
 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(82)76&77 /North/Appeals/ 2017-18  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 409-410-17-18  
 दिनांक (Date): 26-Mar-2018 जारी करने की तारीख (Date of issue): 25/4/2018  
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No 14-15/AC/D/BJM/2017 Dated: 15/11/2017  
 issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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

**M/s PSM Engineering Industries**

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 ।

- (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 मैटल 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 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 वहाँ 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 वहाँ 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 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

The subject appeal is filed by M/s. PSM Engineering Industries (now Known as M/s. Parle-Elizabeth Tools Pvt. Ltd.), Plot No. PE-37, Sanand-II, GIDC Industrial Estate, Sanand, Ahmedabad., (hereinafter referred to as '*the appellant*') against Order in Original No. 14-15/AC/D/BJM/2017 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*'). The appellant is engaged in the manufacture of Tools and Dies falling under CETH 82 of the Central Excise Tariff Act, 1985 [hereinafter referred as CETA-1985) and availing Cenvat credit under CENVAT Credit Rules, 2004 (herein after referred to as "CCR, 2004").

2. The facts in brief of the case is that, during the course of audit, the appellant had, for the period from April 2014 to June-17, availed and utilised Cenvat credit Rs.57,887/- and Rs.321044/- of service tax paid on rent-a-cab service used for transportation of employees to and from their factory. That said service falls under the exclusion clause (B) of Rule 2(1) of the CCR, 2004, the Cenvat credit availed was not valid and to be recovered under the provision of Rule 14 of CCR, 2004, with interest and penalty, invoking the extended period. They have suppressed the material facts from the department with intent to evade payment of Central Excise duty. The appellant was liable for penalty, under Rule 15(1)/(2) of the Cenvat Credit Rules, 2004. Hence, Two SCN's were issued. Vide above OIO's, same were confirmed with interest and penalty.

3. Being aggrieved with the impugned orders the appellant has filed the instant appeals on the following main grounds;

i. Shri Sanjay Manharlal Makwana has provided Rent a Cab service for the movement of factory workers and staff during various shifts of the factory; that they had hired Cars on monthly basis for 'to and fro' movement of factory workers and factory staff from Naroda to their factory at Sanand where their manufacturing activity takes place; that it is a matter of record that they have almost 105 Nos. of workers and staffs working at the factory, the same is at approximately 58km. away from Naroda; that the said service is acquired by hiring of Buses from bus operators who raise bills on monthly basis on which Service tax is charged by them.

ii. they are running their factory predominantly in three shifts and it is absolutely essential to have the facility of transporting the workers / staff from *factory to Naroda and other various pick and drop points en-route*. it mandatory for them to provide transportation as it is not possible for the workers for second and third shifts to get alternate transportation; that the said service provider is absolutely essential to provide proper work force for maintaining/continuing the production activity at the factory; that the said hiring of rent a cab services is squarely covered under the scope of input service as per Rule 2(1) and they have availed Cenvat Credit of the Service tax so paid by the Service Provider .



iii. under the scope of Clause (ii) of Rule 2(1) of Cenvat Credit Rules, 2004 which enumerates any services used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products up to the place of removal; that they do not agree with the observation made in the Show Cause Notice at Para-4.

iv. they have not availed services of renting of motor vehicle but have availed service of rent-a-cab service provider, wherein the service provider along with his own vehicle and his own driver has provided pick up and drop services from factory to predetermined spots for the workers and staff as explained above;

v. the exclusion clause visualizes services provided by way of renting of motor vehicle which is at the discretion of the vehicle receiver as to how it is to be used; that the said exclusion clause does not cover specific rent a cab service, wherein the service provider along with his own vehicle and driver provides specific service of pick and drop to and from factory to pre- determined spots and the same are clearly covered under scope of input service.

vi. they relied upon the following judgements; 1. Graphite India Ltd, 2012 (27) S.T.R. 130 (Kar.) 2. Stanzen Toyotetsu India (P) Ltd., 2011(23) S.T.R 444(Kar) 3. Tata Auto Comp Systems Ltd., 2012 (27) STR 338 (Kar.)

