



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.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ : 079-26305065 टेलीफैक्स : 079 - 26305136

6741/706745

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.) : V2(87)96 /North/Appeals/ 2018-19
ख अपील आदेश संख्या (Order-In-Appeal No.) : AHM-EXCUS-002-APP-74-18-19
दिनांक (Date): 14-Sep-18 जारी करने की तारीख (Date of issue): 24/10/2018
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 जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No 04/Ref/II/18-19 Dated: 08/05/2018
issued by: Assistant Commissioner-Central Excise (Div-III), Ahmedabad North

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

M/s Honda Motorcycle and Scooter India

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।



(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 हैं 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



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक का शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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.5,000/- and 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 of crossed bank draft in favour of Asstt. Registrar of a 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.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथार्थिती अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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 Appellate 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 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिती निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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 संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

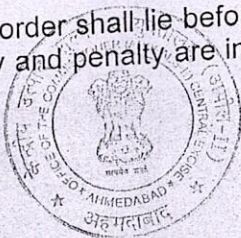
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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. Honda Motorcycle and Scooters India Pvt Ltd., Vithlapur, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-original No. 04/Ref/11/18-19 dated 08.05.2018 (henceforth, "impugned order") issued by the Assistant Commissioner, CGST, Division-III, Ahmedabad-North (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that the appellant, a manufacturer of motorcycles, filed refund claim of Rs.13,55,740/- on 21.02.2018 under Section 11B of Central Excise Act 1994 of CENVAT credit not carried forwarded under Tran-1 Form as per Section 140 of the CGST Act, 2017 read with Rule 117 of CGST Rules, 2017. Based on the closing balance of CENVAT credit available in ER-1 return of July 2017, the appellant filed Tran-1 for Rs.2,50,71,035/-. However said ER-1 return was revised on 31.07.2017 with closing balance of CENVAT Rs.2,64,26,775/- and hence the appellant filed refund claim for differential balance of CENVAT credit Rs. Rs.13,55,740/- which is not carried forwarded into GST. Said refund claim was rejected by the adjudicating authority holding that no enabling provision granting cash refund of closing balance of CENVAT credit are there under the Central Excise Act. It was also held that the appellant is not entitled for refund as Section 142(9)(b) and section 142(3) of CGST Act, 2017 is not applicable.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, the following:

- All conditions of Section 142(9)(b) of the CGST Act 2017 has been satisfied and therefore cash refund of credit is admissible to them.
- Credit rule is a beneficent piece of legislation and its provision should be interpreted in a manner to give full effect to its purpose.
- Cenvat credit validly availed represents an indefeasible right of the assessee.
- GST regime provides for utilization of only such input tax credit lying in electronic credit ledger
- With the advent of GST, Cenvat credit lying with an assessee became redundant and accordingly transitional provisions were made for transition of credit admissible under erstwhile regime.



- Credit attributable to such invoices was admissible to the appellant which was missed on account of inadvertent error.
- Denial of refund will lead to unjust enrichment of the Government and loss of credit to the appellant.
- Cited case law 2008(223)ELT A170(SC) and Lav Kush Textile v/s CCE 2017(353) ELT 417(Raj) on the issue of cash refund of unutilized credit on account of closure of factory.
- Denial of cash refund would result in cascading of taxes.
- The appellant missed availing credit in respect of said 20 invoices eligibility of which was not disputed by the authority. etc.,

4. In the Personal hearing held on 23.08.2018 Shri Naveen Kumar, Head-Taxation of the appellant firm reiterated the grounds of appeal and also stated that as per Section 142(9)(b) of CGST Act,2017 refund is entitled. TRAN-1 was not allowing amendment.

5. I have carefully gone through the appeal wherein refund of CENVAT Credit lying unutilized and not carried forwarded under GST is claimed. Basically the issue pertains to carried forward of Cenvat credit under GST regime for which submitting of declaration electronically in Form GST TRAN-1 was made mandatory under rule 117(1) of CGST Rules, 2017 which was filed by the appellant on 24.12.2017. I find that in order to rectify the mistake of not availing Cenvat credit on all eligible purchases, the appellant filed revised ER-1 returns adding up Cenvat credit of Rs.13,55,740/- against 20 invoices. Thenafter, in order to rectify another mistake of not accurately filing TRAN-1, filed refund claim in question. The following chronology of event clarifies the issue properly;

ER-1 for June 2017(C.B of CENVAT Rs. 2,50,71,035/-) filed on :10.07.2017

Revised ER-1(C.B of CENVAT Rs. 2,64,26,775/-) filed on: 31.07.2017

TRAN-1 Filed claiming Rs. 2,50,71,035/-) on: 24.12.2017

Refund Application for Rs.13,55,740/- filed on: 21.02.2018

5.2 It can be seen from the above that at the time of filing TRAN-1, the appellant grossly erred in mentioning the amount of Rs.2,64,26,775/- which was already available as closing balance under ER1 for June 2017. In spite of claiming Rs.2,64,26,775/- under TRAN-1,they preferred filing it for Rs. 2,50,71,035/- leaving Rs. 13,55,740/- unclaimed. In this regard, I find that rule 120A was inserted under CGST Rules,2017 vide Notification No.34/2017-CT dated 15.09.2017 to incorporate the following:



3. In the principal rules, after rule 120, the following rule shall be inserted, namely :-

“120A. Every registered person who has submitted a declaration electronically in **FORM GST TRAN-1** within the time period specified in rule 117, rule 118, rule 119 and rule 120 may **revise such declaration once** and submit the revised declaration in **FORM GST TRAN-1** electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.”

