



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
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क फाइल संख्या (File No.) : V2(76)202/North/Appeals/ 2018-19 / 10963 to 10968
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-25-19-20
दिनांक (Date): 23/05/2019 जारी करने की तारीख (Date of issue): 04/06/2019
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III (AR-II)), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No 05/SUPDT/NMP/AR-II/SANAND/18-19 Dated: 26/12/2018
issued by: Supdt Commissioner-Central Excise (Div-III (AR-II)), Ahmedabad North,

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

M/s M/s. Raviraj Foils 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



(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, 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 प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायधिकरण 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 लिए 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 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.



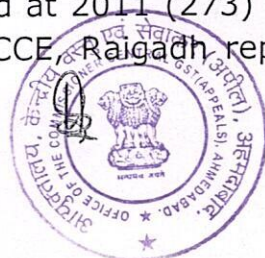
ORDER-IN-APPEAL

This appeal has been filed by M/s Raviraj Foils Ltd., Survey No.169, Chharodi Farm, Taluka- Sanand, Ahmedabad-382170 (Gujarat) (hereinafter referred to as "the appellant") against Order-in-Original NO. 5/SUPDT/NMP/AR-II/SANAND/18-19 dated 26.12.2018 (hereinafter referred to as the "impugned order") passed by the Superintendent of CGST & Central Excise, AR-II, Division-III, Ahmedabad (North) (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the appellant submitted that they had availed cenvat credit of service tax for installation, maintenance, repair, professional fees, insurance, certification charges in respect of wind mills used in generating electrical energy at wind mills located far away from their factory premises and was being sold to Gujarat Energy Transmission Corporation (GETCO); that they were availing input service credit on common input services used in manufacture of excisable goods at their factory plant as well as for the generation of Electricity Energy at wind mills located at different places; that since the electricity energy is an exempted excisable products and no excise duty paid thereon, they were required to pay 6% of the value of electricity energy sold, in terms of Rule (3) of Cenvat Credit Rules, 2004 for brevity "CCR"). Accordingly, show cause notice dated 12.04.2017 for recovery of amount of Rs. 4,50,029/- (for the period from 02.06.2015 to 28.03.2017 and show cause notice dtd. 15.09.2017 for recovery of amount of Rs. 1,73,589/- with interest and also proposed imposition of penalties under Rule 15 of CER read with Section 11 A of Central Excise Act, 1944. Vide impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty of Rs. 6,23,318/-.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that:-

- a) The adjudicating authority has not considered the submissions made before him and the case laws of various courts and tribunals have been ignored;
- b) The appellant has set up and installed three wind mills at the said location and started producing electricity and the units of electricity so generated were given to GETCO who transferred such electricity through State Government grid as per agreement with Uttar Gujarat Vij Company Ltd.;
- c) The said service is undisputedly received for the purpose of the appellant's factory where excisable goods are manufactured;
- d) They rely on the decisions of Hon'ble CESTAT Mumbai in case of M/s Endurance Tech Pvt Ltd. reported at 2011 (273) ELT-248 (Tri.-Mum.), Maharashtra Seamless Ltd. vs. CCE Raigadh reported at 2012 (276)



ELT-2009 (Tri.-Mum.) and CESTAT's Larger Bench, Ahmedabad in case of M/s Parry Engg. & Electronics Pvt Ltd reported at 2015 (40) STR-243 (Tri.-L.B.).

4. A personal hearing in the matter was held on 17.05.2019 in which Shri D.K. Trivedi, Advocate appeared and reiterated the grounds of appeal.

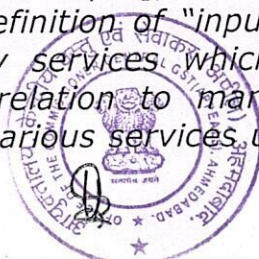
5. I have carefully gone through the facts of the case and submissions made by the appellant. The issue to be decided in the instant case is whether input service credit on Maintenance and Repair Service for maintenance and repair of Wind Mills located at different locations is admissible or otherwise.