4. Personal hearing was accorded on 12.03.2018, Shri akhilesh pandey Sr. manager, appeared on behalf of the appellant unit and reiterated the submissions made vide their appeal memorandum. He submitted copy of the few orders. I have carefully gone through the case records, facts of the case, GOA, submission made at the time of personal hearing and the case laws cited by the appellant. I find that the impugned orders have been issued with respect to the appellant availed Cenvat Credit of service tax paid on rent a cab service. I find that, the issue to be decided is whether appellant is eligible for CENVAT credit of Service Tax paid on rent-a-Cab service I refer Rule 2(1) of CCR, 2004. It's reproduced below,

*"input service" means any service, -*

*(i) used by a provider of [output service] for providing an output service; or*

*(ii.) used by a 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 modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; but excludes, -*

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

[(B) services provided by way of renting of a motor vehicle/. in so far as they relate to a motor vehicle which is not a capital goods; or

5. I find that, In the Rule 2(1) of CCR, 2004, the definition of input service is given. In that the service provided by way of renting of a motor vehicle which includes rent-a-Cab service is specifically excluded from the definition of input service. As it cannot be considered as an input service as per Rule 2(1) of CCR, 2004, the CENVAT credit cannot be availed for the service tax paid on those services. Therefore, I find that the CENVAT credit availed on rent-a-cab service by the assessee as inadmissible and it's wrongly availed.

6. I find that, The CENVAT credit rules 2004, subjected to a major amendment in Notifications 3/2011-CE (N.T) dated 1.3.2011 and 28/2012-C.E (N.T) dated 20.06.2012. In these notifications, the definition of "input service" in rule 2(1) of CCR, 2004 was changed to specifically exclude the service provided by the way of renting of a motor vehicle from the input service, there by disallowing the CENVAT credit for the same. Thus, The cases relied upon by the appellant, are related to cases prior to 2011, and hence not taken into consideration.

7. I find that, the appellant has submitted that they have not availed services of renting of motor vehicle but they have availed rent-a-cab service. This argument doesn't go well with the definition's given in Finance act, 1994 which are provided below,  
Section 65. Definitions.

(20) "cab " means —

(i) a motorcab, or

(ii) a maxicab, or

(iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward:

(91) rent-a-cab scheme operator " means any person engaged in the business of renting of cabs.

From the above definitions, I find that all the cabs are motor vehicles.

8. With regards to invoking extended period under the proviso to section 11A(1), (4) and (5) of the Central Excise Act 1944, I find that the appellant has not shown the details

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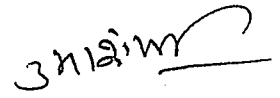
of CENVAT Credit availed/ utilized in respective ER-1 for the relevant period, which is covered in the SCN. The Adjudicating Authority had issued SCN covering relevant period considering extended period of five years. Therefore, I find that extended period of five years is correctly applied under provisions of the Central Excise Act, 1944 and CENVAT Credit Rules, 2004. I find that as per provisions of CENVAT Credit Rules, 2004 details in ER-1 is to be shown regarding availment /utilization of CENVAT Credit on inputs, capital goods and input service in monthly ER-1. The appellant has suppressed the facts. There was deliberate intention in wrongly availing CENVAT credit by the appellant.

9. Further, I find that, Rule 15(2) of CENVAT Credit Rules, 2004 provides that, where CENVAT Credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of Excise Act, or of the rules made there under with intent to evade payment of duty, then, the manufacturer shall be liable to pay penalty in terms of provisions of Section 11AC of Excise Act. That Section 11AC of Central Excise Act, 1944 applies when the extended period is applicable. Since, the extended period itself is invocable in the present case; penalty imposed on the appellant is correct and legal.

10. In view of the foregoing discussion and findings, I uphold the impugned orders, and disallow both the Appeals filed by the appellant.

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

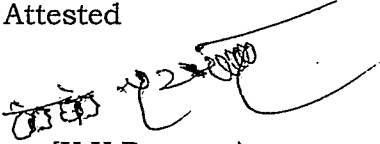
The appeal filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स)

Attested



[K.K.Parmar )

Superintendent (Appeals)  
Central tax, Ahmedabad.

Date- /3/18

By Regd. Post Ad.

M/s. PSM Engineering Industries,  
(now Known as M/s. Parle-Elizabeth Tools Pvt. Ltd.),  
Plot No. PE-37, Sanand-II, GIDC ,  
Sanand, DIST-Ahmedabad..

Copy to :

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad-North.
3. The Asstt. Commissioner, CGST ,Div-III, Ahmedabad-North.
4. The Asstt. Commissioner (Systems), CGST, Ahmedabad-North.
5. Guard File.
6. PA file.

