



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(ST)17 /North/Appeals/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-20-18-19**

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 Arising out of Order-in-Original No **CGST/A'bad-North/Div-VII/S.Tax-DC-015-17-18** Dated **16-Feb-18** Issued by **Deputy Commissioner**, Central GST, Div-VII, Ahmedabad North.

ध अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s Corrttech International Pvt. Ltd

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

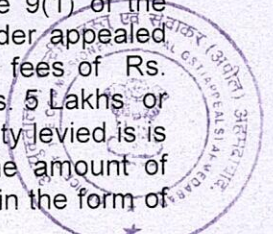
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा अधीक्षक केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 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 हैं -

- (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।

4. 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.

4(1) इस संदर्भ 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।

4(1) 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. Corrttech International Pvt Ltd, 22, 2nd Floor, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad 380 009 (henceforth, "appellant") has filed the present appeal against the Order-in-original No. CGST/A'bad-North/Div-VII/S.Tax-DC-015-17-18 dated 16.02.2018 (henceforth, "impugned order") issued by the Deputy Commissioner, CGST Div-VII, Ahmedabad - North (henceforth, "adjudicating authority").

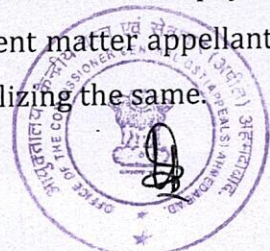
2. The facts of the case, in very brief, are that the appellant, a service tax registrant, was when audited by the C&AG, it was noticed that the appellant had availed inadmissible Cenvat credit of Rs.14,94,030/-on certain capital goods during 2011-12 and 2012-13. Appellant agreed to the audit objection and reversed the said amount on 05.03.2015 from Cenvat credit lying in balance. Later on, a show cause notice dated 14.06.2017 was issued proposing appropriation of the Cenvat credit already reversed, recovery of interest on Cenvat credit wrongly availed and imposition of penalties. In adjudication, adjudicating authority appropriated the Cenvat credit already reversed, confirmed the demand of interest on Rs.14,94,030/- under rule 14 of the Cenvat Credit Rules, 2004 (CCR, 2004) read with section 75 of the Finance Act, 1994 (FA, 1994) and imposed equal penalty under rule 15(3) of the CCR, 2004 read with section 78(1) of the FA, 1994. Feeling aggrieved with the impugned order, the appellant has preferred this appeal.

3. The following are the main grounds of appeal, in very brief-

3.1 Appellant denies the applicability of Supreme Court's judgment in the case of Union of India v. Ind-Swift Laboratories Ltd [2012(25) S.T.R. 184 (S.C.)] stating that in that case respondent had utilized wrongly taken credit and the appeal was in relation to the time period for which interest under rule 14 of the CCR, 2004 needed to be paid, whereas, in the present matter appellant has not utilized the wrongly availed Cenvat credit. Appellant refers to Notification No.18/2012-CE(NT), by which the words "taken or utilised" appearing in rule 14 of CCR, 2004 were amended as "taken and utilized", to state that there wrongly availed credit is reversed without utilizing the same, there cannot be any interest liability on the same.

3.2 Relying on the following decisions, appellant states that it is settled principle that interest liability in case of wrongly taken Cenvat credit will arise when taxpayer has utilized the wrongly availed Cenvat credit; that in the present matter appellant has only availed the credit wrongly and then reversed before utilizing the same.

- Hello Mineral Water (P) Ltd [2004(174) ELT 422 (All.)]



- International Flavours and Fragrances (I) Ltd [2010 1 Taxmann.com (Chennai CESTAT)]
- Pearl Insulation Ltd [2012 (28) Taxmann.com 231 (Karnataka)]
- Mamta Silk Mills (P) Ltd [2010(2) Taxmamnn.com 946 (Ahmedabad CESTAT)]

3.3 Appellant states that as per calculation sheet submitted during CERA audit, the wrongly taken credit pertains to years 2009-10 to 2011-12 and not 2011-12 to 2012-13; that the Cenvat credit availed in service tax return for Apr-2010 to Sep-2010 is clearly time barred, the period being beyond five years.

3.4 Appellant refers to CBEC's Circular No.1023/11/2016-CS dated 08.04.2016, wherein CBEC has clarified the mechanism of adjudication of show cause notice issued on the basis of CERA/ CRA objections, and submits that show cause notice is not issued in accordance with the said circular and is liable to be quashed on this ground alone.

3.5 appellant states that there is no finding in the impugned order which can allege that appellant had intended to evade payment of service tax and hence invocation of extended period on the charge of suppression of facts with intent to evade payment of service tax is not justified.

4. In the personal hearing held on 16.05.2018, CA Bhagyashree Bhatt and CA Ajit Boricha represented the appellant and reiterated the grounds of appeal.