5.3 The appellant had sufficient time/opportunity to rectify said mistake by revising TRAN-1 rather than claiming cash refund with the department. Also, it would be relevant to mention here that the department has taken due care of genuine difficulties by setting up an IT Grievance Redressal Mechanism to address grievances of taxpayers due to technical glitches on GST portal. Details regarding procedure of grievance redressal mechanism is prescribed under circular No.39/13/2018-GST dated 03.04.2018 issued from F.No.267/7/2018-CX.8 by the Board which includes making of application alongwith evidences to establish bona fide attempt made by the taxpayer on the GSTN portal, etc. Para 8.2 of said circular is reproduced below for ease of reference;

8. Resolution of stuck TRAN-1s and filing of GSTR-3B

8.1 A large number of taxpayers could not complete the process of TRAN-1 filing either at the stage of original or revised filing as they could not digitally authenticate the TRAN-1s due to IT related glitches. As a result, a large number of such TRAN-1s are stuck in the system. GSTN shall identify such taxpayers who could not file TRAN-1 on the basis of electronic audit trail. It has been decided that all such taxpayers, who tried but were not able to complete TRAN-1 procedure (original or revised) of filing them **on or before 27-12-2017** due to IT-glitch, shall be provided the facility to complete TRAN-1 filing. It is clarified that the last date for filing of TRAN 1 is not being extended in general and only these identified taxpayers shall be allowed to complete the process of filing TRAN-1.

8.2 The taxpayer shall **not be allowed to amend the amount of credit in TRAN-1** during this process vis-à-vis the amount of credit which was recorded by the taxpayer in the TRAN-1, which could not be filed. If needed, GSTN may request field formations of Centre and State to collect additional document/data etc. or verify the same to identify taxpayers who should be allowed this procedure.

8.3 GSTN shall communicate directly with the taxpayers in this regard and submit a final report to GIC about the number of TRAN-1s filed and submitted through this process.

8.4 The taxpayers shall complete the process of filing of TRAN 1 stuck due to IT glitches, as discussed above, by 30th April 2018 and the process of completing filing of GSTR 3B which could not be filed for such TRAN 1 shall be completed by 31st May 2018.



5.4 In order to take relief, the appellant might have taken resource of the same. In case if the appellant has not taken up the issue with field/nodal officers who are entrusted with the work of dealing such issue involving technical glitch and forwarding applications to GSTN for its examination, the appellant grossly skipped the mechanism available for this purpose. Para 8.2 of the circular supra further clarifies that the taxpayer shall not be allowed to amend the amount of credit in TRAN-1 during this process vis-à-vis the amount of credit which was recorded by the taxpayer in the TRAN-1, which could not be filed.

6. The intention behind above referred provisions i.e. inserting rule 120A enabling the taxpayer to amend TRAN-1 **once** only and clarification under circular **not to amend the credit amount** were very significant in ensuring the taxpayer to be accurate while claiming Cenvat credit under transitional period. So far as the appellant has not utilized all the above remedial mechanism available to them, the claim of cash refund of credit does not hold ground.

7. The plea of the appellant that they missed **availing** credit in respect of said 20 invoices eligibility of which was not disputed by the authority, is not true as said credit was already accounted for as a result of which closing balance of Cenvat credit in revised return was enhanced by the assessee themselves and as such **availment** of credit has taken place. Further the case cited viz. 2008(223)ELT A170(SC) and Lav Kush Textile v/s CCE 2017(353) ELT 417(Raj) pertains unutilized credit on account of **closure of factory** which cannot be relied upon. I agree with the finding of the adjudicating authority holding that Section 11B of Central Excise Act, 1944 provides refund of duty or duty along with interest and no enabling provision for refund of closing balance of Cenvat credit can be allowed in cash. Also, looking to the fact that the appellant has not utilized all the remedial mechanism referred in para 5 available to them, the claim of cash refund of credit do not hold ground and cannot be entertained under the provisions of 142 (3) & 142(9)(b) of the CGST Act 2017.

8. In view of above, I uphold the impugned order and reject the appeal.



9. 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.

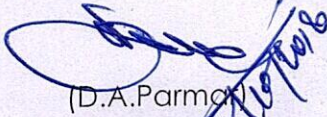
उमाशंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested



(D.A. Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s. M/s. Honda Motorcycle and Scooters India Pvt Ltd.,
T. Poddar Industrial Park, Vithlapur, Mandal, Ahmedabad

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad – North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad North.
4. The Asstt./Deputy Commissioner, CGST Division-VI, Ahmedabad - North.
5. Guard File.
6. P.A.