6. I observe that as per amendment in the Cenvat Credit Rules, 2004 with effect from 01.04.2011, vide notification No.03/2011-CE (NT) dated 01.03.2011, capital goods includes the goods used outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory. As discussed in above, the undisputed facts revealed the appellant has installed Wind Mills at different location for generation of electricity which was being used by them in relation to their manufacturing activities. Therefore, nexus with manufacturing activities are unquestionable. In the circumstances, service availed for maintenance of repairs and work contracts service in respect of Wind Mills is very well covered in the definition of input service and credit availed by the appellant is legally correct. Further, I observe that the Hon'ble tribunal, Ahmedabad (Larger Bench) has decided a similar issue in case of M/s Parry Engg. & Electronics Pvt Ltd - 2015 (040) STR- 243 (L.B.). The relevant para is as under:

"6. The other issue is whether the assessee was entitled to avail Cenvat credit on the input services namely Management, Maintenance or Repair Service on Windmills installed by the manufacturer far away from the factory premises. The Hon'ble High Court observed as under :-

"5. On perusal of these Rules, it becomes clear that the management, maintenance and repair of windmills installed by the respondents is input service as defined by clause "I" of Rule 2, Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by manufacture of final product would be susceptible to Cenvat credit. Rule does not say that input service received by a manufacturer must be received at the factory premises. The judgments referred to above, also interpret the word "input" service in similar fashion.

In the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. [cited supra], the Division Bench of this Court held that the definition of "input service" is very wide and covers not only services which are directly or indirectly used in or in relation to manufacture of final product but also includes various services used in relation to



business of manufacture of final product. The expression "activities" in relation to business is also discussed in this judgment by referring to judgment of Apex Court.

In the case of Deepak Fertilizers & Petrochemicals Corporation Ltd. v. C.C.Ex. Belapur [Cited supra] the Division Bench held as under :

"The definition of the expression 'Input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(1) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(1) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex-facie contrary to 'the provisions contained in Rule 2(I). The first part of Rule 2(I) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(I) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(I). Rule 2(I) must be read in its entirety. The Tribunal has placed an Interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(I). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and service tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(I). The input services in the present case were used by the appellant whether directly or indirectly, in relation to the manufacture of final products. The appellant, it is undisputed, manufactures the dutiable final products and the storage and use of ammonia is an intrinsic part of that process."

I further find support from the case law of C.C.E. & Cus., Aurangabad Vs. Endurance Technology Pvt. Ltd. reported at 2017 (52) S.T.R. 361 (Bom.) in which it has been held and I reproduce the relevant part as under;

"5. On perusal of these Rules, it becomes clear that the management, maintenance and repair of windmills installed by the respondents is input service as defined by clause "I" of Rule



2. Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by manufacture of final final product would be susceptible to CENVAT credit. Rule does not say that input service received by a manufacturer must be received at the factory premises. The judgments referred to above, also interpret the word "input" service in similar fashion.

In the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. [cited supra], the Division Bench of this Court held that the definition of "input service" is very wide and covers not only services which are directly or indirectly used in or in relation to manufacture of final product but also includes various services used in relation to business of manufacture of final product. The expression "activities" in relation to business is also discussed in this judgment by referring to judgment of Apex Court."

7. In view of above, I am of the considered view that the appellant is eligible for Cenvat Credit on service tax paid on inputs service viz. Maintenance & Repairs Service and Work Contract Service in relation to Wind Mills. I therefore set aside the impugned order and allow the appeal.

8. The appeal filed by the appellant stands disposed of in above terms.

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

उमाशंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)
केंद्रीय कर, अहमदाबाद
दिनांक: . . 2019

सत्यापित

T. D. D.
(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद
To,

M/s Raviraj Foils Ltd.,
Survey No.169,
Chharodi Farm, Taluka- Sanand,
Ahmedabad-382170 (Gujarat)

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Commissioner, Central Tax, Ahmedabad (North),
3. The Asstt. Commissioner, System, Central Tax, Ahmedabad (North)
4. The Asstt. Commissioner, CGST, Division- III, Ahmedabad (North)
5. The Superintendent, CGST, AR-II, Division-III, Ahmedabad (North)
6. Guard File.
7. P.A.



