



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(30)153 /North/Appeals/ 2018-19 / 10429 to 10483

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-196-18-19

दिनांक (Date): 28/02/2019 जारी करने की तारीख (Date of issue): _____

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 14/Ref/V/18-19 Dated: 09/05/2018

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 GE Power Systems 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।



(b) In case of rebate of duty or 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 है।

(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 इयूटी 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

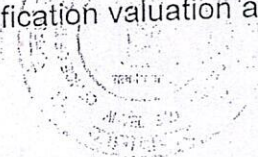
(२) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक का 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 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 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।

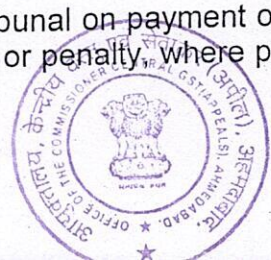
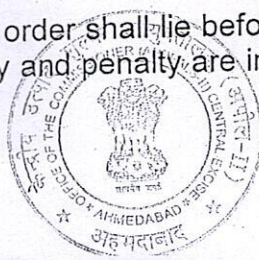
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती 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

This appeal has been filed by M/s GE Power Systems India P. Ltd Plot No.SM-37, Sanand-2, GIDC Industrial Estate II, Ta. Sanand, Dist. Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.14/Ref/V/18-19 dated 05.09.2018 [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.1,11,37,766/- on 28.06.2018, under the provisions of Section 11B of Central Excise Act, 1944 (CEA) in respect of Cenvat Credit not carried forward under Trans-1 Form as per Section 140 of Central Goods and Service Tax Act, 2017 [CGST Act]. The backgrounds for filing the said refund claim is the appellant has carried forward closing balance of Cenvat Credit of Service Tax of Rs.8,95,87,781/- in Trans-1 Form filed under CGST Act on the basis of original service tax return (ST-3) filed on 15.08.2017 instead of closing balance of Rs.10,07,25,547/- shown in the revised ST-3 return filed on 06.09.2017 for the period of April 2017 to June 2017. Therefore, for the differential amount, the appellant has filed the refund claim in question. 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:

- Section 140(8) of CGST Act clearly enable the appellant registered under CGST to avail Cenvat credit pertaining to returns filed the erstwhile indirect tax regim; that the appellant was barred from carrying forward STC (which had accumulated pursuant to revision of their ST-3 return) into GST Regim.
- Since the appellant was not entitled to carry forward the said credit which arose in its books of accounts due to revision of th ST-3 return, Section 142(9)(b) of CGST needs to be referred to in order to ensure that the appellant does not suffer the loss of the credit generated due to revision of ST-3 return.
- Section 11 B of CEA would apply in their case as held by the Hon'ble High Court of Gujarat in the case of Indo Nippon Chemicals Co.Ltd [185-ELT 19]
- Refund to be granted in cash where appellant not in a position to use credit.

4. Personal hearing in the matter was held on 13.02.2018. Shri Jenish Kothiwala and Hetsri Shah, Authorized Representatives of the appellant appeared for the same and reiterated the grounds of appeal.

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. 1,11,37,766/- in respect of Cenvat Credit not carried forward under Trans-1 Form as per Section 140 of CGST Act.

6. In the instant case, I find that the refund claim arises as the appellant failed to carry forward the amount in question in Trans-1 form on the basis of original ST-3 return filed 15.08.2017 instead of closing balance of Rs.10,07,25,547/- shown in



the revised ST-3 return filed on 06.09.2017 for the period of April 2017 to June 2017.

7. The adjudicating authority has rejected the refund claim in question mainly on the grounds that the appellant has failed to carry forward the said credit to GST as input credit till 27.12.2017.

8. I find that the appellant has filed the refund claim on 28.06.2018 in respect of Cenvat Credit not carried forward under Trans-1 Form as per Section 140 of CGST Act. I find that they had filed their ST-3 return for the month of April 2007 to June 2007 on 15.08.2017 by mentioning Cenvat Credit of Rs.8,95,87,781/- as closing balance as on 30.06.2017 and carried forward the said amount to GST in form Trans-1. However, they revised their said ST-3 return on 06.09.2017, showing closing balance of Cenvat Credit as Rs.10,07,25,547/- as they missed to carry forward various input service credit of Rs.1,11,37,766/-.

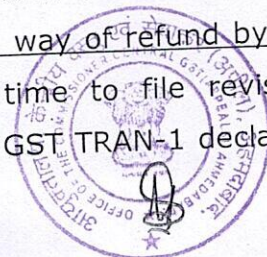
9. I find that the procedure for transition of tax or duty credit carried forward under existing law or on goods held in stock on the appointed day specified under Rule 117 of CGST and Rule 120 A of CGST. Rule 117 of CGST stipulates that:-

"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.]*

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 28.06.2018 which indicates the intention of getting cash of such credit by way of refund by ignoring the statutory provision. Though they have sufficient time to file revised GST Trans-1 and incorporate the Credit in question in such GST TRAN-1 declaration to be revised as



per provisions of CGST Rules *supra*, 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 by mistake or 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 all assesseees started claiming such cash refund of Cenvat credit, by claiming that the credit have been left out of the GST trans-1 form inadvertently or missed to incorporate, 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 even not try to revise their Trans-1 form upto 27.12.2017 of further extended period and also failed to furnish any cogent reason with regard to their failure in non filing of revised Trans-1 form for incorporating the Cenvat credit missed out. 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

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



By RPAD.

To,
M/s GE Power Systems India P. Ltd
Plot No.SM-37, Sanand-2, GIDC Industrial Estate II,
Ta. 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.