

# आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,



# कंद्रीय जीएसटी, अहमदाबाद आयुक्तालय Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

टेलेफैक्स: 079 - 26305136 : 079-26305065

# रजिस्टर डाक ए .डी .द्वारा

6288+06289

फाइल संख्या (File No.) : **V2(64)35 /North/Appeals/ 2018-19** क

अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-55-18-19 ग्व दिनांक (Date): 24-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 जार्र
	मुल आदेश सं दिनांक से सृजित
	Arising out of Order-In-Original No 01/AC/Dem/2017/RTP Dated: 29/11/2017
	issued by: Assistant Commissioner-Central Excise (Div-V), Ahmedabad North

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

## M/s Phenix Procon 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 पूनरीक्षण 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:

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

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।

- 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 भूटान को) निर्यात किया गया माल है ।
  - (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
  - (ध) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 अप्रीलीय 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 मागले 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



- (ख) उकित्लिखित 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 पिधम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी 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 प्रपन्न इ.ए.-3 में 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 रिजस्टार के नाम से रेखांकित वैंक 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 रूपए 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 लिय फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थित 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. In case of the aforesaid manner not withstanding the fact that the one should be paid in the aforesaid manner not withstanding the Central Govt. As 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 रूपए 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-litem of the court fee Act, 1975 as amended.
  - (5) इन ओर सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एंच सेवाकर अपीलीय न्याधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।

(6) Attention in invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

#### ORDER IN APPEAL

This appeal has been filed by M/s Phenix Procon Pvt. Ltd., 87/1, Dholka-Bagodara Road, Village-Gangad, Dholka-Bavla Road, Ahmedabad - 382470 (herein after referred to as the appellants) against the OIO No. 01/AC/2017/RTP dtd. 29.11.2017 (herein after referred to as the impugned order) passed by the Assistant Commissioner, Division-V, CGST, Ahmedabad North (herein after referred to as the adjudicating authority).

- 2. The brief facts of the case are that the appellants were issued show cause notice dtd. 28.11.2016 for wrongly availing 100% cenvat credit on capital goods instead 50% as specified in the rules during the Financial Year 2013-14 and had also availed cenvat credit amounting to Rs. 2,39,938/-on the strength of invoices which were not in the name of the appellants. The adjudicating authority, vide the impugned order, found that the appellants were not entitled for cenvat credit amounting to Rs. 2,39,938/- and interest was liable to be recovered on the on 50% of cenvat credit on capital goods which they had availed en excess of the eligibility. He also imposed penalties for the contraventions.
- 3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:
  - a) That the invoices were in the name of their shipping agents to whom they have paid the amounts and the credit was availed unde4r the bona fide belief that since the cost of shipping agents was borne by the appellants, the service tax paid by them is available as credit to them;
  - b) That accepting the mistake, they have paid the entire amount of demand of Rs. 2,39,938/- vide challan dtd. 20.11.2017 and since the amount demanded has been paid before the issue of show cause notice, penalty and interest should not be imposed upon them;
  - c) They rely on the case laws of CCE, Mangalore vs. Vishwanath Karkera 2006 (1) STR-282 (Tri.-Bang.), M/s Warna Industries vs. Commissioner of Central Excise, Pune 2006 (4) STR-535, M/s Shree Krishna Pipe Industries 2004 (165) ELT-508, Rashtriya Ispat Nigam Ltd. 2004 (163) ELT-A53 (SC), CCE vs. M/s Chelpark Co. Pvt. Ltd. 2007 (216) ELT-364 (Kar.) and many other citations;
- 4. The personal hearing in the case was held on 25.07.2018 in which Shri R. Subramanya, Advocate appeared on behalf of the appellants, He reiterated the grounds of appeal. He submitted that the full amount has

been paid during the Audit and therefore no interest and penalty should be imposed and 50% penalty is harsh and requested for lowering the penalty.

- 5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.
- 6. I find that there are two issues involved in the instant case. First is availment of 100% cenvat credit on capital goods in place of 50% allowable in the first year of receipt of capital goods and the other issue is of availment of cenvat credit on the invoices which are not in their name. The adjudicating authority has imposed the penalty and ordered recovery of interest. The appellants have contested that there was no malafide intention in wrong availment of cenvat credit and they had paid the entire amount of wrongly availed cenvat credit before the issuance of show cause notice.
- 7. I take up the first issue of availment of 100% cenvat credit on capital goods in place of 50% allowable in the first year of receipt of capital goods. I find that the appellants are not contesting the issue of confirmation of recovery of interest the issue of availment of 100% of cenvat credit on capital goods whereas they were entitled to 50% of cenvat credit. I therefore uphold the impugned order on this aspect regarding recovery of interest.
- 8. Now I take up the issue of availment of cenvat credit of Rs. 2,39,938/on the invoices which were not in their name and they are also not contesting this issue. I find that the appellants have submitted that they had paid the entire amount of cenvat credit wrongly availed i.e. Rs. 2,39,938/as per challan dtd. 21.11.2017 and have said that the amount was paid before the issuance of the show cause notice. On perusal, I find that the show cause notice is dtd. 28.11.2016 however the wrongly availed cenvat credit has been paid not before the issuance of show cause notice but before the issuance of the impugned order and considering the facts of the case, I find that lenient view can be taken and accordingly I set aside the penalty imposed upon the appellants. I also rely on the case of REAL PLASTICS Vs. COMMISSIONER OF CENTRAL EXCISE, DAMAN cited in 2009 (236) E.L.T. 121 (Tri. Ahmd.).
- 9. In view of the above findings, the impugned order stands modified and the appeal to that extant stands allowed.
- 10. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

3भाक्षेभ्य (उमा शंकर)

(उमा शकर) केंद्रीय कर आयुक्त (अपील्स) अहमदाबाद

दिनांक:

सत्यापित

र्धर्मेंद्र उपाध्याय) अधीक्षक (अपील्स), केंद्रीय कर, अहमदाबाद

### By R.P.A.D.

To:

M/s Phenix Procon Pvt. Ltd., 87/1, Dholka-Bagodara Road, Village-Gangad, Dholka-Bavla Road, Ahmedabad -382470

#### Copy to:-

(1) The Chief Commissioner, CGST, Ahmedabad Zone,

(2) The Commissioner, CGST, Ahmedabad (North),

(3) The Dy./Astt. Commissioner, CGST, Div.-V, Ahmedabad (North),

(4) The Dy./Astt. Commissioner(Systems), CGST, Ahmedabad (North),

(5) Guard File,

(6) P.A.File.

