



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



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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क फाइल संख्या (File No.): **V2(84)14/North/Appeals/ 2019-20** / 22228 TO 22232
ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-79-19-20**
दिनांक (Date): **13/09/2019** जारी करने की तारीख (Date of issue): **20/09/2019**
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gopi Nath , 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 **23/AC/D/NKS/18-19** Dated: **25/02/2019**
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 Hanon Automotive Systems (I) 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।



Cont....2

(b) In case of rebate of duty of 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 हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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 (नं.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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) 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. का 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.

(2) 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 से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

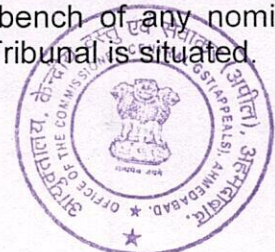
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हारस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

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 यथास्थिति 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 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 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति 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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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)

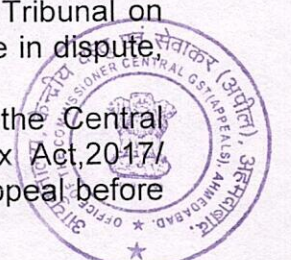
Under Central Excise and Service Tax, "Duty demanded" shall include:

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

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

M/s. Hanon Automative Systems India Pvt Ltd. (formerly known as M/s. Visteon Automative Systems Pvt Ltd.), Village-Keelakaranai, Malrosapuram, Chengalputtu, Chennai-603204 (henceforth, the *appellant*) has filed the present appeal against the Order-in-Original No.23/AC/D/NKS/18-19 dated 25.02.2019 (henceforth, "*impugned order*") passed by the Assistant Commissioner, Central GST & Central Excise, Division-III, Ahmedabad-North (henceforth, "*adjudicating authority*").

2. The facts of the case, in brief, are that based on investigation by DGGI that higher amount of cenvat credit has been passed on by the appellant on stock transfer, a show cause notice for reversal of CENVAT credit of inputs Rs.25,76,659/- availed during the period from December 2014 to June 2017 was issued to M/s. Hanon Automative Systems India Pvt Ltd. Plot No.AV-11, BOL Industrial Estate, GIDC, Sanand, Ahmedabad which was decided under impugned order disallowing said CENVAT credit. It was held by the adjudicating authority that CENVAT credit availed were excess and hence not admissible. Being supplier of said goods under the provisions of 'input removed as such', penalty under Rule 26(2) of the Central Excise Rules, 2002 was also imposed on the appellant.

3. Being aggrieved with the impugned order so far it relates to imposition of penalty, the appellant preferred this appeal contesting *inter alia* that they centrally procure inputs at Chennai unit (Hanon Chennai) by way of imports, avails cenvat credit on it, uses portion of it in manufacture and remaining inputs are cleared by them to Hanon Pune & Hanon Sanand unit based on their requirements; that for internal accounting purposes 'unit price' is fixed by them for every part and component, 'standard cost' which is a purchase order cost is fed into the system; that unit price of the product stock transferred by Hanon Chennai is auto calculated by the computer system using purchase order cost and standard cost which would vary from the actual price; that 'unit price' reflected in tax invoice does not match with actual cost of imported material; that identification of actual availed duty credit for a particular raw material is not possible due to reasons of time gap between import and need base transfer of material, fluctuation in foreign exchange etc, ; that amount of cenvat credit reversed at the time of stock transfer is not less than actual credit availed; that marginal excess payment of duty is only on account of practical difficulties as system was not able to make one to one co relation between bills of entry and tax invoice; that duty payment by Chennai unit is not under dispute; that show



cause notice issued by Ahmedabad-North Commissionerate is without jurisdiction and not maintainable.

