



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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रजिस्टर डाक ए.डी.द्वारा

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क फाइल संख्या (File No.) : V2(Ref)33 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-46-18-19

दिनांक (Date): 03-Aug-18 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-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 28/Ref/IV/17-18 Dated: 31/03/2018

issued by: Assistant Commissioner-Central Excise (Div-V), Ahmedabad North

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

M/s Swastik enterprise

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 धारा 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 ।



Cont...2

(b) In case of rebate or 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



- (ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016.
- (b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.
- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फीस भेजनी होगी । फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी ।
- 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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-
- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिये फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायिकरण को एक अपील या केंद्रीय 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 १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये ।
- 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 सम्बंधित मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायिकरण (कार्यावधि) नियम, १९८२ में निहित है ।
- (6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



-4-

ORDER IN APPEAL

The subject appeal is filed by M/s. Swastik Enterprise, Plot No.1304,Kerala GIDC,Bavla,Dist-Ahmedabad (hereinafter referred to as '*the appellant*') against the Order in Original No. 28/Ref/IV/17-18 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, Central Excise, Division-V, Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*'). Are engaged in the manufacture of Copper Bonded Grounding Rod falling under Chapter 72 of the Central Excise Tariff Act, 1985:

2. The facts in brief of the case are ,the appellant had filed two refund claims under rule 5 of CCR 2004,for Rs.168331/-and Rs. 213991/- for the refund of cenvat credit suffered on exported goods, through merchant exporter, and also filed required documents. However, Copies of relevant bill of lading, Original ARE-1 , Shipping bill, Disclaimer Certi. etc. not filed with the claims. That, they had not fulfilled the conditions of Rule 5 Of Cenvat Credit Rules, 2004. Two Show Cause Notices were issued. Vide OIO no. 22 & 23/Ref/15-16 dated 29/03/2016, the adjudicating authority had rejected both the refund daims. Being aggrieved with the orders, the appellant had filed the appeal before the Commissioner (Appeals). vide OIA NO.AHM-EXCUS-002-APP-46-47-17-18 dated 28.08.2017 upheld the Order-in-Originals and rejected the appeals filed by the appellant.

3. Again, the appellant on 22,12.2017 filed refund claim for the said amount which were reversed by them while filing the original refund application under Rule 5 of Cenvat Credit Rules, 2004. under the provisions of Notification No. 27/2012 CE(NT) dated 18.06.2012 and as per the conditions specified at para 2(h) therein, at the time of filing both the above refund claims, they had debited the said cenvat credit vide Entry No.64 & No, 65 dated 10.10.2015, and the same was also shown in the application for refund. Further, they have mentioned that as per condition at para 2(i) of the Notification No. 27/2012 CE(NT) ,they were entitled to take credit in their cenvat credit register, since the refund was not sanctioned. However, they had preferred an appeal against the Orders-in-Original ,Accordingly, they had not taken the credit. Further, their appeal was decided by the Commissioner (A) on 28.08.2017, whereby appeal was rejected.They have stated that they are entitled to take re credit of the amount not sanctioned ,but due to the fact that the Order-in-Appeal passed after introduction of GST regime, they are unable to take re credit and hence they have applied for refund under Section 142(3) of the CGST Act, 2017. Show cause notice dated 15.03.2018 was issued proposing rejection of refund claim. Vide above order the adjudicating authority had rejected both the refund claim.

4. Being aggrieved by the impugned orders, the appellant filed present appeals on the following main grounds:

i. They have reproduced Section 174(2)(e) of the CGST Act, 2017 and submitted that the said Act clearly indicates that the rights accrued under the repealed Act and in their case they had filed a refund claim under Rule 5 of CCR, 2004. Condition 2(1) of the Notification No.27/2012-CE(NT) specified that if the amount of refund sanctioned was less than the amount debited, the difference was to be taken as credit in the cenvat credit account.



ii. That the said condition clearly indicates that they were entitled to take the credit of the rejected amount in their cenvat credit register and it was only because of the fact that they had filed an appeal that they had not taken the cenvat credit. Subsequently, they have become eligible to take the credit in their cenvat credit account only after the finalization of the appeal and since the OIA was issued after 1.7.2017, the Central Excise Act was repealed and as such we were not in a position to take the Cenvat credit in their Cenvat credit account.

iii. that it was not the case of the department that the cenvat credit was not admissible; they could have taken the credit of Rs.1,68,331/- and Rs.2,13,999/- on 29.03.2016 itself; that in this case, the balance would have been carried forward and they would have been in a position to carry forward the same as Input Tax Credit in terms of the provisions of Section 140 (1) of the CGST Act, 2017. that they had filed an appeal, they were not in a position to take the credit of the same.

iv. that they were prevented in taking credit because Of the repeal of the Central Excise Act; however, the right of taking credit is not lost in terms of the provisions of Section 174(2) (c) of the CGST Act, thus, the proposal for lapsing the credit is not legal and sustainable in the eyes of the law.

