



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



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(87)58 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-110-18-19

दिनांक (Date): 30-Oct-18 जारी करने की तारीख (Date of issue): 7/12/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 24/JC(SK)/LTU-A/CX/2016-17 Dated: 16/01/2017

issued by: Joint Commissioner-Central GST, (Div-III), Ahmedabad-North-Mumbai LTU

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

M/s Tata Motors 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



Cont...2

(D) In case of rebate of 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 क्रेडीट 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 को 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 पढ़ी कार्य से बचने के लिए यथार्थिती 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 यथार्थिती 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 (सिरस्टेट), के प्रति अपीलों 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 उत्पादन 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।

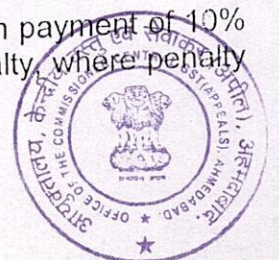
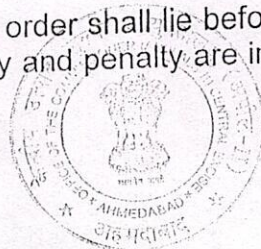
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 मांग 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 appeal has been filed by M/s Tata Motors Ltd, Revenue Survey No.1, VillageNarthkotpura, Taluka-Sanand, Ahmedabad [hereinafter referred to as "the appellant"] against Order-in-Original No.24/Joint Commissioner (SK)/LTU-A/CX/2016-17 dated 04.01.2017 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner, Larger Taxpayer Unit Audit, Mumbai [hereinafter referred to as "adjudicating authority"]

2. Briefly stated, the fact of the case is that during the course of Audit of M/s JBM Auto Ltd, it was observed that the appellant has supplied Dies at free of cost to M/s JBM Auto Ltd during 2010-11 and 2011-12 which were exclusively used captively for manufacture for auto components as per the appellant requirement; that M/s JBM Auto Ltd had cleared such auto components manufactured out of the said dies to the appellant on payment of duty on the transaction value during the period of September 2010 to July 2012. However, M/s JBM Auto Ltd did not include the cost of amortization of dies into assessable value as per provisions of Rule 6 of Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000 [for short-Valuation Rules]. On pointed out of the same, M/s JBM Auto Ltd has paid the differential duty of Rs.1,37,52,562/- with interest of Rs.17,71,882/- on the amount of amortization of dies supplied by the appellant free of cost and raised supplementary invoices in favour of appellant for recovery of Central Excise duty amounting to Rs.1,37,52,562/-. Accordingly, the appellant has paid the said differential duty and availed CENVAT credit. As it was pointed out to the appellant that since M/s JBM Auto Ltd had paid the said differential amount only after being pointed by the auditors and the supplementary invoices issued cannot be termed as valid document for the purpose of availment of CENVAT credit as per the provisions of Rule 9(1)(b) of CENVAT credit Rules, 2004 (CER), the appellant has reversed the said credit under protest. Therefore, a show cause notice dated 23.03.2015 was issued to the appellant to regularize the CENVAT credit reversed under protest and also to vacate the protest clause. The show cause notice also proposes for imposition of penalty under Rule 15(2) of CCR read with Section 11 AC of Central Excise Act, 1944 (CEA). Vide impugned order, the adjudicating authority has regularized the amount reversed under protest by appropriating against wrongly availment of credit of CENVAT on supplementary invoices and also imposed penalty of Rs.1,37,52,588/-.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- In the present case the Hon'ble High Court has decided the issue as to whether there was suppression of facts etc on the part of M/s JBM Auto Ltd in relation to the payment of addition duty on the goods cleared to the



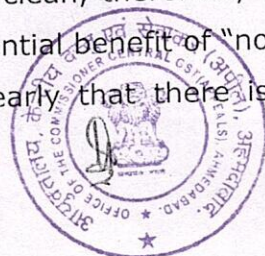
(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

9. From the facts of the case, I observe that M/s JBM Auto Ltd has not paid the excise duty in question voluntary in nature but on account of Audit Objection. These facts were not disputed. In the circumstances, it is clearly established that if the point was not noticed by the Audit Officer, the short payment could not have detect and could escape from the normal assessment. Further, M/s JBM Auto Ltd has preferred an application before Settlement Commission against the show cause notice issued and prayed for adjustment of duty along with immunity from penalty. However, the Settlement Commission, vide order dated 31.10.2014 has held that M/s JBM Auto Limited had suppressed and mis-declaration of facts with an intention to evade duty. The Writ Appeal filed by M/s JBM Auto Ltd before the Hon'ble High Court of Mumbai, against Settlement Commission's order, has also decided vide order dated 26.09.2016. The relevant portion of the said order is as under:

