



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(29)193/North/Appeals/ 2018-19 / 10463 to 10467
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-173-18-19
 दिनांक (Date): 29/03/2019 जारी करने की तारीख (Date of issue): 09/05/2019
 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 13/AC/D/NKS/2018-19 Dated: 12/12/2018
 issued by: Assistant Commissioner-Central Excise (Div-III), Ahmedabad North,

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

M/s Meck Pharmaceuticals and Chemicals 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।



Cont...2

ORDER-IN-APPEAL

This appeal has been filed by M/s Meck Pharmaceuticals and Chemicals Pvt. Ltd., 3/A and 189-I- Paiki 2, Kailash Industrial Estate, Iyawa, Sanand Virochan Nagar, Ahmedabad-381170 (hereinafter referred to as "the appellant") against Order-in-Original No. 13/AC/D/NKS/18-19 dated 12.12.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of CGST, Division-III, Ahmedabad-North (hereinafter referred to as "the adjudicating authority").

2. The facts of the case in brief are that the appellant is engaged in excisable goods viz. pharma bulk drugs falling under chapters 29 of CETA, 1985. Based on EA 2000 Audit, show cause notice dated 31.05.2018 was issued to the appellant for denying CENVAT credit in respect of inputs and input services for the reasons viz. (i) cenvat credit amounting to Rs. 10,158/- availed and utilized on the strength of invoices which were more than one year old; (ii) the credit amounting to Rs. 24,292/- was availed and utilized on MS Channels, MS Beams & MS Plates which are not covered under the definition of capital goods as specified under Rule 2 of the CCR, 2004; (iii) cenvat credit amounting to Rs. 14,040/- on input services twice on single invoice and further that the input services pertained to hotel booking, air freight charges for one of the directors of the appellant; (iv) the credit amounting to Rs. 69,146/- was availed and utilized on plastic doors and windows as capital goods which are not covered under the definition of capital goods; and (v) had not paid amount @ 6% on value of exempted goods under Rule 6 (3) of the CCR, 2004. The show cause notices also proposed for recovery of interest and imposition of penalty under Rule 15 of CCR. Vide the impugned order, the adjudicating authority confirmed the interest liability for item No. (1) as the wrongly availed and utilized cenvat credit had already been paid. The adjudicating authority confirmed the demand with interest liability for item No. (ii), (iii), (iv) and (v). He also imposed penalty of Rs. 9,01,903/-.

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

- a) The cenvat credit on MS Channels, MS Beams & MS Plates is admissible as they were used for fabrication of capital goods within the factory. They rely on the case law of Gold Plast vs. Commissioner of C.Ex. Coimbatore - 2005 (185) ELT-37 (Tri.-Chennai), Saraswati Sugar Mills vs. CCE, Delhi-III - 2011 (270) ELT-465 (S.C.), Jodhpur Alloys Pvt. Ltd. vs. CCE, Jaipur - 2013 (292) ELT-448 (Tri. Del.),



Mundra Ports & Special Economic Zone Ltd. vs. CCE & Cus., - 2015 (39) STR-726 (Guj.), Bombay Forgings Ltd. vs. CCE & Cus., Aurangabad - 2015 (329) ELT-938 (Tri. Mum.), Parle Products Pvt. Ltd. vs. CCE & S.T., Bangalore-III - 2016 (343) ELT-498 (Tri. Bang.), Singhal Enterprises Pvt. Ltd. vs. CCE & Cus., Raipur - 2016 (341) ELT-372 (Tri. Del.), Tata Iron & Steel Company Ltd. vs. CCE, Jamshedpur - 2016 (344) ELT-994 (Tri. Kol.), Sai Life Sciences Ltd. vs. CCE, Cus. & S.T., - 2017 (51) STR-55 (Tri. Hyder.);

- b) The director is required to travel within India and outside India for expansion of business, marketing and procurement of orders and for this purpose, the services of air travel booking agent, hotel booking agent services are required. Further the services on which cenvat credit has been availed do not fall in the exclusion clause of the definition. Hence input service in dispute falls in the definition of input service;
- c) the credit amounting to Rs. 69,146/- availed and utilized on plastic doors and windows as capital goods is also admissible as the said material is required to make the chemical laboratory for the purpose of testing of material within the production area of the factory premises in compliance to the statutory norms of Gujarat Pollution Control Board;
- d) as regards payment of the amount @ 6% on value of exempted goods under Rule 6 (3) of the CCR, 2004, they submit that the audit officers have not proved that the credit taken on the quantity of input used in the manufacture of exempted goods is used by them for the payment of duty liability and further they produced the separate account of inputs consumed in production of a product in question and hence they are not required to pay amount @ 6% on value of exempted goods under Rule 6 (3) of the CCR, 2004. Whenever they have availed the credit on inputs used in the manufacture of exempted goods, they have reversed the amount as evident in the show cause notice.

