



केंद्रीय कर आयुक्त (अपील)



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

162 सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन,
सातवीं मंजिल, पोलिटेक्निक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building,
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Ambavadi, Ahmedabad-380015

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(ST)162/A-II/ 2016-17

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 49-17-18

दिनांक (Date): 28/08/2017, जारी करने की तारीख (Date of issue): 20/9/17

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

Passed by Shri Uma Shanker , Commissioner (Appeals)

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

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No. SD-01/06/AC/EWFCL/16-17 Dated: 10.08.2016
issued by: Assistant Commr STC(Div-I), Ahmedabad.

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

M/s East West Freight Carrier 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

- (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.100~~ 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 :-

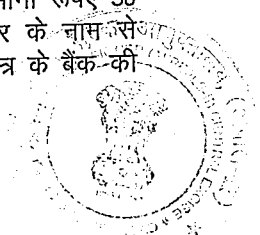
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मेन्टल 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 इए-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।



(ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/- फीस भेजनी होगी। फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है। स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी।

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 ₹ 1,000/-, ₹ 5000/- and ₹ 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of ₹ 500/-.

(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 चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय 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 ₹ 1 lacs fee of ₹ 100/- for each.

(4) न्यायालय शुल्क अधिनियम १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of ₹ 6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है।

(6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



ORDER IN APPEAL

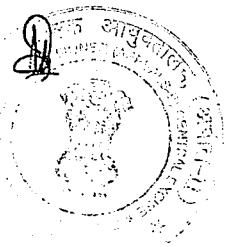
M/s. East West Freight Carrier Ltd., 9/A, Vikram Nagar Society, Opp. Ambika Society, Nr. Usmanpura garden, Usmanpura, Ahmedabad (*hereinafter referred to as the 'appellants'*) have filed the present appeal against the Order-in-Original number SD-01/06/AC/EWFCL/2016-17 dated 10.08.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-I, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that during the course of audit, it was detected that the appellants had wrongly availed CENVAT credit of duty paid on input services on the invoices which were in the name of other than the appellants and in some cases the invoices were addressed to the other branches of the appellants. On being pointed out, the appellants disagreed to the objection and stated that the issue is no more *res integra* as it has been held in various case laws that these kind of procedural lapses should not be the basis for denial of eligible CENVAT credit if it is proved that such services have been actually received by the assessee.

3. Thus, a show cause notice, dated 21.04.2016, was issued to the appellants which was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the Service Tax demand of ₹1,81,997/- under Section 73(1) of the Finance Act, 1994 and ordered for recovery of interest under Section 75 of the Finance Act, 1994. He further imposed penalty under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants have submitted that the impugned order is factually incorrect. They argued that the allegation that the addresses mentioned in the invoices are that of their Mumbai office, Rajasthan, Pune and Kanpur, is just a minor procedural lapse which could be condoned. They further stated that there was neither any dispute or allegation as to whether the input services were received by the Ahmedabad office nor was any disagreement that it was accounted elsewhere. In support of their claim, they have cited several case laws and judgments and argued that the substantive benefit could not be denied on mere procedural infractions.

5. Personal hearing in the matter was granted and held on 20.07.2017 wherein Shri Adithya Srinivasan, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. He requested to allow him seven days time for further submission. Shri Adithya Srinivasan submitted additional documents on 28.07.2017 in support of the arguments of the appellants.



6. 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 at the time of personal hearing. I find that the adjudicating authority has denied the CENVAT credit on the following two grounds;

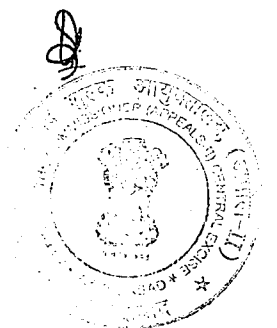
(a) Invoices not in the name of the appellants i.e. in the name of other company.

(b) Invoices not in address of Ahmedabad branch i.e. in the address of Mumbai, Rajasthan, Pune, Kanpur and Tamilnadu branch (they are not even registered at any place at Rajasthan, Pune and Kanpur).

7. Regarding the issue mentioned in (a) above, in the entire grounds of appeal, I could not find any argument of the appellants to counter the allegation pertaining to the issue of invoices not in the name of the appellants i.e. in the name of other company. Thus, I conclude that they have accepted the fact that the invoices that do not carry their name are not related to them i.e. to be precise; they could not relate any nexus between them and the said invoices. In view of the above, I agree to the views of the adjudicating authority and affirm that the appellants are not eligible for the credits that are in the name of some other company.

8. Now comes the issue pertaining to the invoices which were not in address of Ahmedabad branch. The adjudicating authority has denied the CENVAT credit availed by the appellants, on the basis of the invoices pertaining to the office premises which were either not registered under Service Tax or of their different branch. However, I find that non-inclusion of the premises in the registration certificate amounts to a minor technical hitch at the part of the appellants and they should not be penalized for this. In support of my view, I would like to quote the judgment of Hon'ble CESTAT, South Zonal Bench, Chennai in the case of M/s. Shukra Beedies (P) Ltd. vs CCE, Tirunelveli where the CESTAT has stated that just because their head office is not registered as Input Service Distributor (ISD), denial of credit is not justified.