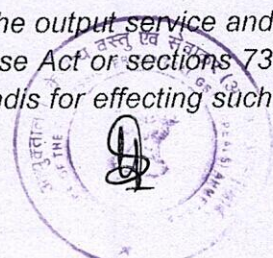
5. I have carefully gone through the appeal. The issue is all about of applicability of interest provisions stipulated under rule 14 of the CCR, 2004 on the Cenvat credit wrongly availed during 2011-12 and 2012-13. Rule 14, before amendment vide Notification No.18/2012-CE(NT) dated 17.03.2012, read as follows

"14. Recovery of CENVAT credit wrongly taken or erroneously refunded.-

*Where the CENVAT credit has been **taken or utilized** wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries."*

After amendment vide Notification No.18/2012-CE(NT) – effective from 01.04.2012 – the words "*taken or utilized*" were replaced by "*taken and utilized*" and accordingly the rule read as under -

*14. Where the CENVAT credit has been **taken and utilized** wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries."*

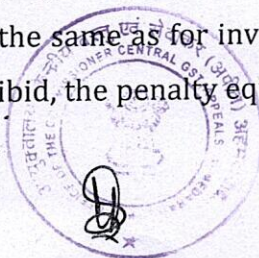


5.1 Therefore, for the period prior to 01.04.2012, interest is payable where credit was taken or utilized wrongly, and for the period from 01.04.2012, interest is applicable where credit is taken and utilized wrongly. As far as the period from 01.04.2012 is concerned, i.e., for the year 2012-13, interest is payable if the Cenvat credit was taken and utilized. In other words, if the credit taken was not utilized, interest provisions would not apply. For the prior period, i.e., for the years 2011-12 or before that, the issue stands decided in Supreme Court's judgment in the case of Union of India v. **Ind-Swift Laboratories Ltd** [2012(25) S.T.R. 184 (S.C.)] wherein Hon'ble Court found that interest is applicable where Cenvat credit is wrongly taken even if not utilized as the words used in the rule are "taken or utilized" and not "taken and utilized". The first head-note of the citation reads as under -

Interest - Cenvat/Modvat - Interest on irregular credit whether arises from date of availing such credit or date of utilization - Rule 14 of Cenvat Credit Rules, 2004 specifically providing for interest when Cenvat credit taken or utilized wrongly or erroneously refunded hence interest on irregular credit arises from date of taking such credit - High Court in impugned order proceeded by reading down Rule 14 ibid to mean that interest payable from date of utilization of irregular credit and credit availment by itself not creates liability to pay excise duty - High Court misread and misinterpreted Rule 14 ibid and wrongly read it down without properly appreciating scope and limitation thereof - Rule 14 ibid clear and unambiguous - No reason to read the word "or" appearing in Rule 14 ibid between expressions 'taken' or 'utilised wrongly' or 'has been erroneously refunded' as "and" by way of reading it down - Credit recoverable with interest on happening of any of the three specified circumstances - High Court erroneously held that interest cannot be claimed from date of wrong availment - Attempt by High Court to read down provision by substituting "or" by "and" to give relief to assessee, erroneous - Impugned order set aside and Settlement Commission's order restored - Rule 14 of Cenvat Credit Rules, 2004 - Section 11AB of Central Excise Act, 1944.

Hence, for the period prior to 01.04.2012, this judgment of the highest court of the land applies squarely and no amount of arguments would work in favour of the appellant. Appellant's argument that interest liability does not arise since credit availed was not utilized can be relevant only after amendment in rule 14 from 01.04.2012 when the words "taken or utilized" were replaced with "taken and utilized"..

5.2 With regard to penalty imposed under section 78(1) of the Finance Act, 1994 read with rule 15(3) of the CCR, 2004, I observe that adjudicating authority has justified the invocation of extended period under section 73(1) of the Finance Act, 1994 for recovery of Cenvat credit availed without having proper documents. Since the ingredients required for invoking extended period are the same as for invoking penalty provisions under section 78(1) ibid and rule 15(3) ibid, the penalty equal to the Cenvat credit wrongly availed has been rightly imposed.



5.3 Regarding period of dispute, appellant states that credit was availed in 2009-10 to 2011-12 as per calculation sheet submitted during CERA audit, whereas, as per adjudicating authority, credit was availed on 01.04.2012 and earlier. Now, interest is applicable on the credit taken wrongly in the period prior to 01.04.2012 even if the credit taken was not utilized, however, this is not so in respect of credit taken on 01.04.2012 and thereafter because from 01.04.2012 credit utilization has to be there to attract interest provisions. The demand of interest on the credit taken on 01.04.2012 and thereafter has not been justified in the impugned order as there is no finding on utilization of credit. Since appellant's one of the submissions is that credit taken was not utilized, the fact of utilization needs to be confirmed by the adjudicating authority. This part of the impugned order, therefore, requires to be decided afresh to justify the demand of interest on the wrong availment of credit on 01.04.2012 and thereafter.

6. Accordingly, I remand the matter relating to interest on credit taken on 01.04.2012 and thereafter to the adjudicating authority for a fresh decision. The impugned order is accordingly modified.

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

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested

S. Hudda
(Sanwamal Hudda)

Superintendent

Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To,

M/s. Corrttech International Pvt Ltd,
22, 2nd Floor, Dhara Centre, Vijay Char Rasta,
Navrangpura, Ahmedabad 380 009

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 Asstt./Dy. Commissioner, CGST Div-VII, Ahmedabad- North
5. Guard File.
6. P.A.