7. We do not think that in the given facts and circumstances, there was any need to record a finding that there is suppression and mis-declaration of the facts with intent to evade duty. The settlement commission, in this case, took the application for settlement on record and adjudicated it in accordance with law. The very purpose was to provide an opportunity to parties like petitioner to come clean by readily accepting the calculations and computation. Precisely, that has been done and there is no change to the order of the Settlement Commission on merit. The findings that the disclosures are honest and yet there is suppression and mis-declaration of facts cannot be reconciled. Were, therefore, delete that part of the order. The writ petition is allowed to that extent....."

8. By virtue of this order, the petitioner will not derive any benefit in the form of refund of duty, interest and penalty already paid under the order of the settlement commission.

10. From the above, it is very much clear that the Hon'ble Court has not recorded any fresh findings against the order of the Settlement Commission and held that the Settlement Commission had settled the issue in accordance with the law. Further, the Hon'ble Court has also ordered to abstain from all other benefits to M/s JBM Auto Ltd. The Hon'ble Court has very clearly indicated in para 7 that "The very purpose was to provide an opportunity to parties like petitioner to come clean by readily accepting the calculations and computation." It shows that Hon'ble Court has taken note of the fact that M/s JBM was not "clean" and since they have come clean, no such remark was required. In Hon'ble Court's observation, it clearly underline that M/s JBM was not clean, therefore, in para 8 of their order, Hon'ble Court has debarred the consequential benefit of "non suppression". The order of the Hon'ble High Court indicates clearly that there is suppression of facts and mis-



declaration on the part of M/s JBM Auto Ltd. In the circumstances, the supplementary invoices issued by M/s JBM Auto Ltd is not a valid documents in terms of Rule 9(1)(b) of CCR and the CENVAT credit availed by the appellant is clearly in contravention to the Rule 9 (1) (b) *ibid*. Therefore, I observe that the adjudicating authority has correctly denied the CENVAT credit and demanded with interest.

11. The appellant further argued that the extended period cannot be invocable in the instant case and they have shown the said credit in the monthly return. In this case, it is fact that the appellant did not inform the jurisdictional central excise office that they had taken credit from the supplementary invoices issued by M/s JBM Auto Ltd Unit and the said duty was on account of under valuation detected by the Audit officer. In the prescribed monthly returns also, they did not intimate the facts in this regard to the Department. Further, even if they had mentioned the details of credit taken in the monthly return, it is a fact that they did not disclose the fact that the credit taken by them was due to the payment of duty which was suppressed by M/s JBM Auto Ltd by way of under valuation of goods cleared. These facts came in to the notice of the jurisdictional office only after an audit observation. Therefore, I am of the view that the extended period invoked in the case is absolutely correct and the ground taken by the appellant in their appeal cannot be accepted in view of the fact discussed above.

12. The appellant further argued that they had not utilized the CENVAT credit in question. This argument is not applicable for the relevant period in question applicable to the instant case. The clause of not to levy of interest on CENVAT credit not utilized came into existence with effect from 2015. However, in the instant case, the appellant stated they had availed the CENVAT credit on August 2012. Therefore, the said argument is no tenable.

13. The Appellant has placed various case laws in support of their argument which cannot made applicable to the instant case as the Hon'ble High Court in its order supra has clearly indicated that that there is suppression of facts and mis-declaration on the part of M/s JBM Auto Ltd.

14. As regards penalty, I observe that the adjudicating authority has imposed penalty under Rule 15 (2) of CCR read with Section 11 AC of CEA. Looking into the apt of the case and facts discussed at para above, I do not find any merit to interfere with the order of the adjudicating authority as regards imposition of penalty.



15. In view of above, the appeal filed by the appellant is rejected and the impugned order is upheld.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date : .10 .2018

Attested

Mohan V.V
(Mohan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.
By RPAD.



To,
M/s Tata Motors Ltd,
Revenue Survey No.1, Village Narthkotpura,
Taluka-Sanand, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Joint Commissioner, Central Tax, Ahmedabad-North
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North.
5. The Assistant Commissioner, CGST, Ddiv-III, Ahmedabad North
6. Guard File.
7. P.A.