*"6. So far as claim of CENVAT credit prior to 1.4.2008 is concerned, law has permitted grant of CENVAT credit in respect of service tax paid to avail GTA services. There shall be no dispute on this count. However, whether status of ISD registration is sine qua non is the question. **When the credit claimed on the services availed was not disputed nor even service tax paid is in dispute, so also the genuinity of the parties is not disbelieved, denial of CENVAT credit of the Service Tax suffered by the head office of the appellant shall be detrimental to the interest of justice. There is also no finding***



that service tax paid by the head office was not connected to the business of the appellant or was irrelevant.

7. Registration is a regulatory measure to bring the assessee to the fold of the law. Even if unregistered, the liability under law remains unchanged. Therefore, denial of the distribution of CENVAT credit during unregistered period shall be anomaly to law when tax liability incurred is ordered to be paid. Accordingly, in so far as distribution of service tax credit prior to 1.4.2008 is concerned, the appellant is entitled to the CENVAT credit thereof."

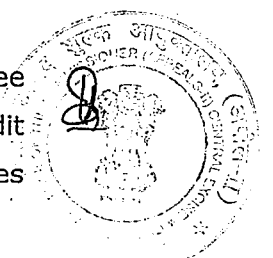
The Hon'ble High Court of Karnataka in the case of M/s. mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore [2012 (27) S.T.R. 134 (Kar.)], has held that the Credit Rules does not mandate registration with Department for availing Cenvat credit and denial of benefit on the ground non-existent in law is unjustified.

In the case of Manipal Advertising Services Pvt. Ltd. Vs. C.C.E., Mangalore [2010 (19) S.T.R. 506 (Tri. - Bang.)], the Hon'ble CESTAT, Bangalore held that if a person is discharging Service tax liability from his registered premises, the benefit of Cenvat credit on the Service tax paid by the service providers cannot be denied to the assessee only on the ground that the said invoices are in the name of branch offices.

In the case of M/s. Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut, Hon'ble CESTAT, Delhi held that in the absence of any such dispute regarding availment of Impugned Services and their utilization for payment of Service tax or proper accounting of the same, the denial of Cenvat Credit of Service tax paid on Impugned Services by Nainital office of the Appellant on the sole ground that the invoices issued are in the name of the Appellant's unregistered Delhi office is unjustified since the head office which is registered with the Department has discharged the Service tax liability of Delhi office.

In the case of M/s. Mahindra and Mahindra Ltd. Vs. Commissioner of Central Excise, Mumbai the Hon'ble CESTAT, Mumbai after observing that the branch offices have no separate accounting system and their accounts form part of the Head Office accounts, which is registered as an ISD, held that the Appellant had rightly availed Cenvat credit in respect of the services received at the branch office/regional office and consequently, their distribution in the manufacturing unit is also proper.

9. In light of the above judgments mentioned in paragraph 8, I disagree with the views of the adjudicating authority and view that the denial of credit is not justified. However, it is not possible for me to bifurcate the invoices

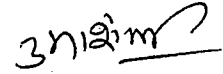


which were in the name of some other party and the invoices which pertained to the appellants but of other branches. Further, the appellants, in their additional submission, have produced before me some certificates from LCL Logistix (India) Pvt. Ltd., C. N. Gandevia and Deval Logistics. As I have no details/data with me, it is very tough for me to verify the said certificates. Same goes with the copies of invoices and other documents submitted by the appellants. I believe that the adjudicating authority is the best suited person to verify the genuineness and applicability of the above mentioned documents. In view of the above, it is necessary to re-quantify the invoices, by the adjudicating authority, and allow the credits which were in the name of the appellants but of different address.

8. Accordingly, as per the discussion held above in paragraphs 7, 8 and 9, I remand back the case to the adjudicating authority to verify the invoices and re-quantify the credit. He should allow the credit as discussed in paragraph 8 and reject the one as discussed in paragraph 7. The appellants are also hereby directed to present all sort of assistance to the adjudicating authority by providing all required documents during the proceeding for which the case is remanded back.

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

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



(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

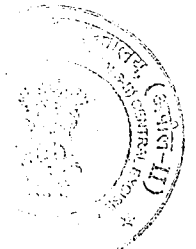
ATTESTED


(S. DUTTA) 13/09/17

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.



To,
East West Freight Carrier Ltd.,
9/A, Vikram Nagar Society, Opp. Ambika Society,
Nr. Usmanpura garden, Usmanpura,
Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (North).
- 3) The Dy./Asstt. Commissioner, Central Tax, Division-VII, S. G. Highway East, Ahmedabad (North).
- 4) The Asstt. Commissioner (System), Central Tax Hq, Ahmedabad (North).
- 5) Guard File.
- 6) P. A. File.

