



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.) : V2(71)82 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-106-18-19

दिनांक (Date): 26-Oct-18 जारी करने की तारीख (Date of issue): 5/12/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

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

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 01&02/AC/DEMAND/18-19 Dated: 04/05/2018

issued by: Assistant Commissioner , Central GST, (Div-I), Ahmedabad North.

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

M/s Edelweiss Metals 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 हो



Cont...2

(D) In case of rebate or duty or excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक का 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 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 दाय से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथारिथति 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 यथारिथति 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।

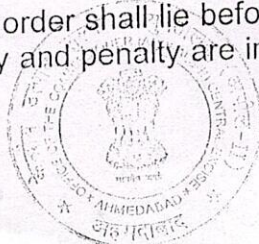
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 संदर्भ 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

This order arises out of an appeal filed by M/s. Edelweiss Metals Ltd.,(now M/s. Sovereign Metals Ltd.) Revenue Block No.184,185,187, Phase-III, GIDC Naroda, Ahmedabad-382330 (in short 'appellant') against Order-in-Original No.01 & 02/AC/DEMAND/18-19 dtd. 04.05.2018 (in short 'impugned order') passed by the Assistant Commissioner, CGST & Central Excise, Division-I, Ahmedabad North (in short 'adjudicating authority').

2. Briefly stated that adjudicating authority vide impugned order confirmed demand of Rs.4,68,005/- and Rs.68,026/- alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 (in short CCR, 2004) for violation of Rule 6(3)(i) of the Cenvat Credit Rules, 2004 read with Section 11A(4) and 11AA of the Central Excise Act, 1944 respectively (in short CEA, 1944) and also imposed penalty of Rs.2,34,003/- and Rs.6,802/- under Section 11AC(1)(c) and 11AC(1)(a) ibid read with Rule 15(1) and 15(2) ibid respectively.

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that:

- The adjudicating authority has erred in holding that the proportional reversal of credit is in violation of provisions of Rule 6(3)(i) of the CCR, 2004 despite there being catena of decisions favouring their view that the proportional credit can be reversed.
- The adjudicating authority has not correctly appreciated the fact that they had reversed on their own prior to audit the entire input service credit of Rs.5,421/- taken during the relevant month on the exempted activity of jobwork vide Entry No.13/31.03.2015, shown in the monthly return ER-1 and also informed the Range Supdt. On 10.03.2015 about exempted clearance.
- Demand confirmed invoking larger period is incorrect in as much as the deptt. was in full knowledge about exempted clearance and reversal of proportional credit prior to audit itself.
- The adjudicating authority has erred in understanding legal with regard to the intimation not given to the range Supdt. Regarding the option to be exercised and rely upon the case law viz. Jai Balaji Ind. Ltd. Vs.CCE&ST, Raipur reported in 2017(352) ELT-86 (Tri. Delhi) wherein it is held that failure to follow procedure absolutely should not come in the way of extending substantive benefit of proportional reversal.

4. Personal hearing in the matter was held on 09.10.2018. Shri Mukesh Matreja and Rajesh Mehuriya, Consultants, appeared on behalf of the appellant and reiterated the grounds of appeal; pleaded limitation and stated that certain amount was paid and proportionate reversal is already made; filed additional written submission received on 15.10.2018 stating, inter alia, that

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the

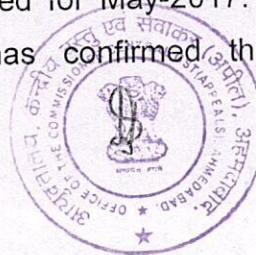


main issue to be decided is whether the demand confirmed vide impugned order is sustainable or otherwise. Accordingly, I proceed to decide the case on merits.

6. I find that two SCNs have been issued for violation of provision of Section 6(3)(i) of the CCR, 2004. First SCN dtd.27.05.2016 was issued for recovery of Rs.4,68,005/- invoking extended period under Section 11A(4) of the CEA, 1944. In this regard, the appellant has mainly contested they had received silver waste/scrap to manufacture silver bars/grains on job work basis, which is exempted from payment of excise duty vide Sr.No.197 of Notifn. No.12/2012-CE dated 01.03.2012,. Though there is no common input or input services attributable to such activity of refining the silver scrap, they had reversed Rs.5,241/- voluntarily prior to audit on conservative basis being credit on entire input services; that they filed ER-1 return and also informed the Range Supdt. on 10.03.2015 regarding clearance of exempted goods for taking on record the correction in ER-1 filed for the month of February-2015 and hence there is no suppression of material facts and extended period cannot be invoked. In the additional written submission, the appellant has mainly contested that the adjudicating authority has erred in understanding the legal position with regard to the intimation not given to Range Supdt. regarding the option to be exercised and rely upon case laws viz. Jai Balaji Industries Ltd. Vs. CCE&ST, Raipur reported in 2017(352) ELT-86 (Tri. Del.)