5. Personal hearing in the matter was held on 26.06.2018 wherein Shri Archit Kotwal, Consultant appeared for the appellant. He submitted that after GST they cannot take credit. Plea to Allow refund under Section 142(3) /Section 174(2)(c) of the CGST Act, 2017.

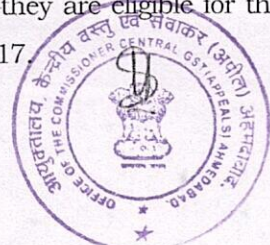
6. I have gone through the refund claim filed by the claimant alongwith documents filed by them including, OIO, OIA. written submission filed by them as well as oral submission made by them during personal hearing. I find that the appellant have filed the refund claim in terms of provisions of Section 142(3) of the COST Act, 2017. which reads as under:

*3) Every claim for refund filed by any person before, on or after tbs appointed day. for refund of any amount of CENVAT credit, duty, tax. interest or any Other amount paid under the existing law, shall be (ffsposed 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 UB of the Central Excise Act, 1944 (1 of1944):*

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."

The show cause notice accused that since the refund claim filed by the appellant earlier under Rule 5 of Cenvat Credit Rules, 2004 and rejected by the adjudicating authority for non-fulfillment of conditions of the said Rules/Notification and also upheld by the Commissioner (Appeals), the proviso of Section 142(3) of CGST Act, 2017 will be applicable in the case, hence not eligible for refund. I find that the issue to be decided is whether they are eligible for the refund of the CENVAT credit under Section 142(3) of the CGST Act, 2017.



7. I have gone through the Section 142(3) of the CGST Act, 2017 under which the appellant has filed the present refund claim. I find that the said Section provides that every claim for refund filed by any person 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. I find that as per the said Section, if any amount accruing to any person shall be paid in cash. Further, as per proviso to the said Section "where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse".

8. In view of the above, I have to decide, whether the subject refund claim fulfills the provisions of Section 142 (3) of the CGST Act, 2017. I find that originally the appellant had filed refund claim as per Rule 5 of Cenvat Credit Rules, 2004 but the adjudicating authority held that they have not fulfilled the conditions and the procedure laid down in Notification No.27/2012 CE (NT) dated 18.06.2012 and they are not liable for refund.

9. I further find that the appeal filed by the appellant is rejected, and upheld the Order-in-Originals. Now, the appellant have relied upon the Section 174(2) (c) of the CGST Act, 2017 and contented that their right of taking credit is not lost. I have gone through the Section 174 of the CGST Act, 2017. I find that the said Section is the Repeal and saving Section under CGST Act. I find that as per subsection (1) of Section 174 of the CGST Act, 2017, among other Acts, Central Excise Act, 1944 And Central Excise Tariff Act, 1985 have been repealed. Further, subsection (2) provide Saving clause, which read as under:

(2) The repeal Of the said Acts and the amendment of the Finance Act, 1994 thereafter referred to as "such amendment" or "amended Act" as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything done or suffered thereunder; or

(s) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against Investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as due or may become due or any forfeiture or punishment incurred or indicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts: or

*(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, **interest, right,** privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture, or punishment may be levied or imposed as if these Acts had not been so amended or repealed;*



(f) affect any proceedings inducting that relating to an appeal, review or reference, instituted before on. or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed "

10. I find that Section 174(2) of CGST Act, 2017 provides remedial provisions in general, wherein proviso to Section 142(3) categorically says that,

"where any claim for refund of CBNVA T credit is fully or partially rejected, the amount so rejected shall lapse.

I find that in the present case, the original refund claims filed by the Appellant were rejected, and on appeal by the Appellant, the Commissioner (Appeals) also upheld the rejection of refund claims.. Therefore, I hold that the impugned order is correct and legal.

11. In view of the foregoing discussion and findings, I uphold the impugned order and disallow the appeal filed by the appellant.

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

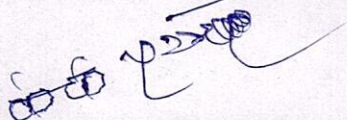
The appeal filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested



[K.K.Parmar)

Superintendent (Appeals)
Central tax, Ahmedabad.

By Regd. Post A. D

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Copy to :-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad-North.
3. The Asstt. Commissioner, CGST C.Ex. Div-V, Ahmedabad-North.
4. The Asstt. Commissioner (Systems), CGST C.Ex. Ahmedabad-North.
5. Guard file.
6. PA File.



