



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(84)18 /North/Appeals/ 2018-19

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

दिनांक (Date): **25-Jun-18** जारी करने की तारीख (Date of issue): **17/7/2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

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

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No **02/supdt/AS/2018** Dated: **22/03/2018**

issued by: Supdt Commissioner Central Excise (Div-IV), Ahmedabad North

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

M/s AIA Engineering 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 हैं



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

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 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. 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-बी/35-इ के अंतर्गत:-

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

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 इ.ए-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 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 भेजनी होगी।



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की 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 पढी 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 not withstanding 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 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 (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।

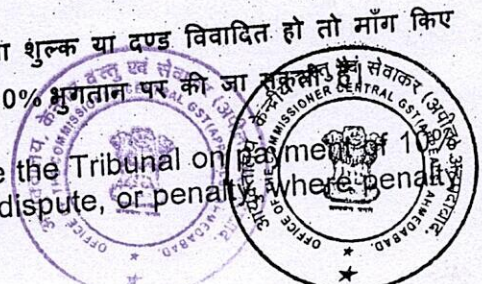
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

M/s. AIA Engineering Ltd (Unit-8), 18/P, N.H.-8-A, 20th Milestone, Sarkhej Bavla Highway, Changodar, Ahmedabad 382 213 (henceforth, "appellant") has filed the present appeal against the Order-in-original No. 02/Supdt./AS/2018 dated 22.03.2018 (henceforth, "impugned order") issued by the Superintendent, CGST Range-III, Div-IV, Ahmedabad - North (henceforth, "adjudicating authority").

2. The facts of the case, in very brief, are that a show cause notice dated 09.01.2018 was issued to the appellant, a manufacturer of excisable goods, for recovery of Cenvat credit amounting to **Rs.5,02,362/-** taken on 12.04.2016 on the strength of their own Sale Bill No. 159/07.10.2014. The goods sold under the Sale Bill 159/07.10.2014 had been returned by the buyer namely M/s. Essar Power Ltd and appellant, in terms of rule 16 of the Central Excise Rules, 2002 (CER, 2002), which deals with credit of duty on goods brought to the factory, took the impugned credit. The credit taken was sought to be denied on two reasons - (i) the document on which credit was taken was not a valid document under rule 9 of the Cenvat Credit Rules, 2004 (CCR, 2004); and (ii) credit after a year was not permissible in terms of rule 4(1) of the CCR, 2004. In adjudication, the Cenvat credit of Rs.5,02,362/- was ordered to be recovered alongwith interest and a penalty of Rs.50,240/- was also imposed under rule 15(1) of the CCR, 2004 read with section 11AC(1)(a) of the Central Excise Act.

3. The appellant, being aggrieved with the impugned order has filed this appeal on the following main grounds of appeal-

3.1 Appellant states that under rule 16(1) of the CER, 2002, whenever goods cleared from the factory are received back, they are to be considered as deemed inputs and manufacturer is entitled to take credit on such returned goods; that rule 16 does not prohibit availment of credit on the manufacturer's own invoices; that the only relevant factor is the duty paid invoice and if the invoice is duty paid the manufacturer is eligible to take credit on its own invoice. Appellant relies on the following decisions -

- Balmer Lawrie & Co. Ltd v. CCE, Mumbai [2016(343) ELT 1175
- Hitesh Plastic Pvt Ltd v. CCE [2009(243) ELT 419]
- Arihant Appliances Ltd v. CCE, Pune [2012(279) ELT 449]

3.2 Appellant states that even if time limit of one year is applicable, the same should be calculated from the date of receipt of returned/ rejected goods and in that case since goods were returned on 17.02.2016 and credit was taken on 12.04.2016, the time limit is not exceeded.



3.3 With regard to penalty, appellant states that penalty under section 11AC read with rule 15(1) can be imposed only if the Cenvat credit is taken or utilized by reasons of fraud, collusions, etc.; that in the present case, revenue has failed to bring on record any positive evidence showing intent of evasion; that no penalty can be imposed where the issue is interpretational in nature; that when demand itself is not sustainable, penalty cannot be imposed and interest cannot be demanded. Appellant adds that they have not utilized the credit but the same was lying in balance, hence, interest on unutilized credit cannot be demanded under rule 14 of the CCR, 2004.

4. In the personal hearing held on 13.06.2018, Shri Amit Laddha, Advocate represented the appellant and reiterated the grounds of appeal. He submitted a compilation of case laws.

5. I have carefully gone through the appeal. Cenvat credit availed on the returned goods on the basis of appellant's own original sale invoice has been denied on the ground that credit has been taken on an invalid document (not a prescribed document under rule 9 of CCR, 2004 for taking credit) and that too after more than a year from the date of original invoice. Appellant contends that the returned goods are deemed inputs in terms of rule 16 of the CER, 2002; that for taking credit the relevant thing is that there should be a duty paid invoice which is there in the form of original sale invoice; that time limit prescribed under rule 4(1) of the CCR, 2004 is inapplicable to the returned goods.