4. Personal Hearing in the matter was held on 27.03.2019. Shri R. R. Dave, Consultant appeared for the same and reiterated the grounds of appeal. He submitted that they had maintained separate accounts but their plea was not considered by the Audit. He also submitted a citation of M/s Madhu Silica Pvt. Ltd. vs. CCE & S.T., Bhavnagar Final Order No. A/12973/2018 dtd. 12.12.2018.



5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is relating to admissibility of input service credit in respect of following input services, availed by the appellant during various periods covered in the four show cause notices have been denied.

- (i) cenvat credit amounting to Rs. 10,158/- availed and utilized on the strength of invoices which were more than one year old;
- (ii) the credit amounting to Rs. 24,292/- availed and utilized on MS Channels, MS Beams & MS Plates;
- (iii) cenvat credit amounting to Rs. 14,040/- on input services twice on single invoice and further that the input services pertained to hotel booking, air freight charges for one of the directors of the appellant;
- (iv) the credit amounting to Rs. 69,146/- availed and utilized on plastic doors and windows as capital goods which are not covered under the definition of capital goods; and
- (v) had not paid amount @ 6% on value of exempted goods under Rule 6 (3) of the CCR, 2004.

6. I find that the adjudicating authority has denied cenvat credit on the basis of the grounds that the credit was availed beyond prescribed time limit of one year and this fact is not disputed by the appellant. I also find that the wrongly availed credit amount has also been paid by the appellant and they contend that the interest liability is not arising in view of the fact that they had not utilized the wrongly availed cenvat credit. While going through the para 13.1 of the impugned order, I find that the adjudicating authority has given detailed findings based on the verification of concerned ER-1s and has concluded that considering the balance of cenvat credit, it was evident that the wrongly credit had been utilized also. In view of the findings based on the verification of records, I see no reason not to accept that and accordingly reject the contention of the appellant. The impugned order is upheld as far as it deals with this issue.

6.1 Now I take up the issue of availment of the credit amounting to Rs. 24,292/- on MS Channels, MS Beams & MS Plates. During the relevant period under dispute, Rule 2(I) of CCR 2004 defined "input service" as under:

(I) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,



and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

The definition of "input service" consists of categories viz. [i] services which are directly or indirectly used in or in relation to the manufacture of final products; [ii] services which are used for clearances of the final products up to the place of removal; [iii] inclusive part of services such as used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; and [iv] and exclusive part of service such as service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for (a) construction or execution of works contract of a building or a civil structure or a part thereof; or (b) laying of foundation or making of structures for support of capital goods. The appellant has argued that the MS Angle, Channels and plates were used for fabrication of capital goods within the factory. I find that there is no doubt that the inputs used in the fabrication of capital goods are serving essential purpose of manufacturing process and no doubt that the use of the inputs becomes essential. I find force in the case laws cited by the appellant in their favour. I find the case law of Rajasthan



Spinning Mills cited at 2010 (255) E.L.T. 481 (S.C.) specifically deals with this issue and lays down that considering the use of the goods in the manufacturing process, these could be considered as falling within the definition of capital goods and accordingly admissible for cenvat credit. I quote the relevant part of the order:

"13. Applying the "user test" on the facts in hand, we have no hesitation in holding that the steel plates and M.S. channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. It is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of Serial No. 5 of the goods described in column (2) of the Table below Rule 57Q.

14. We are, therefore, of the opinion that the Tribunal was correct in law in holding that the assessee was entitled to avail of modvat credit in respect of the subject items viz. steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as capital goods in terms of Rule 57Q of the Rules."

In view of these findings, I accept the contention of the appellant and accordingly allow the contention of the appellant. The impugned order is set aside as far as it deals with this issue.

