



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

10/5/2019

क फाइल संख्या (File No.): V2(84)2,46 & 47/North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 315 to 317-17-18

दिनांक (Date): 01/02/2018 जारी करने की तारीख (Date of issue): 15/2/2018

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/05/Ref/AC/2017/PKS Dated: 21/06/2017 & MP/174 & 175/Ref/AC/2017/KDB Dated 10/10/2017

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 Arvind Ltd, Naroda Road

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।

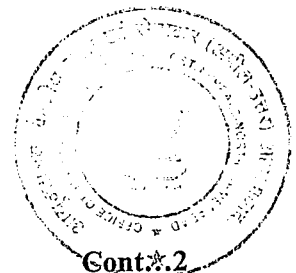
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

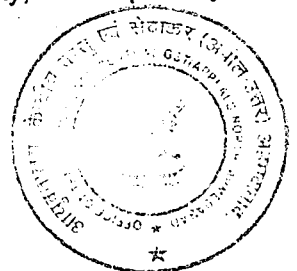
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



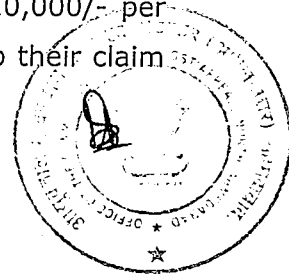
ORDER IN APPEAL

M/s. Arvind Ltd., Naroda Road, Ahmedabad-380025(*hereinafter referred to as the 'appellants'*) have filed the present appeals against the following Orders-in-Original (*hereinafter referred to as 'impugned orders'*) passed by the then Assistant Commissioner of Central Excise, Division-II, Ahmedabad-II/GST Division-II(Naroda Road), Ahmedabad North(*hereinafter referred to as 'adjudicating authority'*);

Sr. No.	Order No. & date	Appeal No.	Period Covered	Amount of refund claimed (₹)	Amount rejected(₹)
1	MP/05/Ref/AC/2017/PKS dated: 16.06.2017	V2(84)2/North/Appeals/17-18	Oct 2016 to March 2017	11,30,599/-	11,30,599/-
2	MP/174/Ref/AC/2017/KDB dated: 10.10.2017	V2(84)47/North/Appeals/17-18	April 2017 to May 2017	3,43,595/-	3,43,595/-
3	MP/175/Ref/AC/2017/KDB dated: 10.10.2017	V2(84)46/North/Appeals/17-18	June 2017	3,39,196/-	3,39,196/-
Total				18,13,390/-	18,13,390/-

2. The facts of the case, in brief, are that the appellants are holding Central Excise Registration No. AABCA2398DXM005 as a Composite Textile Mill and are availing exemption under Notification No. 30/04-CE dated 09.07.2004. This exemption permits credit of capital goods but not of inputs.

3. The appellants had filed refund claims for the total amount of Rs. 18,13,390/- for the period of Oct 2016 to June 2017 as detailed above. The refund claims were filed by the appellants stating the ground that, under Budget 2016, the definition of input has been amended, where under, capital goods up to the value of Rs. 10,000/- per piece are specifically included as input. However, there is no corresponding exclusion from definition of capital goods made. Further, the appellants contended that such items are capital goods and hence available as credit even when exemption under Notification No. 30/04-CE is claimed. They have also filed a representation dated 07.06.2016 to CBEC on this behalf, but without any response from the CBEC and in view of protecting their credit claim, they have filed these refund claims for such items of capital goods having value up to Rs. 10,000/- per piece. They have also specifically stated that they do not give up their claim for exemption under Notification No. 30/04-CE.

