant Commissioner, Central Excise Division-II, Ahmedabad North
4. The Assistant Commissioner, System, Central Excise, Ahmedabad North.
5. Guard File.
6. P.A.

