



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

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(73)35 /Ahd-II/Appeals-II/ 2016-17

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 50-17-18

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-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No . _19 to 21/AC/D/2016/UKG _Dated: 21/04/2016
issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad-II

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

M/s Erhard+Leimer (India) Pvt. 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. 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.

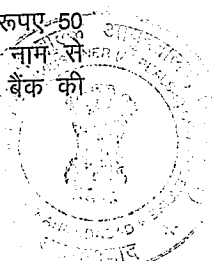
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (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 मैनटल 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 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। 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) उक्तलिखित 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 न्यायधिकरण 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है ।

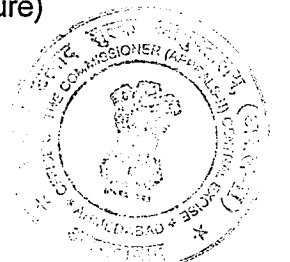
In case of the order covers a number of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising ₹ 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 Erhardt+Leimer(India) Pvt Ltd, Survey No 251/1,252/2, Nr Arvee Denim, Sarkej-Bavla Highway, Village-Sari, Taluka-Sanand, Dist-Ahmedabad, Gujarat (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No 19 to 21/AC/D/2016/UKG dated 21.04.2016 (hereinafter referred to as 'impugned orders') passed by the Additional Commissioner of Central Excise, Ahmedabad-II, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, the appellant are registered with the Central Excise Department having registration no. AAACE 2657G XM002 and engaged in manufacturing of Web grinding System, Electronic Integrated Circuit, Panels, Consoles, Instruments falling under chapter 84,85,90 and 40 of Central Excise Traiff Act, 1985. During the course of Audit, for the period from March, 2012 to October, 2015, it is observed that the appellant has availed Cenvat Credit on Service Tax paid on the services namely "Subscription Fees, Membership Fees, Insurance for employees, Maintenance charges paid at Delhi, Ahmedabad Management Association & R.G. Services Pvt Ltd" and Services used for Outward Clearance by Courier. As per audit the said service are not related directly or indirectly with the manufacture of final product. Hence the Cenvat Credit availed by the appellant is inadmissible. Accordingly department issued three SCN to the appellant which was adjudicated by the impugned orders. Duty of Rs 2,30,661/- was confirmed. Equivalent Penalty was also imposed. Interest was also demanded.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that the above service are valid input service as they are used in or in relation to their business activity. The service wise submission is as under-:

(1) Subscription /Membership Fees paid to Ahmedabad Management Association-: The appellant have availed the Cenvat Credit of service tax paid on Subscription /Membership Fees paid to Ahmedabad Management Association. The said fees are paid for the courses attended by the appellant employees. Further membership fee paid to the Indo-German Chamber of Commerce for having single window solution to do business either in India or in Germany. Further the Appellant has paid subscription fee to EEPC India for providing vital details about buyer and the use of engineering product manufactured by the Appellant to the customer.

(2) Maintenance charges paid at Delhi to R.G. Services Pvt Ltd-: The said service was availed by the Appellant in respect maintenance of their Delhi office. The said service is availed up to the place of removal.

(3) Services used for Outward Clearance by Courier-: The said service was availed by the Appellant in respect of business activity. As per Appellant submission without



courier their business will become standstill. They are using courier for sending documents. Therefore it is part of business activity.

(4) Cenvat Credit taken on Service Tax paid to Insurance Company-: The said service was availed by the Appellant for taking insurance of the employee. The said insurance premium is paid for workmen compensation. Therefore it is part of business activity.

4. Personal hearing in the case was granted on 19.07.2017 which was attended by Appellant representative. Written submission was also submitted at the time of personal hearing.

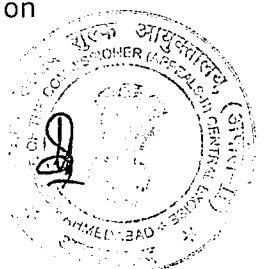
5. I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

6. Now issue to be decided is whether all such credit which are taken by the appellant are eligible or otherwise. I will take up the matter issue wise as shown above.

(1) Subscription /Membership Fees-: I find that adjudicating authority has denied the said credit on the basis of definition of Input Services which comes in force after 01.04.2011. The service tax paid on subscription fees is the annual membership subscription of EEPC India for providing various services to the appellant. The EEPC INDIA (Formerly Engineering Export Promotion Council) was set up in 1955 under the sponsorship of Ministry of Commerce & Industry, Govt. of India, for export promotion of engineering goods, projects and services from India. Objective of facilitating exports of Indian engineering products & services to the global market and to provide the overseas buyers true value. Therefore, service tax paid on all the above services which were used in relation to manufacture and sale of goods was permissible to the appellant. Regarding Membership fees paid to Ahmedabad Management Association & Indo-German Chamber of Commerce, I find the appellant has rightly taken the Cenvat credit as the service is used directly or indirectly, in or in relation to the manufacture of final products.