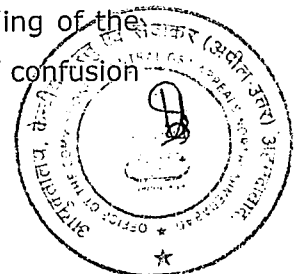


4. On scrutiny of the refund claims, the department noticed the following infirmities:

- (i) the appellants have not mentioned the relevant section of the Central Excise Act, 1944 or Rules of Central Excise Rules, 2002 or any Notification issued under the said Act or Rules where under the amount of refund claims are permissible.
- (ii) any documentary proof in respect of the goods/inputs purchased is not submitted so as to prove that the said goods/inputs had been used/utilized or otherwise consumed within the factory premises of the appellants.
- (iii) the enclosures filed with the claim contains details of goods/inputs received during the period does not contain particulars of duty payments made by the supplier manufacturer along with any evidence of such payment of duty on the basis of which it can be ascertained that the refund amount is admissible, correct and the claim is filed within the time limit.
- (iv) any evidence is not provided so as to prove that the incidence of excise duty has not been passed on the customers and hence, the doctrine of unjust enrichment as provided under section 11B and section 12B of the Central Excise Act, 1944 is not applicable to the present claim under consideration.
- (v) the claim has been filed enclosing certified copy of invoices where under goods/inputs are procured whereas for the purpose of claiming refund, original copy has to be filed.
- (vi) the appellants have not submitted any case laws or citation which makes their refund permissible under the Central Excise Act, 1944 and Rules and regulations made there under.

5. On the basis of the above findings the adjudicating authority vide the above mentioned impugned orders rejected the refund claims. Feeling aggrieved, the appellants have filed these appeals against the rejection of the refund claims, on the grounds *which are inter alia mentioned* that:

- (a) The impugned orders rejecting refund claims are not correct. In the impugned orders all the contentions raised by the appellants in the refund claims have been accepted.
- (b) The appellants are at a loss to understand that which provisions of section 11B have not been followed by them. The said section requires application to be made showing grant of refund and the same has been duly filed. The appellants are at a loss to understand which infirmity is found in the refund applications.
- (c) It is correct to say that no permission is required for availing of the credit. However, in peculiar facts of the case and on account of confusion



prevailing on account of amendment in the definition, the appellants had referred a safer course of filing refund claims. The application for clarification has not been answered. However, the appellants have chosen to safer course of filing refund application whereby forcing the department to take a specific stand. Therefore, the refund applications were filed in the peculiar facts and circumstances of the case.

(d) There is clear confusion arising on account of budgetary changes and for which representation has also been filed. Unfortunately, even after period of nearly 6 months there is no clarification, compelling us to adopt the only available route of filing refund to protect against running of time within which credit can be taken. Had we taken the credit and reversed by the very next entry instantly, the claim would have been maintainable.

(e) The objections of adjudicating authority are of technical nature and do not address the issue involved.

(f) Therefore, the impugned orders may be set aside and refund claims may be allowed.

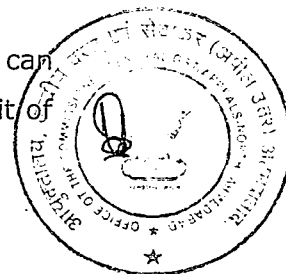
6. Letters for Personal hearing were sent to the appellants. The appellants vide their letter of dated 01.02.2018 replied that the matter may be decided on the basis of grounds of appeal and considering the following submissions:

(a) In the present case, the refunds are rejected mainly on the ground that the Cenvat credit should have been taken by the appellants and granting credit is not covered u/s 11B.

(b) The reason for not availing the credit and seeking refund has been elaborated in the grounds of appeal. In the facts of present case, the appellant was aware about the legal provisions but the confusion was prevailing particularly regarding interpretation of the definition of capital goods credit in view of the budgetary amendment to the definition of input under Budget 2016.

(c) The appellant was availing exemption notification 30/04-CE where capital goods credit is permitted but input credit is not permitted. The confusion was as to whether the items of capital goods where value per piece is up to Rs. 10,000/- is specifically covered as input though not excluded from the definition of capital goods. In such scenario, doubt arose as to whether the credit of such items could be availed as capital goods or not.

(d) The apprehension of the appellant was that the department can interpret the credit as input credit and, therefore, thereby denying benefit of



Notification No. 30/04-CE. The appellant had made repeated attempts to solicit the clarification from departmental authority including from CBEC. Despite rigorous follow up, no clarification has been issued till date. Since the period for availing the credit was expiring, the appellant had no choice but filed refund claims to force the department to clarify legal confusion.

(e) It is under these peculiar circumstances that the refund application has to be filed.

(f) Since the impugned order clearly records that the appellants are entitled to capital goods credit in para 10.3, the appeal may be allowed with consequential relief.

7. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and submissions made by the appellants vide their letter dated 01.02.2018. I find that the main issue to be decided is whether the impugned orders are just, legal and proper or otherwise.

8. Notification No.30/2004-CE, dated 9.7.2004, stipulates that the assessee manufacturing excisable goods of the descriptions specified in the column 3 of the Table of the Chapter, Heading No., Sub-heading No. of the first Schedule of the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said table were exempted from whole of the duty of excise leviable thereon under the Central Excise Act. "Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs has been taken under the provisions of the Cenvat Credit Rules 2002" (this proviso has been corrected vide corrigendum 30/2004-CE dated 09.07.2004).

