

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

रजिस्टर डाक ए.डी.द्वारा

1899 + 01903

क फाइल संख्या (File No.): V2(STC)23&38 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-337-338-17-18

दिनांक (Date): 22-Feb-2018 जारी करने की तारीख (Date of issue): 23-3-2018

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

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

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

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No SD-04/Ref-19/AK/17-18 Dated: 21/06/2017 & 20/Ref/IV/17-18 Dated: 01/09/2017

issued by: Assistant Commissioner Central Excise (Div-III)(Service Tax Div-IV), Ahmedabad North

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

M/s JBM Auto System 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 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 हैं।

O/C



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 मैटल हास्पिटल कम्पाउण्ड, मेघाणी 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 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 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 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 अपीलो 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।

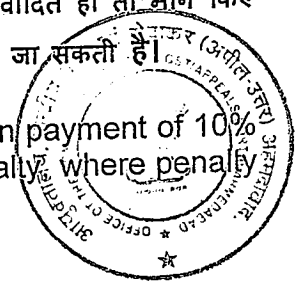
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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. JBM Auto System Private Limited, Plot No. AV-13, Ford Vendor Park, BOL Industrial Estate, GIDC, Sanand-II, Pin-382170, Gujrat (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 Assistant Commissioner, Service Tax, Division-IV, Ahmedabad/ GST Division-III, Ahmedabad North (hereinafter referred to as 'adjudicating authority');

Sr. No.	OIO No.& date	Appeal No.	Amount of refund claim (₹)	Amount sanctioned (₹)	Amount rejected (₹)
1	SD-04/Ref-19/Ak/17-18 dated: 21.06.2017	V2(STC)23/North/Appeals/17-18	3,22,252/-	0	3,22,252/-
2	20/Ref/IV/17-18 dated: 01.09.2017	V2(STC)38/North/Appeals/17-18	1,12,500/-	0	1,12,500/-
Total			4,34,752/-	0	4,34,752/-

2. The facts of the case, in brief, are that the appellants are registered with the Service Tax Department having Registration No. AAACK8997RSD005 issued under section 69 of Finance Act, 1994 for providing Business Auxiliary Services and for receiving taxable services such as Manpower Recruitment/Supply Agency, Rent a Cab Operator, Transport of Goods by Road services.

3. The appellants had filed Service Tax refund claims for the total amount of Rs. 4,34,752/- as detailed above, under Section 11B of the Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1944 on the ground that they had erroneously paid the service tax on certain invoices for the service provided to Ford Motor Private Limited, Tamil Nadu unit and Sanand (Gujrat) unit as the said invoices were generated erroneously and they had paid service tax on them which were not required to be paid by them.

4. On scrutiny of the refund claims, the department noticed some discrepancies in their refund claims and show cause notices were issued to the appellants. The show cause notices were adjudicated vide the above mentioned impugned orders wherein the adjudicating authority rejected the refund claims mainly on the following grounds:

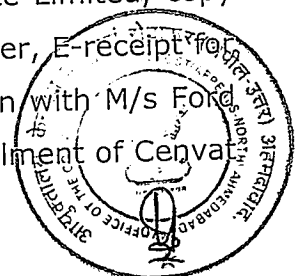
- a) The appellants failed to produce the following basic and essential corroborative documentary evidences to sustain the refund claims:



- Copy of ledger of M/s. Ford Motor Private Limited for the certain months.
 - Certificate/Disclaimer of M/s. Ford Motor Private Limited regarding non availment of Cenvat Credit of service tax paid on the certain invoices.
 - Disclaimer certificate of M/s. Ford Motor Private Limited regarding refund claims.
 - Any other documents/evidence in support of their claims.
- b) It is difficult to ascertain from the Challans that they have paid Service Tax erroneously on invoices generated by mistake for service provided to M/s Ford Motors Private Limited.
- c) The appellants have been given sufficient opportunity to submit the documents, but they failed to submit the same.

5. 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 appellants have made application for refund claims within time limit of one year from the date of payment of service tax.
- b) The appellants had raised two invoices for the same services and consequently the service tax was also paid twice in respective months; but later ~~we~~^{they} found this mistake and hence seeking for refund for service tax paid twice for the same services.
- c) As required and asked by the department, the appellants have already submitted the Chartered Accountant Certificate for 'unjust enrichment'.
- d) As the appellants have made duplicate invoices for the same services by mistake, Ford Motors Private Limited had returned the invoices without accounting in their books of accounts and therefore the question of service tax credit of these invoices by Ford Motors Private Limited is not relevant.
- e) Appellants have shown the break up and challans details in its service tax returns too.
- f) The impugned order No. 20/Ref/IV/17-18 dated: 01.09.2017 has been passed by the adjudicating authority before the receipt of personal hearing letter. The order was passed before giving the opportunity of being heard.
- g) They have also submitted the following documents to substantiate their claims- copy of Ledger of M/s Ford Motors Private Limited, copy of invoices, copy of ST-3 returns, copy of purchase order, E-receipt for service tax payment and copy of e.mail communication with M/s Ford Motors Private Limited certifying in respect of 'non availment of Cenvat



Credit' of service tax paid on the two invoices- 9001904355 & 9001904384.

