

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

रजिस्टर डाक ए.डी.द्वारा

823 / 827

क फाइल संख्या (File No.): V2(84)9 /Ahd-II/Appeals-II/ 2016-17

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-58-17-18

दिनांक (Date): 8/28/2017 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. 24/AC/D/2015/UKG Dated: 29/03/2016 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 Endeavour Instrument 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 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।

Contd. 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 :-

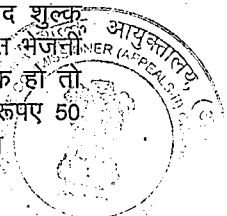
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मेटल हास्पिटल 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 रूपरुप 5 लाख या उससे कम है वहाँ रूपरुप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 5 लाख या 50 लाख तक हो तो रूपरुप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 50 लाख या उससे ज्यादा है वहाँ रूपरुप 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 Appellate 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) लिसा 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 Endeavour Instrument Pvt. Ltd.45/3 &Plot No.11/B, Changodar Ind. Estate, Opp.Bus Stop, Changodar, ta- Sanand, Dist-Ahmedabad.(hereinafter referred to as the "appellant"), against OIO No.24/AC/D/2015/UKG dated 29.03.2016 (hereinafter referred to as 'the impugned order'), passed by the Asstt. Commissioner, Central Excise, div-IV,Ahmedabad-II (hereinafter referred to as the 'the adjudicating authority'). The appellant is engaged in the manufacture of weigh scale falling under Chapter 84 of the Central Excise Tariff Act, 1985. They are availing CENVAT Credit under Cenvat Credit Rules, 2004.

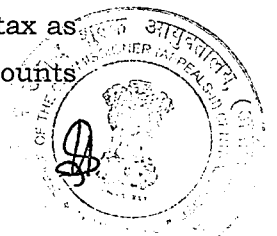
2. The facts of the case in brief are that during the course of audit, it was noticed that, the appellant is a registered "Input Service Distributor" having Corporate head office at 4<sup>th</sup> floor, Mohini-II,B/H Sakar-I, Ashram Road, Ahmedabad, and availed cenvat credit of input services i.e. CHA Service, Courier Service, Telephone Service etc. amounting to Rs.359637/-on the basis of invoices in the name of its Corporate Office. The appellant is also engaged in trading activities, and distributed the credit to their manufacturing plant under their own invoices. Thus, the ISD has not distributed cenvat credit as per rule 7 & rule 9 of the Cenvat Credit Rules 2004. Therefore, SCN was issued for recovery of credit, with interest and Penalty. The same was decided vide the impugned order, duty was confirmed with interest and penalty.

3. Being aggrieved with the impugned order, the appellant filed the instant appeal on the following grounds:

[i] There is no dispute that said Cenvat Credit was available to the appellant's head office, and therefore the cenvat credit of input services availed by the appellant's unit is correct. The service tax has actually been suffered by the appellant on various input services .there is no pre-condition under rule 9 of the Cenvat Credit Rules 2004 that an input service must be received in the factory where the credit was taken.

[ii] When the cenvat credit in question is not denied to the appellants as an entity availing taxable input services, the controversy to deny utilisation of cenvat credit by head office or the factory of the appellant is illegal and unjustified; in the instant case ISD registration is obtained by its head office from where cenavt credit is distributed to their factory.

[iii] The restrictions contained in rule 9 and rule 9[6] of the Cenvat Credit Rules'2004 would NOT be applicable in the instant case because rule 7 is the specific provision for distribution of credit by an ISD and none of the conditions of rule 7 is violated. That the appellant had suppressed the facts from the department, the documents were available for scrutiny and inspection of Range Officers. all details about service tax as well as excise duty payments were duly reflected in the appellants books of accounts



and thus there is no suppression about payment made by the appellant in the instant case, recovery of interest is liable to be set aside.

They relied upon the Case laws of 1. Doshion Ltd. V. CCE Ahmedabad reported in 2013 (288) ELT 291 (Tri.Ahmd.) 2. Precision Wire India Ltd. 2013[31]STR62[TRI.AHMD] 3.2015[322]ELT198[BOM] Sunrise Zink Ltd.

4. Personal Hearing was held on 16.05.2017, which was attended by Shri Vipul Khandar, FCA, on behalf of the appellant. I have carefully gone through the SCN, OIO concerned, and submissions made by the appellant in their written GOA. The issues to be decided in this appeal are;

I. Whether the ISD engaged in trading activities can distribute the full amount of service tax credit to their factory. II. Whether, the credit is admissible in terms of definition of ISD under rule 2(m) of the CER 2002 and under rule 7 of the Service Tax Rules'1994.

5. I find that, the alleged cenvat credit pertains to the period 2014-15. The appellant is also engaged in trading activities, and the services on which they have availed service tax credit were invoiced to head office and deliberately acted to avail the said full amount of credit at their factory, and utilization thereon has resulted in contravention of the provisions of rule 7, and 9 of the Cenvat Credit Rules 2004. I find that, as per rule 2(m) of the Cenvat Credit Rules 2004;

*"input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rule, 1994 towards purchase of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;*

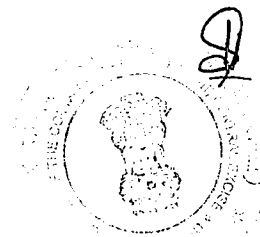
6. Further, Rule 9(6) of the Cenvat Credit Rules'2004 specifies that;

*"the manufacturer of the final products or the provider of the output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilised, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the cenvat credit shall lie upon the manufacturer or provider of output service taking such credit".*

7. Further, the Rule 7 - Manner of distribution of credit by input service distributor is reproduced below:

*The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely :-*

*(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or (b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.*



8. Para 2.3 of the Circular No.97/2007-ST dated 23.08.2007 reads as under:-"2.3. An 'input service distributor' is an office .....An input service distributor is required (under Section 69 of the Act, read with Notification No. 26/2005-S.T.) to take a separate registration."

9. The combined reading of the above Rules and the Circular dated 23-8-2007 clearly shows that there are two restrictions regarding the distribution of the cenvat credit. The first restriction is that the credit should not exceed the amount of Service Tax paid. The second restriction is that the credit should not be attributable to services used in manufacture of exempted goods or providing of exempted services. I also find that, the appellant is engaged in trading activities, and distributed full amount of credit to their manufacturing plant under their invoices. Thus, the appellant has violated provisions of rule 7 & rule 9 of the Cenvat Credit Rules 2004. In this case I find that, the distribution of the total amount of Service Tax credit made in respect of the appellant unit was not found correct on the grounds that the services were also used in trading activities by the head office of the appellant.

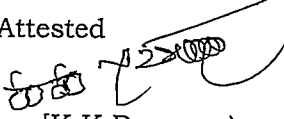
10. In view of above findings, I remand the matter back to original authority to verify and ascertain the service tax credit admissible to the appellant, and decide the case afresh after allowing the opportunity of P.H. to the appellant within 30 days.

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

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

उमा शंकर  
(उमा शंकर)  
आयुक्त (अपील्स)

Attested

  
[K.K.Parmar )  
Superintendent (Appeals)  
Central tax, Ahmedabad.

By Regd. Post AD.

M/s. Endeavour Instrument Pvt. Ltd.

45/3 & Plot No.11/B, Changodar Ind. Estate,

Changodar, Ta- Sanand,

Dist-Ahmedabad.

Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
- 3 The Asstt. Commissioner, Central Excise, Division-IV, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
- ✓ 5. Guard file.
6. PA file.

