



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(38)126 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-178-18-19

दिनांक (Date): 14/02/2019 जारी करने की तारीख (Date of issue): 26/3/2019

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 12/Ref/V/18-19 Dated: 17/07/2018

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 Allied Refractory Products India 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 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।



ध 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 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- षोबी/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 न्यायाधिकरण 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 वहां 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 वहां 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 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 पढ़ी 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 अनुसूची-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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 63 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 अर्जी एवं अपील को लागू नहीं होगा।

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 appeal has been filed by M/s Allied Refractory Products Pvt Ltd, SM-5, BOL GIDC, B/h Tata Motor Nano, Taluka Sanand, Dist Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.12/Ref/V/18-19 dated 17.07.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of CGST & CEX, Division-III, Ahmedabad North [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the fact of the case is that the appellant has filed a refund claim of Rs.10,04,469/- under the provisions of Section 142(3) of Central Goods and Service Tax Act, 2017 [CGST Act] on 08.05.2018 in respect of input tax credit not carried forwarded under form Trans-1 as per Section 140 of CGST Act read with Rule 117 of CGST Rules, 2017. The backgrounds for filing the said refund claim is that they had received inputs in their factory during July 2017 for which bills of entry were already filed prior to introduction of GST i.e on 01.07.2017. However, the appellant have not claimed Cenvat Credit of the said inputs in their Central Excise Return filed for the month of June 2017 as well as not carried forwarded in their TRANS-1 form filed on 26.12.2017 under GST. Therefore, the appellant has filed the instant refund claim. The Adjudicating authority has rejected the said claim on the grounds that the appellant has failed to carry forward the said credit to GST as input credit till 27.12.2017

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

- The principles of natural justice have not been provided to them while deciding the case; that the impugned order was issued without referring to the any grounds as submitted by them.
- The goods in question was received in July 2017 and the credit of the said goods are admissible only after physical receipt in the factory premises, hence applicable credit in this regard have not been incorporated in the return filed for the month of June 2017 and the same have also been left out while filing the GST Trans-1 return till 27.12.2017.
- The provisions of filing Trans-1 does not restrict or take away the eligibility or utilizing the credit genuinely and legally available to the assessee if the same is not included in the trans-1 return; that filing of Trans-1 is only a procedural aspect; that substantial benefits cannot be deprived off merely because procedural inflections.



4. Personal hearing in the matter was held on 29.01.2018. Shri Jigar Shah, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He further pointed out that the refund in question has not been considered under GST Act.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The issue to be decided in the instant case is relating to eligibility of refund amounting to Rs. 10,04,469/- filed under Section 142(3) of CGST Act.

6. The appellant has argued that principles of natural justice were not granted to them while deciding the case. I find from the impugned order that the adjudicating authority has granted opportunities of personal hearing to the appellant and they have not availed the same. In the circumstances, I do not find any merit in the said contention.

6. While coming into the merit of the case, I observe that the Provisions of Section 142(3) of CGST Act read as under:

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) :

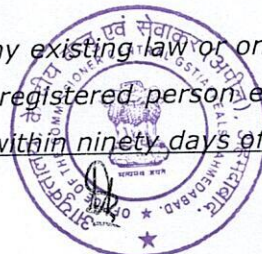
Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse :

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

7. The adjudicating authority has rejected the refund claim in question on the grounds that [i] the appellant had applied for the refund which has not been carried forward to GST and there is no enabling provision under Central Excise Act where refund of Cenvat credit not carried forward in GST through form Trans-1 can be allowed in cash; and [ii] though the appellant had time to revise the Trans-1 till 27.12.2017 by carry forwarding the credit in question, they intentionally failed to follow the procedure to encash the amount.

8. The procedure for transition of tax or duty credit carried forward under existing law or on goods held in stock on the appointed day specified under Rule 117 of CGST and Rule 120 A of CGST. Rule 117 of CGST stipulates that:-

"Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day. — (1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed



day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [of eligible duties and taxes, as defined in Explanation 2 to section 140,] to which he is entitled under the provisions of the said section..”

Rule 120 A of CGST Rule has been inserted on 15.09.2017, vide which revision of TRAN-1 declaration has been permitted for one time only, which reads as under:

[RULE 120A. [Revision of declaration in FORM GST TRAN-1]. — Every registered person who has submitted a declaration electronically in FORM GST TRAN-1* within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1* electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]*

9. In the instant case, I find that the appellant has filed the refund claim of Cenvat credit due to the reasons that they could not incorporate the credit for which the refund claim in question has filed in their return pertaining to the month of June 2017 as the goods have been received in the month of July 2017; that they also carried forward the said credit in their GST TRAN-1 on 01.07.2017. Further, they stated that they failed to incorporate the said credit while filing the revised Trans-1 on 26.12.2017. In the instant case, I observe that though the provisions of Rule 120A specifically allows the appellant to file a revised GST TRAN-1 once within ninety days of the appointed day, which has been further extended till 27th December 2017 vide CBEC order dated 15.11.2017, the appellant have not availed or bothered to avail such facility and instead, they filed a refund claim on 08.05.2018 which indicates the intention of getting cash of such credit by way of refund by ignoring the statutory provision. It is a fact on records that the appellant had filed the declaration in Trans-1 from on 26.12.2017. In the circumstances, they have sufficient time to incorporate the Credit in question in the revised GST TRAN-1 declaration as per provisions of CGST Rules *supra*, however, they deliberately chose not to avail such statutory remedy with a specific intention to encash the CENVAT credit by saying that the credit in question have been left out of the GST Trans-1 form inadvertently. The argument or contention of the appellant cannot be accepted legally as it is the responsibility of the appellant to follow the procedures prescribed under relevant statute in respect of carry forward the Cenvat Credit. If such started claiming cash refund Cenvat credit, by claiming that the credit have been left out of the GST trans-1 form inadvertently, then option of carrying forward the credit through Trans-1 as per Section 140 of CGST Act will lose its relevancy and every tax payers will adopt this modus operandi and easy procedure to encash their Cenvat credit. Further, in the instant case, I find



that the appellant has failed to furnish any cogent reason with regard to their failure in incorporating the Cenvat credit while filing revised Trans-1 declaration on 26.12.2017. Looking into the facts and circumstances case, I find that the adjudicating authority has correctly rejected the refund claim and I do not find any merit to interfere the impugned order passed by the adjudicating authority. Therefore, I uphold the same.

10. In view of above, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

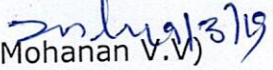
उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : .2 .2019

Attested


(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.



By RPAD.

To,
M/s Allied Refractory Products Pvt Ltd,
SM-5, BOL GIDC, B/h Tata Motor Nano,
Taluka Sanand, Dist Ahmedabad

Copy to:-

The Chief Commissioner, Central Tax, Ahmedabad Zone .
The Commissioner, Central Tax, Ahmedabad North.
The Assistant Commissioner, System, Central Tax, Ahmedabad North
The Assistant Commissioner, CGST, Division III, Ahmedabad North
Guard File.
P.A.



Statement