6. Personal hearing in the matter was held on 06.02.2018 wherein Shri. Alpesh J. Kothari, Chartered Accountant, appeared on behalf of the appellants and reiterated the contents of appeal memorandum. He also submitted invoices (original & duplicate) along with CA Certificate which has not been considered. Further they submitted additional submission on 08.02.2018, wherein they submitted copy of e.mail communication with M/s Ford Motors Private Limited certifying in respect of 'non availment of Cenvat Credit' of service tax paid on the following invoices-

(i) 9001904355 & 9001904384.

(ii) 9000278383, 9000279590, 9000286642 all of dated 28.05.2016.

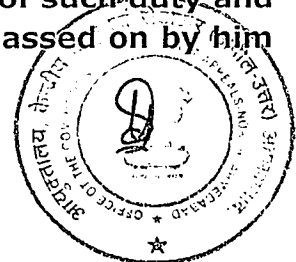
7. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, oral submissions made by the appellants at the time of personal hearing and additional submissions made by the appellants vide their letter dated 08.02.2018. I find that issue to be decided is whether the appellants are eligible for refund or otherwise.

8. In the present case, I find that the appellants had decided to file the claims of refund on the ground that they had erroneously paid the service tax on certain invoices for the service provided to Ford Motor Private Limited, Tamil Nadu unit and Sanand (Gujrat) unit as the said invoices were generated erroneously and they had paid service tax on them which were not required to be paid by them. In view of the above, I would like to reproduce the relevant paras of Section 11B of the Central Excise Act, 1944 (as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1944) for proper clarity;

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and **the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :**

.....



(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

.....
"

[Emphasis supplied]

9. On examining the refund claims in this backdrop I find that -

(a) The appellants have filed the refund claims under Section 11B of the Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1944;

(b) The appellants have filed the refund claims within the stipulated time limit prescribed under Section 11B of Central Excise Act, 1944.

(c) The appellants have filed the refund claims on the ground that they had erroneously paid the service tax on certain invoices for the service provided to Ford Motor Private Limited, Tamil Nadu unit and Sanand (Gujrat) unit as the said invoices were generated erroneously and they had paid service tax on them which were not required to be paid by them;

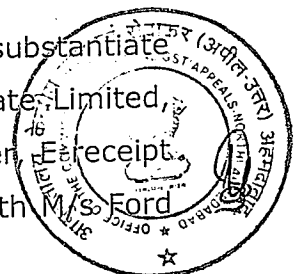
(d) Sec.11B of the Central Excise Act provides that refund application may be made in such form and in such manner as may be prescribed and accompanied by documentary evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax, in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any paid on such duty had not been passed on by him to any other person;

(e) The appellants failed to produce the basic and essential corroborative documentary evidences before the adjudicating authority to substantiate their refund claims.

(f) The appellants have claimed that impugned order No. 20/Ref/IV/17-18 dated: 01.09.2017 has been passed by the adjudicating authority before the receipt of personal hearing letter. The order was passed before giving the opportunity of being heard.

(g) The adjudicating authority has rejected the refund claims mainly in absence of the basic and essential corroborative documentary evidences which are essential to substantiate their refund claims.

(h) Now, they have submitted the following documents to substantiate their refund claims- copy of Ledger of M/s Ford Motors Private Limited, copy of invoices, copy of ST-3 returns, copy of purchase order receipt of M/s Ford for service tax payment and copy of e.mail communication with



Motors Private Limited certifying in respect of 'non availment of Cenvat Credit' of service tax paid on the certain invoices.

10. Thus, in view of the above findings and in the fitness of things, it would be just and proper to remand the matter to the Adjudicating Authority to decide afresh, after considering the submission of the appellants. Needless to say that, the adjudicating authority shall give proper opportunity of hearing before passing the order. The appellants are also directed to put all the essential documents and evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority.

11. In view of the foregoing the aforementioned appeals are disposed of by remanding the matter back to the adjudicating authority in terms of the discussion held above.

12. अपीलकर्ता द्वारा दर्जकी गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. 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. JBM Auto System Private Limited,
Plot No. AV-13, Ford Vendor Park, BOL Industrial Estate,
GIDC, Sahand-II, Pin-382170, Gujrat.

Copy to:

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

