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

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30)31 /Ahd-II/Appeals-II/ 2016-17 /938 to 942
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 69-17-18
दिनांक (Date): 8/28/2017 जारी करने की तारीख (Date of issue): 22/03/17

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. 23/AC/D/2015/UKG Dated: 28/03/2016 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 Leamak Healthcare 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।

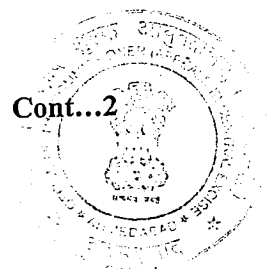
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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।

(Handwritten Signature)



- (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 आदेशों 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 :-

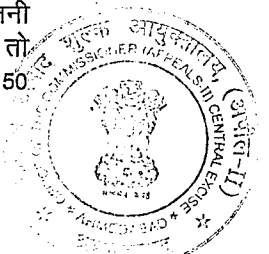
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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, अपीलों 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, 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 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 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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।

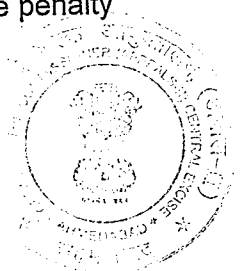
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 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. Leamak Healthcare Ltd. Sarkhej-Bavla Highway, Matoda, Dist:Ahmedabad,(hereinafter referred to as 'the appellant') against Order in Original No. 23/AC/D/2015/UKG (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, Division-II,Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of goods falling under CETH 30 & 17 of the Central Excise Tariff Act,1985 [hereinafter referred as CETA-1985]. And availing the credit of duty paid on inputs and input services under Cenvat Credit Rules, 2004.

2. The facts in brief of the case is that, during the audit by the department it was noticed that Cenvat Credit was taken Rs.173136/- towards service tax on rent certificate, operation and Maintenance of their Wind Mill situated at Dist-kutch, Gujarat away from their factory. Therefore, said services does not fall under the purview of Input Service and not eligible for cenvat credit, during JUNE-2011 to FEB-2014. Show cause notice was issued for recovery of credit wrongfully availed, with interest and penalty. Said SCN was decided vide the impugned order and confirmed the demand.

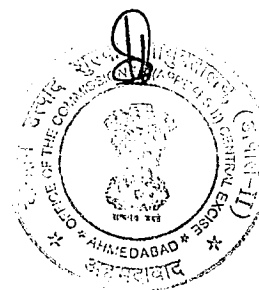
3. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following grounds;

That 3 P.H date have been given on 14-03-2016, 15-03-2016 or 16-03-2016 and informed vide letter dated 07-03-16, which did not allow sufficient time to the appellant. This is clear violation of natural justice.

That Electricity generated at kutch, away from the manufacturing unit of the appellant, is used for manufacture of final product at appellant factory situated in ahmedabad, because such electricity generated at kutch is adjusted to the Electricity used at appellant Factory at ahmedabad .they relied on the case laws of 1. Vikram Cement | 2006 (197) ELT 145 [SC] 2. Union Carbide India Ltd V.Cce Calcutta 1996 (86) ELT 613 3. Ahmedabad Electricity Co.Ltd 2003 (158) ELT 3[SC]

That services pertaining to repairs and maintenance of wind mill are eligible for cenvat credit as input service. The definition of inputs service as per rule 2[1] of CCR,2004,covers said services and cenvat credit is allowed on services used outside the factory of manufacturer of the final product for generation of electricity for captive use within the factory.

That the demand for the period JUNE-2011 to FEB 2014 was barred by limitation. Whereas the notice was received on 03.06.2014.



That services pertaining to repairs and maintenance of wind mills are eligible for cenvat credit as input service. They relied on the case laws of the hon'ble CESTAT, 1. 2015[40] STR 243[TRI.lb] Ahmd. In case of Parry Engg. & Electronics P. Ltd.

