



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(94)196 /North/Appeals/ 2018-19**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-190-18-19**

दिनांक (Date): **28/02/2019** 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 **11/AC/D/NKS/18-19** Dated: **27/11/2018**

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 Magna Automotive 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 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 ।



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 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- 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, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ 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 वहाँ 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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 43 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 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 appeal has been filed by M/s Magna Automotive India Pvt Ltd, AV-17, BOL Industrial Estate, GIDC, Sanand II, Sanand, Sanand Ahmedabad [hereinafter referred to as "the appellant" against Order-in-Original No.11/AC/D/NKS/18-19 dated 27.11.2018 ["impugned order"] passed by the Assistant Commissioner, CGST, Divison-III, Ahmedabad North [for short-"adjudicating authority"].

2. Briefly stated, the fact of the case is that the appellant is engaged in the manufacture of car seat and accessories falling under CH 94 of CETA, 1985. During the course of EA-2000 Audit, it was noticed that they had procured duty paid Tools/Mould total amounting to Rs.2,78,06,925/- on behalf of M/s Ford India Ltd Pvt Ltd during 2016-17 and availed Cenvat Credit of duty involved. It was further noticed that the appellant has sold the said tools/Mould to M/s Ford India Ltd without payment of central excise duty by issuing commercial invoices. Therefore, a show cause notice dated 26.07.2018 was issued to them for recovery of Central Excise duty of Rs.34,75,866/- with interest and imposition of penalty under Section 11AC of Central Excise Act, 1944. Vide the impugned order, the Assistant Commissioner has confirmed the duty with interest and imposed penalty of Rs.34,75,866/- under Section 11AC(1)© of CEA.

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

- They had procured duty paid goods and taken Cenvat credit thereof since they were used in the course of production of dutiable finished goods; that it was due to the commercial arrangement between them and M/s Ford Ltd; that it was done to ensure that working capital of them was not blocked in the cost of tools/Mould which were procured by them for exclusive use in goods to be produced and sold to M/s Ford only.
- The effect of such sale of tools/mould by the appellant to M/s Ford Ltd, while retaining the same physically in the factory premises was such that it was as if the said goods were provided/facilitated/financed by M/s Ford without any cost to the appellant to be used in their factory for production of various finished goods which were eventually supplied and sold to M/s Ford Ltd. The appropriate cost of tools/mould was required to be suitably apportioned to the value of finished goods sold by them, as required under Rule 6 of Valuation Rules, 2000 read with Circular No.170/4/96-CX dated 23.1.1996.
- For the purpose of claiming Cenvat credit, in terms of Rule 3 of CCR, ownership of the goods is not a criterion at all; that nowhere in CCR requires of either having the goods reflected in "Inventory" in the balance sheet or being "owner of such goods" for the purpose of availing Cenvat credit. The impugned order has invoked Rule 3 (5A) of CCR only because the appellant was not the owner of the tools/mould and the same were not reflected in the inventory.
- They also submitted that no penalty under Section 11AC of CEA can be imposed.
- They relied on various case laws in favour of their arguments.



4. Personal hearing in the matter was held on 14.02.2019. Shri S.R.Dixit, Advocate appeared for the same and reiterated the grounds of appeal. He submitted further written submission along with various citations in favour of their arguments.

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.

6. At the outset, I find that the adjudicating authority has demanded the duty in respect of the goods in question on the grounds that the appellant had removed the goods from the factory premises and hence violated the provisions of Rule 3(5A) of CCR. On the other hand, the appellant has argued that they raised commercial invoices for transfer of title of the goods in question and the goods were not physically removed from their factory and only the ownership of the goods was transferred.

7. Rule 3(5A) (a) of CCR states that "if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit,.."

8. The violation of the said Rule, as contended by the adjudicating authority, will be taken place only if the goods in question, on which Cenvat credit has been taken, are removed. In the instant case, the appellant has contended that the goods in question i.e tools and moulds were not physically removed from their factory by ownership of the goods were transferred by way of issuing commercial/sale invoices to M/s Ford Ltd on paying applicable VAT. The adjudicating authority has not agreed with the said contention and stated when excisable goods are removed from the inventory, it is as equal as clearance of excisable goods and excise duty is required to be recovered. The appellant has relied on various case laws in this regard to say the settled legal position that the ownership of goods is not a relevant factor at all for the purpose of availment of Cenvt credit. Therefore, the appellant has contended since the goods in question were no longer owned by the appellant, the tools/moulds were not featuring the balance sheet of the appellant as an asset. Further, the appellant has relied on various decision to the effect that where ownership in capital goods is changed due to any reasons, even sold by vendor to customer to be used in production of finished goods, there is no liability under Rule 3(5A) of CCR since the capital goods (tools/moulds in the instant case) is not physically removed.



9. I am of the view that removal contemplates physical removal of goods from one place to another place. In the instant case, I find that the adjudicating authority has demanded duty only the grounds that the goods in question were removed by the appellant from their factory on the grounds as stated above. However, he did not give any supportive argument or evidence brought in the impugned order to prove that the ownership of the goods was with the appellant while removing the goods. I find that the appellant has furnished copy of commercial invoice along with cost tooling order pertains to sales of the said goods in question which supports the contention of the appellant that that they had back to back sold off said goods. Mere removal from the inventory is not sufficient to suggest that the goods are cleared from the factory and excise duty is payable in such circumstances. The adjudicating authority should have discussed with supportive evince to prove the factual position of physical clearance of such goods. In the instant case, the appellant has vehemently argued that on removal car seat, excise invoices were raised and in the said excise invoices, they discharged excise duty on the assessable value of car seats plus the amortized value of tools and moulds proportionately. However, this aspect i.e whether the appellant has amortized the value in the invoice or otherwise has also not been discussed by the adjudicating authority in the impugned order. Therefore, I am of the view that the matter needs to be verified again by the adjudicating authority afresh with regard to physical removal of goods in question from appellant's factory and amortization of value in the assessable value. Therefore, I remand the case to the adjudicating authority. Needless to say that sufficient opportunity of natural justice may be given to the appellant before deciding the case.

9. In view of above discussion, I set aside the impugned order by way of remand. The appeal stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)  
प्रधान आयुक्त (अपील्स)  
Date : .2 .2019

Attested

*Mohan V.V.*  
(Mohan V.V)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.

By RPAD.

To,  
M/s Magna Automotive India Pvt Ltd,  
AV-17, BOL Industrial Estate, GIDC,  
Sanand II, Sanand, Sanand Ahmedabad  
Copy to:-

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

