



सत्यमेव जयते

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

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

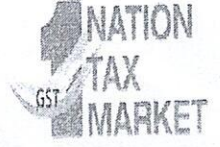
Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : V2(GST)158 to 165/North/Appeals/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-150 to 157-18-19

दिनांक Date : 25-Jan-19 जारी करने की तारीख Date of Issue: 12/2/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सूचित

Arising out of Order-in-Original: MP/231 to 238/RFD-1A/Inverted/Ref/18-19, Date: 28-Sep-18 Issued by: Assistant Commissioner, CGST, Div: II, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shree Siddhi Fragrance

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए राक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी गण्डागार या अन्य कारखाने में या किसी गण्डागार से दूसरे गण्डागार में माल ले जाते हुए मार्ग में, या किसी गण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी गण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of 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 हो।

(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 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 दिनोंक 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- ०0बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबध की जाये। यह ड्राफ्ट उस स्थान के किसी नागित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 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 अनुसूचि-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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2018(2018 की संख्या 29) दिनांक: 06.08.2018 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, 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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This order arises on account of 8 appeals filed by M/s. Shree Siddhi Fragrance, C-223, B.G. Towers, O/S Delhi gate, Ahmedabad-380004 (in short 'appellant') against the following Orders-in-Original Nos. (in short 'impugned orders') passed by the Assistant Commissioner, CGST, Division-II (Naroda Road), Ahmedabad North (in short 'adjudicating authority'):

Sr. No.	OIO No.	OIO date.	Amount Of refund claimed(₹)	Amount of refund sanctioned (₹)	Appeal No.
1	MP/231/RFE-1A/ Inverted Ref/18-19	28.09.2018	4,13,284/-	2,93,449/-	V2(GST)158/North/ Appeals/18-19
2	MP/232/RFE-1A/ Inverted Ref/18-19	28.09.2018	1,45,009/-	16,029/-	V2(GST)159/North/ Appeals/18
3	MP/233/RFE-1A/ Inverted Ref/18-19	28.09.2018	2,36,968/-	49,555/-	V2(GST)160/North/ Appeals/18
4	MP/234/RFE-1A/ Inverted Ref/18-19	28.09.2018	1,45,858/-	---	V2(GST)161/North/ Appeals/18
5	MP/235/RFE-1A/ Inverted Ref/18-19	28.09.2018	2,76,209/-	1,97,093/-	V2(GST)162/North/ Appeals/18
6	MP/236/RFE-1A/ Inverted Ref/18-19	28.09.2018	2,44,646/-	92,190/-	V2(GST)163/North/ Appeals/18
7	MP/237/RFE-1A/ Inverted Ref/18-19	28.09.2018	2,26,349/-	1,12,140/-	V2(GST)164/North/ Appeals/18
8	MP/238/RFE-1A/ Inverted Ref/18-19	28.09.2018	4,82,168/-	2,92,108/-	V2(GST)165/North/ Appeals/18

2. Brief facts of the case are that the appellant is holding GST Registration number 24ACTFS8907R1ZY. They had filed above refund claims, before the adjudicating authority, under Section 54 of CGST Act, 2017 for accumulated ITC on account of rate of tax on inputs being higher than the rate of the output supplies. The adjudicating authority, vide the above mentioned impugned orders, partly allowed the refund claims (except in case of sr.no.4) on the ground that as per Rule 89(5) read with Section 54(3) of the CGST Act, for the purpose of calculation of net ITC, input means only those inputs on which rate of tax is higher than the rate of final product.

3. Being aggrieved with the impugned orders, the appellant have filed the present appeals wherein, inter alia, stated that the adjudicating authority has erred in partially rejecting GST refund.

4. A personal hearing in the matter was held on 13.12.2018. Shri Anand Shah, Chartered Accountant, appeared before me on behalf of the appellant and



reiterated the contents of the grounds of appeal. He also filed additional written submission wherein, inter alia, stated that:

- Taxpayer is eligible for refund under GST if the duty structure is inverted. Inverted duty structure means situation where the tax rate on "inputs" are more than tax rate on output. The word "inputs" is plural. It means one to one nexus is not required.
- The ITC is claimed on the basis of total available ITC from "inputs". One cannot segregate and assume that 5% ITC is not utilized and remained in balance. Hence, reducing of entire ITC of 5% from NET ITC is not correct. It is nowhere stated that one to one nexus is required for NET ITC.
- As per the explanation to the formula for computation of the amount of refund, NET ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule 4A or 4B or both.

The appellant filed further written submission, received on 02.01.2019, stating that CBIC vide Circular No.79/53/2018-GST dated 31.12.2018 has clarified that refund of ITC of GST paid on inputs procured at equal or lower rate shall include all the inputs including equal or lower rated input as compared to output.

5. I have carefully gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. I find that only issue to be decided is whether the appellant is eligible for refund of ITC on all inputs or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the appellants had filed the refund claims under Section 54 of CGST Act, 2017 for accumulated ITC on account of rate of tax on inputs being higher than the rate of the output supplies. Now, the main issue remains to me is whether while calculating the inverted rate refund claim under section 54 of CGST Act, net ITC will be taken after deduction of inverted rate purchase or otherwise. I find that sub-rule 5 of Rule 89 of Central Goods & Services Tax Rules, 2017 has clarified the matter pertaining to refund on account of inverted duty structure vide following formula:

"Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation : - For the purposes of this sub-rule, the expressions -

- (a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- (b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).]"

On plain reading of the provision and rules, Net ITC has been specifically defined in the rule, which states that input tax credit availed on input during the relevant period other than input tax credit pertaining to zero rated supply



mentioned in Rule 89 (4A) and (4B). So the contention of the department regarding the calculation of the net ITC after deduction of inverted rate purchase ITC i.e. 5% rated purchase is not sustainable. I find that net ITC has to be as per the definition mentioned in the above rule i.e. input tax credit availed on inputs during the relevant period. Thus, I find that the adjudicating authority, on his own, has travelled beyond the clarification as prescribed in the statute. The adjudicating authority should have relied on the "exact wording" of the statute under consideration.

7. I also find that the CBIC vide Circular No.79/53/2018-GST dated 31.12.2018 has issued clarification in the subject matter vide Para 4 as under:

"a) **Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting rates of tax, in the formula provided in Rule 89(5) of the CGST Rules, the terms "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax."**

Therefore, I find that the adjudicating authority has wrongly deducted ITC of the same rate i.e. 5% availed by the appellant and agree to the plea placed before me.

8. In view of above, I set aside the impugned orders and allow the appeals filed by the appellant with consequential relief as per law.

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

उमा शंकर

(उमा शंकर)

Principal Commissioner(Appeals)

Attested:

by
12/02/19
(B.A. Patel)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

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C-223, B.G. towers, O/S Delhi gate,
Ahmedabad-380004.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad North.
3. The Asstt. Commissioner, Central Tax, Division-II(Naroda Road), Ahmedabad North.
4. The Asstt. Commissioner, Central Tax (System), HQ, Ahmedabad North.
5. Guard file.
6. P.A file.