That there was no malafide intention in taking of cenvat credit. That the appellant was filing intimations regularly to the department, Hence it cannot be said that they have not informed to department, regarding Cenvat credit availed. therefore, the matter being interpretation of law, provisions of rule 15[2] and section 11AC cannot be invoked and the penalty imposed is liable to be set aside.

4. Personal hearing was accorded on 19.07.2017, Shri S.J.Vyas. Consultant appeared on behalf of the appellant and reiterated the submissions made vide their appeal memorandum. He submitted copy of the CESTAT Order No.2015[40] STR 243[TRI.lb]Ahmd. Parry Engg. & Electronics P. Ltd. I have carefully gone through the case records facts of the case, submission made by the appellant at the time of personal hearing and the case laws cited by the appellant. I find that the impugned order have been issued with respect to the appellant availed Cenvat Credit of service tax paid on operation and Maintenance of Wind Mill, as per provision of Rule 2 [1]of Cenvat Credit Rules.2004. I find that, since the services were used in or in relation to manufacture of final products and thus it is covered under said Rules. Further, I rely on the following decisions in which, it was held that services of repairs & maintenance of Wind Mill are eligible for cenvat credit. I rely on the case laws of 1. No.2015[40] STR 243[TRI.lb]Ahmd. Parry Engg. & Electronics P. Ltd. and 2. Endurance Technologies Pvt. Ltd. vs. CCE, Aurangabad [2015 TIOL-1371-HC-MUM-ST. " it was held that, '

On perusal of these Rules, it becomes clear that Management, maintenance and repair of windmills installed by the respondent is input service as defined by Clause "I" of Rule 2. Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by the manufacturer of final product would be susceptible to Cenvat Credit. Rule does not say that input services received by a manufacturer must be received in the factory premises."

5. I find that, wind mill can be installed only at place where there is heavy wind available and hence Wind Mill is located at remote place far away from the factory. It is important to note that looking into the above issue, the Cenvat Credit Rules were amended vide Notification No. 03/2011-CE (NT) dt. 01.03.2011, w.e.f. 01/04/2011 Capital Goods includes the goods used outside the factory for manufacturer of the final product for generation of electricity for captive use within the factory. Since the electricity generation plant outside the factory is hence service used for running and maintaining of it is also eligible as Input Services. As far as nexus of generation of electricity with manufacturing is concerned, it is



pertinent to note that electricity generated at Wind Mill is wheeled through GETCO line and Gujarat Electricity Board used to give credit of units generated after wheeling in the electricity bill charged from the assessee. In electricity bills, unit generated after wheeling is shown separately. Thus I find that, since the electricity generated at Wind Mill is used for manufacturing of the final products and hence it is very well covered in the definition of input services.

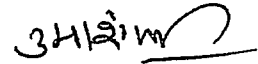
6. Further, I find that, the appellant was filing intimations, regarding Cenvat credit availed, regularly to the department, Hence it cannot be said that they have not informed to department. I rely on the case law in the case of Hon'able CESTAT Ahmedabad in the case of Asian Tubes Ltd. vs. CCE, Ahmedabad [2011 (263) ELT 707] held that " 'having accepted that the appellant had filed Monthly returns..... hence extended period of limitation cannot be invoked.' In view of the above ruling, I hold that, extended period cannot be invoked in this case.

7. I find that, since the demand is not maintainable and hence interest is not applicable. Since the credit of input service was based on decisions given by various judicial forums, in which it was held that service tax paid on the repairs & maintenance of wind mill is eligible for availment of cenvat credit and on the basis of these decisions, they have availed the cenvat credit and thus, they have not violated any of the Provisions of Central Excise Act, 1944 or Rule made there under. Therefore I hold that no penalty imposable under Rule 15 [2] of Cenvat Credit Rules'2004. I rely on the decision passed by Hon'ble CESTAT Ahmedabad in the CCE Daman vs. Paras Motor Mfg. Co.-2013 (31) STR 811.

8. In view of the foregoing discussion and findings, I set aside the impugned order and allow the appeal.

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

9. 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.

By Regd. Post A. D

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Matoda,

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Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Div-III, AhmedabadII
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA FILE.