In this regard, I find that the appellant had already debited, on their own, proportional cenvat credit attributable to exempted goods vide Entry No.13 dtd.31.03.2015 and Rs.60,006/- vide cenvat register entry no.02 dtd.18.10.2015 and shown in monthly returns ER-1 whereas the SCN is issued on 27.05.2016 invoking extended period. I also find that the appellant had cleared 220.248 kgs of silver bars valued at Rs.72,59,403/- vide Excise invoice no.06 dtd.27.02.2015, which is exempted from payment of central excise duty vide Sr.No.197 of Notifn. No.12/2012-CE dtd. 17.03.2012, and intimated to the Range Supdt. on 10.03.2015. So, I do not find any suppression of material facts with intent to evade payment of duty and the said SCN dtd.27.05.2016 is hit by limitation under the provisions of Section 11A (1)(a) of the CEA, 1944. Hence, demand confirmed alongwith interest and penalty imposed vide impugned order is set-aside to this extent.

6(a). As regards the second SCN dtd.09.03.2018 issued for recovery of Rs.68,026/- for violation of provision of Section 6(3)(i) of the CCR, 2004, the appellant has stated that they have already debited Rs.1,905/- proportionately being common input or input services attributable to such activity of refining the silver scrap, and shown in the monthly return ER-1 filed for May-2017. I find that the adjudicating authority vide impugned order has confirmed the demand of



Rs.68,026/- under Rule 6(3)(i) of the CCR, 2004 whereas the appellant has resorted to provisions contained in sub-rule (ii) but failed to follow the procedure prescribed in Rule 6(3A) ibid. I find that in catena of judgement of higher appellate forum it is categorically held that proportionate reversal amounts to as if the cenvat credit not availed. The appellant has relied upon the case law viz. Jai Balaji Industries Ltd. Vs. CCE&ST, Raipur reported in 2017(352) ELT-86 (Tri. Del.) wherein the Hon'ble CESTAT has held as under:

“Cenvat credit - Reversal of - Common inputs used for electricity generated within factory premises for captive use, partly sold outside - Since electricity exempt from duty, reversal demanded of Cenvat credit to extent of 5%/10% of value of electricity sold outside as per Rule 6(3) of Cenvat Credit Rules, 2004 - Assessee already reversed credit on proportionate basis for electricity sold along with interest before issuance of show cause notice - Department claiming procedure under Rules 6(3)(i), 6(3)(ii) and 6(3)(iii) ibid not followed - HELD : No justification for demand of value of 5%/10% of electricity wheeled out - Failure to follow procedure absolutely should not come in the way of extending substantial benefit of proportionate reversal - As no finding on quantum of required reversal in impugned order, matter remanded to adjudicating authority to verify whether credit reversed satisfies requirement of proportionate reversal - Rule 6(3) of Cenvat Credit Rules, 2004. [para 5]”

Similarly, in case of CCE&ST, Udaipur Vs. Secure Meters Ltd. reported in 2017 (354) E.L.T. 146 (Tri. - Del.) the Hon'ble CESTAT has held as under:

“Cenvat credit - Use of Common inputs in manufacture of dutiable and exempted products - Demand of 10% value of exempted product not sustainable if Cenvat credit attributable to inputs used in manufacture of such exempted product reversed subsequent to their clearance - Rule 6(3) of Cenvat Credit Rules, 2004. [para 7]”

Similar view is taken by the Hon'ble CESTAT, Bangalore in case of Cranes & Structural Engineers Vs. CCE, Bangalore-I reported in 2017(347) ELT-112 (Tri. Bang) as under:

“Cenvat credit - Reversal of - Non-maintenance of separate accounts for dutiable and exempted goods - Proportionate credit reversed before issuance of show cause notice under Rule 6(3A)(ii) of Cenvat Credit Rules, 2004, without intimation in writing to Department - Whether Rule 6(3A)(i) ibid becomes mandatorily and automatically applicable on failure to comply with procedure as per Rule 6(3A) ibid - HELD : Rule 6(3A) ibid only a procedure contemplated for application of Rule 6(3) ibid and does not provide that manufacturer to lose right to avail second option of reversing proportionate credit on not following procedure prescribed thereunder - Denial of substantive right due to procedural failure unjustified - Demand as per Rule 6(3A)(i) ibid set aside - Rule 6(3A) of Cenvat Credit Rules, 2004. [para 4.1]”



I find that facts of the case is similar to the above case laws. Hence, applying the ratio to the present appeal, I hold that demand confirmed alongwith interest and penalty imposed vide impugned order is not sustainable and accordingly set-aside with consequential relief, if any, as per law.

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

B.A. Patel

(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.



BY SPEED POST TO:

M/s. M/s. Edelweiss Metals Ltd.,
(now M/s. Sovereign Metals Ltd.)
Revenue Block No.184,185,187,
Phase-III, GIDC Naroda, Ahmedabad-382330.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad North (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division-I, Ahmedabad North.
- (4) The Asstt. Commr(System), CGST ; Ahmedabad North.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