6.2 Services of travel agents, air travel charges, hotel charges: The appellant has contended that the said services have been used by their director for the business related activities and such activities are inseparable from the business of the appellants and travelling is indispensable for running business smoothly and are directly relating to the manufacturing of activity. I find that the Hon'ble Supreme Court in case of M/s Ramala Sahkari Chini Mills Ltd -2010 (260) E.L.T. 321 (S.C.) has held that "Goods to fall under 'inputs' as per said decision must be (i) used in or in relation to manufacture of final product whether directly or indirectly, and whether contained in final product or not; (ii) covered within six enumerated categories in Rule 2(g) of Cenvat Credit Rules, 2002 and (iii) used within factory of production - First



and third parts namely specific part and location of use to be satisfied for goods to be inputs - Supreme Court's ruling relating to confining goods only to inclusive part of definition, that is to the six specified categories, not agreed with - Prima facie, restricting definition of inputs to six categories not intended by legislature - Phrase "and includes" not intended by legislature to impart restricted meaning to definition of inputs - Interpretation of such term in Maruti Suzuki case requires reconsideration by Larger Bench." Therefore, the eligibility of credit will be depending upon the basis of services having nexus with business of manufacture of final products.

The definition of "input service" supra covers services which are directly or indirectly used in or in relation to the manufacture of final products; the services which are used for clearance of the final products up to the place of removal; and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal. Therefore, I find that the inclusive part of the definition of "input" is restricted to the inputs used in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" extends to services used prior to/during the course of/after the manufacture of the final products. Accordingly, the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under Rule 2(1) of CCR. In view of above discussion, I find that the services mentioned in para 6.2 above directly or indirectly have nexus with the manufacture of the final products of the appellant as well as the business of manufacture of final products. In the circumstances, I do not find any justification for denying the credit availed by the appellant in respect of such services. Therefore, I allow the credit in respect of said services mentioned above. There is nothing in the impugned order regarding double availment of credit on the same invoice. In case the double credit has not been reversed, then it stands confirmed and is liable to be paid with interest.

6.3 The credit amounting to Rs. 69,146/- availed and utilized on plastic doors and windows as capital goods: the cenvat credit has been denied as



these are not covered under the definition of capital goods. I have seen that the appellant have raised the contention that there is a statutory requirement to build a lab in their factory premises and therefore the credit may be allowed. I find that the appellant are engaged in manufacture of drugs and being a highly sensitive product with regard to quality, it is essential that they have a chemical laboratory for the testing purpose. The use of the lab is compulsory to maintain strict quality controls and therefore an integral part of the manufacturing process. In view of these findings, I see no reason to reject the contention of the appellant and accordingly allow the contention of the appellant. The impugned order is set aside as far as it deals with this issue.

6.4 Non-payment of amount @ 6% on value of exempted goods under Rule 6 (3) of the CCR, 2004: from the perusal of the findings of the impugned order, I find that the appellant has argued that they had maintained separate accounts with regard to receipt and issue of each raw material wherein from the stage of opening balance, receipt of material, issue for production and the quantity remained in closing balance have been maintained and had availed and utilized cenvat credit pertaining to only those inputs which were cleared on payment of duty. They have also submitted copies of accounts for the purpose. This fact has been noted in para 17.2 of the impugned order but surprisingly, no findings about verification of the separate accounts submitted to the audit party have been given. I further find that the argument of the appellant regarding submission of accounts has not been rebutted by the adjudicating authority and his findings are entirely based on provisions of rules which at best can be procedural as the substantial requirement of not taking credit on the inputs used in manufacturing of exempted goods and maintaining separate accounts for inputs used both in exempted as well as dutiable final products has been complied with. In view of this, I accept the contention of the appellant and set aside impugned order the as far as it deals with this issue.

7. As regards penalty imposed, I find that the adjudicating authority has imposed penalty under Section 11 AC (1)(c) of the Central Excise Act, 1944. The appellant has contended that they have not suppressed the facts with an intention to evade the duty. As regards the cenvat credit wrongly availed by the appellant in respect of the services detailed above, penalty is required to be imposed on them as they have failed to discharge their responsibility by contravening the provisions of CCR. Therefore, I uphold the same as is in proportion to the disallowed credit.



8. In view of above discussion, I partly allow the appeal. The appeal stands disposed of accordingly.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

दिनांक: . . 2019

सत्यापित

धर्मेन्द्र

(धर्मेन्द्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद



By RPAD.

To,

M/s Meck Pharmaceuticals and Chemicals Pvt. Ltd.,

3/A and 189-I- Paiki 2,

Kailash Industrial Estate,

Iyawa, Sanand Virochan Nagar,

Ahmedabad-381170

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad (North),
3. The Asstt. Commissioner, System, Central Tax, Ahmedabad (North)
4. The Asstt. Commissioner, CGST, Division-III, Ahmedabad (North)
5. Guard File.
- ✓ 6. P.A.