5.1 For ease of reference, I would like to quote rule 16 (1) *ibid* -

RULE 16. Credit of duty on goods brought to the factory. (1) *Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.*

It is clear that provisions of rule 16 *ibid* are special provisions with regard to returned goods to allow Cenvat credit on returned good under CCR, 2004 as if the returned goods are received as inputs under the CCR, 2004. As regards the denial of credit on appellant's own invoice, Mumbai Tribunal's decision in the case of **Balmer Lawrie & Co. Ltd v. Commissioner of C.Ex., Mumbai [2016(343) ELT 1175 (Trib.-Mumbai)]** as quoted by the appellant is squarely applicable wherein it has been held that there is no prohibition in taking credit on the assessee's own invoices. Extract the head-note of this decision for quick reference -



Cenvat credit - Duty paid goods brought back into factory - To be treated as inputs and assessee can avail credit of duty paid - No prohibition in taking credit on assessee's own invoices - Irrespective of fact whether invoices are of assessee or otherwise if duty paid goods brought in factory of assessee credit can be allowed - No procedure such as making application or taking permission required for compliance of Rule 16 of Cenvat Credit Rules, 2002 - Cenvat credit availed on returned goods allowable - Rule 16 of Cenvat Credit Rules, 2002.

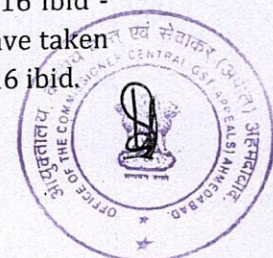
5.2 That rule 16 of the CER, 2002 is a special provision enacted for receiving back final product and invoices issued by manufacturer are also required to be considered fit for availment of credit has been also held by Ahmedabad Tribunal in the case of **Hitesh Plastic Pvt Ltd** v. Commissioner of C.Ex. & Cus., Vapi [2009(243) ELT 419(Trib.-Ahmd.)]. Cenvat credit in respect of rejected goods received back for processing has also been allowed on the basis of assessee's own invoice in the case of Commissioner of C.Ex., Vadodara v. **PAB Organics Pvt Ltd** [2012(286) ELT 621(Trib.-Ahmd.)]. The case law of **Jindal Photo Ltd** v. Commissioner of C.Ex., Vapi [2009(247) ELT 730(Trib.-Ahmd.)] is also quite applicable here and I quote the head-note of it.

Cenvat/Modvat - Rejected returned goods - Documents for availing credit - Rule 16 of Central Excise Rules, 2002 allows a manufacturer to receive back rejected goods and to avail credit of duty originally paid by them under cover of invoice issued at the time of clearance of goods - Objection raised by lower authorities that it should be an invoice issued by manufacturer of goods satisfied on same interpretation - Very purpose of Rule 16 ibid defeated if lower authorities reasoning is accepted, and it would make Rule 16 ibid redundant - Impugned order set aside - Rule 9 of Cenvat Credit Rules, 2004.

The issue of allowing credit on the original sale invoice, therefore, is fairly settled and credit on this reason alone cannot be denied.

5.3 With regard to time limit prescribed under rule 4(1) of the CCR, 2004, I am of the view that if the condition of taking credit within one year of issuing the original sale invoice is applied, the benefit or operation of rule 16 would be drastically curtailed. Rule 16 ibid is a beneficial piece of legislation and there is no time limit prescribed under this rule for taking credit. In the case of **Arihant Domestic Appliances Ltd** v. Commissioner of C.Ex., Pune-III [2012(279) ELT 449 (Trib.-Mumbai)], Hon'ble Tribunal has decided the issue of time limit under rule 16 and I quote the head-note as under -

Cenvat - Return of defective goods, no time limit - Rule 16 of Central Excise Rules, 2002 provides for taking credit of duty paid at the time of clearance of goods which are returned as defective - No time limit in the Rule 16 ibid - Appellants entitled to take credit under Rule 16 ibid - Appellants have taken credit correctly - Impugned order set aside - Appeal allowed - Rule 16 ibid.

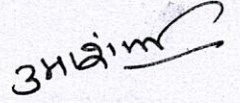


5.4 In the impugned order, the adjudicating authority has found the case laws cited by the appellant as irrelevant to the matter as the facts, circumstances and period involved are different. In my view, the case laws cited and discussed above are quite applicable in the matter and denial of due benefit of Cenvat credit on returned goods on the issues that stand decided in CESTAT is unjustified. The appeal filed deserves to be allowed.

6. Accordingly, I set aside the impugned order and allow the appeal.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

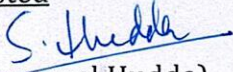
The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested



(Sanwermal Hudda)

Superintendent

Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,

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Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Joint/Additional Commissioner, Central Tax (System), Ahmedabad North.
4. The Superintendent, CGST Range-III, Div-IV, Ahmedabad- North
- ✓ 5. Guard File.
6. P.A.