(2) Maintenance charges paid at Delhi to R.G. Services Pvt Ltd-: I find that adjudicating authority has denied the said credit on the basis that the Appellant has not produced any documentary evidence whether the said office is solely used as sales office or any other activity is also going on. I hereby reproduce the definition of input service as provided in Rule 2(l) of CCR, 2004 which came into force on 01.04.2011. The same is as under.

(l) "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-----

Here the Appellant has started a sales office for the purpose of efficient service which requires to enhance his business. Therefore Cenvat Credit of Service Tax on such maintenance is allowable.

(3) Services used for Outward Clearance by Courier:- The appellant has submitted that courier/postage service utilized by them for delivering documents to the buyers in relation to business activity thus same is admissible. The activity of sending documents is also a part of business activity, thus courier service are in the nature of activities relating to business because their business of manufacturing and selling goods could continue and flourish only if they use courier service. Merely saying that the courier/postage service is not as input service cannot be proper to disallowing the credit. In this regard, the appellant has place reliance upon the decisions in respect of (i) CESTAT Order No. A/1194-1195/WZB/AHD/2010 in case of M/s Dishman Pharmaceuticals & Chemicals Ltd (ii) Order dated 21.04.2011 of Gujarat High Court, in case of M/s Ambalal Sarabhai Enterprises Ltd. (iii) 2012(280) E.L.T. 453 (Tri. Del.)- Kodak India P. Ltd. (iv) 2012(278) E.L.T. 625 (Tri. Ahmd.)-Parle International P. Ltd. in their favour in this regard. I find that said judgments support their claim very much. The Hon'ble CESTAT, WZB, Ahmedabad in case of Tufropes Pvt. Ltd V/s C.C.E., Vapi reported at 2012 (277) E.L.T. 359 (Tri. - Ahmd.) has held that:-

"2. Learned counsel submits that courier service has been utilized for sending documents/invoices etc. to various customers other plants and offices and submits that all these documents/invoices are relatable to the manufacture of the products by the appellants and therefore credit is admissible. I find that sending documents/invoices to various customers, other plants, offices is definitely relatable to manufacture and therefore credit is admissible. The learned counsel relied upon the decision of the Tribunal in the case of Hindalco Industries Ltd. vide Order No. A/2147/WZB/AHD/11, dated 2-12-2011. Since I find that appellants are eligible for the benefit, the appeal is allowed with consequential relief to the appellants."

Accordingly, courier service was directly concerned with in relation prospective customer in relation to sale of goods manufacture by the appellant and there is no dispute on the fact that this service was availed by the appellant for the same, hence was in the nature of an input service. Therefore, respectfully following the above decision, I allow the credit of Service Tax paid on courier/ postage service. Accordingly, respectfully following the above judgment, I allow the credit of Service Tax paid on courier/postage service.

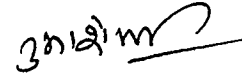
(4) Cenvat Credit taken on Service Tax paid to Insurance Company:- I find that adjudicating authority has denied the said credit on the basis of definition of Input



Services which comes in force after 01.04.2011. The said Insurance premium is paid by the Appellant is a kind of Group Insurance. The case laws of Coca Cola India Pvt. Ltd. 2009 (242) ELT 168 and Ultratech Cement Ltd. 2010 (260) ELT 369 are not relevant because they pertain to period prior to 01.04.2011. I disallow the credit of Service Tax paid to Insurance Company.

Regarding the invocation of extended period of limitation against the appellant, I find that, the appellant were well aware of changes in definition of input & input services which was brought in 2011 and should have been careful and respected the legislative changes. Therefore it has been rightly invoked. In view of above, reduced the penalty proportionately. The appeal stands disposed of in above terms.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
7. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED



(S S Chowhan)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s. Erhardt+ Leimer(India) Pvt Ltd,
Survey No 251/1,252/2, Nr Arvee Denim,
Sarkej-Bavla Highway, Village-Sari,
Taluka-Sanand, Dist-Ahmedabad, Gujarat.

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II, Ahmedabad.
3. The Dy. /Assistant Commissioner, Central Excise Division-IV, Ahmedabad-II, Ahmedabad.
4. The Assistant Commissioner(Systems), Central Excise, Ahmedabad-II, Ahmedabad
5. Guard File.
6. P.A. File.

