



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
☎ : 079-26305065 टेलीफैक्स : 079 - 26305136

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रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.) : V2(94)95&103 /North/Appeals/ 2018-19
ख अपील आदेश संख्या (Order-In-Appeal No.) : AHM-EXCUS-002-APP-68-69-18-19
दिनांक (Date): 13-Sep-18 जारी करने की तारीख (Date of issue): 29/10/2018
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No 46&47/D/2009 Dated: 03/09/2009 & 04/09/2009
issued by: Assistant Commissioner-Central Excise (Div-IV), Ahmedabad -II

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

M/s Phenix Varco Pruden

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:

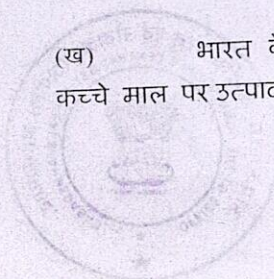
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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 प्रक्रिया 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।



(D) 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 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.

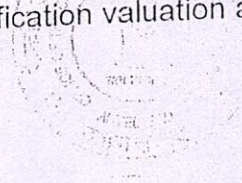
(२) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

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 । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/- फीस भेजनी होगी । जहाँ 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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है ।

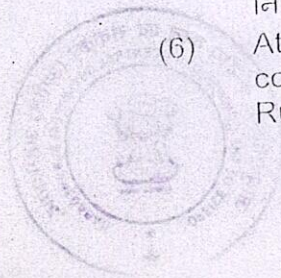
In case of the order covers a number of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising 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 मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (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.



ORDER IN APPEAL

Hon'ble CESTAT vide its order No. A/997/WZB/AHD/2010 dated 9.7.2010, while deciding the appeal against OIA No. 426-427/2009 dated 11.12.2009, filed by M/s. Phenix Varco Pruden (A division of M & B Engineering Limited), Plot No. 30P, Village Naranpura, Sanand, Ahmedabad [for short –'appellant'] held as follows :

"3. I find that Commissioner(Appeals) has disregarded the decisions of the Tribunal in this regard and he should have considered the claim of the appellants that in the absence of utilization of credit, interest was not payable and penalty was also not imposable. Under these circumstances it would be appropriate to remand the matter to the Commissioner(Appeals) who shall decide the issue after confirming that the appellants had not utilized the credit taken by them and after considering the decisions of the Tribunal cited by the appellant. All the issues are kept open and the matter is remanded to the Commissioner(Appeals) for a fresh decision. Needless to say appellants shall be given an opportunity to present their case before a final decision is taken."

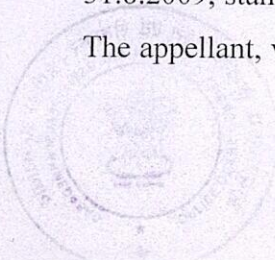
Both the appeals were placed in call book and are now retrieved, hence, the two appeals are being disposed of through this order. The appellant has provided copies of the registration certificate dated 7.8.2007 wherein the registration was in the name of M/s. Phenix Varco Pruden (A division of M & B Engineering Limited) and a copy of registration certificate dated 18.7.2011 wherein the registration was in the name of M/s. Phenix Construction Technologies(A division of M & B Engineering Limited). The registration number in both these certificates is AAACM7930QXM001.

2. Briefly, the facts are that a show cause notice dated 26.2.2009, was issued to the appellant *inter alia* alleging that the appellant had wrongly availed CENVAT credit of Rs. 25,992/- before taking registration i.e. prior to 7.8.2007. The notice therefore, demanded the CENVAT credit wrongly availed along with interest and further proposed penalty under rule 15(2) of the CENVAT Credit Rules, 2004, read with Section 11AC of the Central Excise Act, 1994. One more show cause notice dated 26.2.2009, was issued to the appellant *inter alia* alleging that they had wrongly availed CENVAT Credit of Rs. 18,052/-. This notice therefore demanded the CENVAT credit wrongly availed along with interest and penalty.

3. These notices were adjudicated vide OIO No. 46/D/2009 and 47/D/2009, both dated 31.8.2009, respectively, wherein the adjudicating authority confirmed demands along with interest and also imposed penalty. As the appellant had already reversed the CENVAT credit involved, it was adjusted against the confirmed demand.

4. Aggrieved, the appellant filed an appeal before the Commissioner(A), primarily challenging the demand of interest and imposition of penalty. The Commissioner(A) vide his OIA dated 11.12.2009, upheld both the OIOs dated 31.8.2009. An appeal was thereafter filed before the Hon'ble Tribunal, who vide its order dated 9.7.2010, remanded back the matter to the Commissioner(Appeals), as mentioned *supra*.

5. Since the appeals against OIO No. 46/D/2009 and 47/D/2009, both dated 31.8.2009, stands restored, I would like to briefly mention the grounds raised in the said appeals. The appellant, while informing that they had started the manufacturing activities in August 2007



further stated that they had an average balance in their CENVAT credit account which was more than the credit reversed during the period March 2008 to January 2009. The appellant has basically challenged the demand of interest, imposition of penalty and also questioned the invocation of extended period.

6. Personal hearing in respect of both the appeals was held on 2.9.2018, consequent to the case being removed from call book. Shri Vipul Khandhar, CA and Shri Mukund Thakkar, appeared on behalf of the appellant and reiterated the grounds of appeal. They further informed that they have already paid the interest and penalty. During the course of personal hearing they submitted an additional submission dated 12.9.2018, giving a brief facts of the case and their submission, which in the first para stated that they had paid the penalty of Rs. 25,992/- on 27.2.2013 vide challan no. 02005292702201300038 and penalty of Rs. 18,052/- vide challan no. 02005292702201300040 dated 27.2.2013. It was further informed vide second para that they had paid the interest demanded of Rs. 6,450/- in the month of August 2016 through PLA and as a proof they submitted the copies of the challan and the ER-1 return for the month of August 2016.

7. Since the appellant claims to have paid the entire interest and penalty demanded and confirmed vide the impugned OIOs dated 31.8.2009, it is forthcoming that they do not wish to contest the confirmation of interest and penalty. Even otherwise, the matter is no longer *res integra* having been settled by the Hon'ble Supreme Court in the case of M/s. Ind-Swift Laboratories Ltd. [2012 (25) STR 184 (SC)].

8. In view of the foregoing, the impugned OIOs are upheld and the appeals filed by the appellant are rejected.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date : 13.9.2018

Attested

(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,
M/s. Phenix Varco Pruden
(A division of M & B Engineering Limited),
Plot No. 30P,
Village Naranpura,
Sanand,
Ahmedabad



Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
3. The Assistant Commissioner, Central Tax Division-III(Sanand), Ahmedabad North Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
5. Guard File.
6. P.A.

