

आयुक्त का कार्यालय, (अपीलस) Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

दे ते फैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

6253+36258

- क फाइल संख्या (File No.) : V2(87)86 /North/Appeals/ 2018-19
- ख अपील आदेश संख्या (Order-In-Appeal No.): <u>AHM-EXCUS-002-APP-54-18-19</u> दिनांक (Date): <u>30-Aug-18</u> जारी करने की तारीख (Date of issue): <u>///9/2048</u> 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 जार्र			
	मूल आदेश सं	दिनांक	से सृजित	
	Arising out of Order-In-Original No 28/AC/D/BJM/2017-18 Dated: 31/01/2018			
	issued by: Assistant Commissioner-Central Excise (Div-III), Ahmedabad North			

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

M/s Tenneco 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 जिल्हा

Cont...2

- (b) In case or repate 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 भ्टान को) निर्यात किया गया माल है ।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (घ) अतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इ्यूटी क्रेडीट 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 रूपये या उससे कम हो तो रूपये 200/- फ़ीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000/- फ़ीस 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, केंद्रीय 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

#/a. i P (74] [.]:

उक्तिलखित 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, मेघाणी नगर, अहमदाबाद-380016.

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)

केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में (2) . निर्धारित किए अनुसार अपीलीय न्यधिकरण की गई अपील के विरूद्ध 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/- फ़ीस 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 सार्वजिनक 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/-

यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिय 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 नयाधिकरण 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 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.

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 (4) एक प्रति पर रुपए ६.५० पैसे का न्यायलय शुल्क टिकट लगा होना चाहिय । One copy of application or O.I.O. as the case may be; and the order of the adjournment authority shall beer a court fee stamp of Rs. 6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

इन ओर सम्बंधित मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एंव सेवाकर अपीलीय न्याधिकरण (कार्यावधि) (5) नियम, १९८२ में निहित है।

Attention in invited to the rules covering these and other related matter Attention in invited to the rules sovering and Appellate Tribunal (Procedure) contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) (6)

Rules, 1982.

ORDER-IN-APPEAL

This appeal has been filed by M/s Tenneco Automotive India Pvt Ltd. Plot No.WP.27, Phase II, Bol.GIDC Industries Area, Sanand, Ahmedabad [for short-appellant] against Order-in-Original No.28/AC/D/BJM/2017-18 dated 31.01.2018 [for short-impugned order] passed by the Assistant Commissioner of CGST, Division-III, Ahmedabad North [for short-adjudicating authority]

- Briefly state, the facts of the cases are that during the course of audit 2. of the records of the appellant, covering the period of 2014 to March 2016, it was noticed that the appellant had [i] wrongly availed CENVAT credit amounting to Rs.37,303/- on service tax paid on input service on the strength of invoices issued beyond one year from the date of taking credit; [ii] non -payment of service tax amounting to Rs.2,66,951/-on security services received by them under Reverse Charge Mechanism (RCM); [iii] non- payment of service tax amounting to Rs.54,539/- on Works Contract Services received by them under RCM; and [iv] non- payment of central excise duty amounting to Rs.4,28,194/- by not including the amortization cost tooling supplied by the buyer in the assessable value of final products. On pointed out the said issues, the appellant has reversed/paid CENVAT credit/Service Tax/central excise duty involved therein along interest applicable. However, show cause notice dated 01.11.2017 was issued to them for imposition of penalty under [i] Rule 15 of CENVAT Credit Rules, 2004 read with Section 11 AC of Central Excise Act, 1944; [ii] under Section 78 and 76 of Finance Act, 1994; and [iii] under Section 11 AC of CEA respectively. The adjudicating authority has imposed penalty equal to the CENVAT credit availed/Service Tax, Excise duty not paid.
- 3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:
 - Excise duty is always on the manufacturer of tools and department has collected the dues from such manufacturer of tools, hence again demanding duty from the appellant is unwarranted.
 - In the instant cases non of the acts were backed up with any ulterior motive or mala-fide intention to evade duty and therefore, imposition of penalties is incorrect and uncalled for based on settled position on the issue.
 - The relied on various case laws in favour of their argument.

- 4. A personal hearing in the matter was held on 29.08.2018. Shri Lalait Maheshwari, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He further requested for leniency in penalty.
- 5. I have carefully gone through the facts of the case and submissions made by the appellants.
- 6. At the outset, I observe that while auditing the records of the appellant, the audit officers have raised certain points viz.
 - [i] wrongly availment CENVAT credit amounting to Rs.37,303/- on service tax paid on input service on the strength of invoices issued beyond one year from the date of taking credit;
 - [ii] non -payment of service tax amounting to Rs.2,66,951/-on security services received by them under Reverse Charge Mechanism (RCM);
 - [iii] non- payment of service tax amounting to Rs.54,539/- on Works Contract Services received by them under RCM; and
 - [iv] non- payment of central excise duty amounting to Rs.4,28,194/-.

That though the appellant has paid the amount involved along with interest, the department has issued show cause notice for imposition of penalties under Cenvat Credit Rules/Central Excise Act/ Finance Act and accordingly, the adjudicating authority has imposed penalties. Therefore, the limited point to be decided in the instant appeal is only with respect of imposition of penalty only.

I observe that the adjudicating authority has imposed penalty equal to the CENVAT credit wrongly availed and Service Tax/Excise duty not paid as the case may be, which do not require any interference looking into facts of the case. I observe that at the time of audit of the records of the appellant and while taking the observation regarding wrong availment of CENVAT credit, non-payment of Service Tax/Excide duty, the appellant has not disputed to the said observations. On the contrary, by accepting such observations, they had paid/reversed the amount in dispute with applicable interest. In other words, if the records of the appellant were not audited by officers, the wrong availment of CENVT/ duty liability would have been escaped from assessment and also would be a definite loss to Government Revenue. Further, it is an undisputed fact that contravention of any of the provisions of statutes clearly attracts penal provisions. In the circumstances, I observe that the adjudicating authority has correctly invoked the penal provisions and imposed penalty accordingly. Therefore L do not interfere in the impugned order and upheld the same.

In view of above discussion, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

3412.W

उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date:

/ 08/2018

Attested

(Mohanan V.V) Superintendent, Central Tax (Appeals),

By R.P.A.D.

To M/s Tenneco Automotive India Pvt Ltd. Plot No.WP.27, Phase II, Bol.GIDC Industries Area, Sanand, Ahmedabad

Copy to:

- 1. The Chief Commissioner of C.G.S.T., Ahmedabad.
- 2. The Commissioner of C.G.S.T., Ahmedabad North.
- 3. The Additional Commissioner, C.G.S.T (System), Ahmedabad North.
- 4. The Additional Commissioner, CGST, Ahmedabad North.
- 5. The Assistant Commissioner, CGST, Dn III North
- 6. Guard File.

7. P.A.