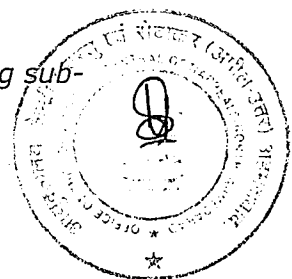
9. Prima facie, I find that the refund claims were rejected by the adjudicating authority on the following grounds:

- that the claimant has not clarified the irregularities raised in the SCN such as under which provisions of Central Excise Act, Rules, Notifications the refund claim is filed;
- that it is only up to the claimant to either opt for availing CENVAT credit on inputs and clear the goods on payment of duty or follow the amended provision of Rule 2 of CENVAT Credit Rules, 2004.

10. Facts leading to the refund are that vide Notification No. 13/2016-C.E. (N.T.) dated 1-3-2016, the definition of *input* was amended as follows:

(c) *in clause (k),-*

(iii) *after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely :-*

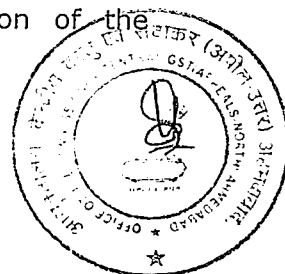


"(v) all capital goods which have a value upto ten thousand rupees per piece .";

However, there was no corresponding change in the definition of 'capital goods'. The effect of the amendment was that capital goods having a value of upto Rs.10,000/- per piece, were included under the definition of 'input'. The appellants, operating under Notification No. 30/2004-CE dated 9.7.2004, [which allowed availing of CENVAT credit on capital goods only], feeling apprehensive, that if they were to avail CENVAT credit on capital goods below Rs. 10,000/-, it would be construed as having availed CENVAT credit on inputs and may lead to situation wherein they would be denied even the benefit of Notification No. 30/2004-CE dated 9.7.2004, have without availing the CENVAT credit filed this refund.

11. The appellants have in their grounds, claimed that the relief needed are [a] permission to avail CENVAT credit and [b] refund of the said credit, claiming that refund of credit is outside the purview of unjust enrichment. Surprisingly, I do not find any condition under the CENVAT Credit Rules, 2004, which obliges an assessee, to seek permission to avail CENVAT credit. For availing CENVAT credit on inputs, capital goods and input services, the appellants have to fall within the ambit of the definitions of the inputs, capital goods, input services along with fulfilling the conditions enumerated in any exemption notification, in case they are availing any such benefit. In this era of self assessment, such a request of seeking permission to avail CENVAT credit, not being legally tenable, I reject the same.

12. The second relief claimed is regarding grant of refund which stands rejected by the adjudicating authority. Going by the facts of the cases, I find that the appellants had purchased these goods [i.e. capital goods having a value of upto rupees ten thousand per piece] on payment of duty. It is nowhere claimed that these goods were exempted. Further, neither have the appellants produced any notification, rule, section etc. which provides refund in case they purchase such goods on payment of duty in case they are availing the benefit of the notification, *ibid*. Therefore, it is surprising that the appellants have sought refund from the Government of a tax which the manufacturer of the goods was legally bound to pay and the appellants have to bear finally being a purchaser of the said goods. The appellants who have borne the excise duty on the capital goods by no stretch of imagination can seek refund of the same just because they are working under a specific exemption. In view of the foregoing, I uphold the decision of the adjudicating authority in rejecting the refund claims.



13. In view of the above, the appeals filed by the appellants are rejected.
14. अपीलकर्ता द्वारा दर्जकी गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
14. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
आयुक्त (अपील्स)

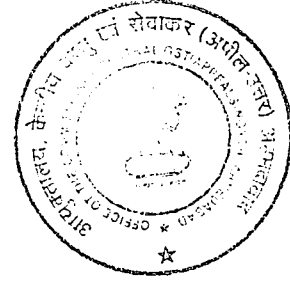
Attested

Vinod Lukose

(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY SPEED POST TO:

M/s. Arvind Ltd.,
Naroda Road,
Ahmedabad-380025.



Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Ahmedabad North.
- (3) The Assistant Commissioner, Central Tax, Division-II(Naroda Road), Ahmedabad North.
- (4) The Asstt. Commissioner (System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)
- (5) Guard file