3.1 It is further argued by the appellant that penalty under Rule 26(2) cannot be levied for the reasons that appellant has not raised invoices without delivery of goods, that duty on enhanced value was paid, that both the units are one and the same; that a person referred in rule 26(2) indicates a natural person which the company cannot be. They cited case law Steel Tubes of India v/s CCE (2007) 217 ELT 506 & Woodman Industries v/s CCE (2004) 154 ELT 339 affirmed by Supreme Court in 2004 170 ELT A307. They further stated that confirming of penalty under Rules 26(2)(ii) is travelling beyond the scope of show cause notice. They cited various case laws to support their claim.

4. In the personal hearing held on 20.08.2019, Shri T.A.Bhaskar, GM,Tax & Legal appeared on behalf of the appellant and reiterated the submissions of appeal memo and also submitted the compendium of cases referred in the grounds of appeal.

5. I have gone through the facts of the case, the grounds of appeal and the oral averments and submissions made by the appellant. The question to be decided in this appeal is whether the adjudicating authority was correct in imposing penalty under Rule 26(2) of the Central Excise Rules 2002 on the appellant who supplied the raw material following the provisions of 'input removed as such' and passed on cenvat credit. It is undisputed facts that the appellant unit at Chengalputtu, Chennai (Hanon Chennai) procured the goods i.e raw material in question by way of imports, availed cenvat credit of CVD in their account and removed the same to sister concern unit at Sanand, Ahmedabad on payment of marginally higher amount of central excise duty than that of availed by them. The impugned authority at Sanand, Ahmedabad confirmed the demand on Sanand unit who were the recipient of goods holding that credit passed on by Chennai unit were in excess/inadmissible and also imposed penalty under Rule 26(2) of the Central Excise Rules 2002 on the appellant who while supplying said input as such and passed on cenvat credit in excess. Before moving ahead, I reproduce below the provisions i.e. Rule 26(2) of the Central Excise Rules 2002 under which penalty has been imposed on the appellant:



RULE 26. Penalty for certain offences. — [(1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or [two thousand rupees], whichever is greater.

[**Provided** that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.]

[(2) Any person, who issues -

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which **the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004** or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.]

6. From plain reading of above provision 26(2)(ii), it is observed that any person who issues excise duty invoice/any other document on the basis of which the user of said **invoice or document is likely to take or has taken any ineligible benefit** under the Act or the rules made there under like **claiming of CENVAT credit under the CENVAT Credit Rules, 2004** or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater. Said sub-rule is applicable on the person who issues the invoice based on which recipient of such invoice claims ineligible cenvat credit. In the present case, it is stated by the appellant that marginal excess payment of duty occurred due to practical difficulties on account of software which was not able to make one to one co-relation between bills of entry and tax invoice. It shows that the appellant was aware that said version was not suitable/compatible with the provisions meant for. However, they continued with said software and hence bona fide of the appellant is not established. The actions of the appellant on the issue lead to hold that they intentionally mentioned duty amount in the invoice on higher side to facilitate the recipient to avail such inadmissible credit. I also observe that version of software, if any, has to be developed in harmony with the provisions/statutes for which it is developed and not the statutes to be interpreted in accordance with the software. Revenue loss, if any, occurs on account of faulty design of the software, can never be considered as minor or procedural lapse. The plea of the appellant regarding practical difficulties on account of software, thus do not qualify for its consideration. Furthermore, in order to overcome with the situation related to the software and to follow the provisions in its spirit, the appellant was at his liberty to mention in the invoice, the admissible amount of duty separately along with actual duty debited by them, which would have



had facilitate the recipient of goods in availing only admissible amount of cenvat credit. By not mentioning such admissible amount of duty in invoice, the appellant facilitate in availment of higher cenvat credit to the recipient of goods.

7. It is further contested by the appellant that show cause notice issued by Ahmedabad-North Commissionerate to the appellant in Tamilnadu is not maintainable. In view of the fact that the investigation was conducted and show cause notice was issued by Directorate General of Goods & Service Tax Intelligence having jurisdiction of the assessee registered with one or multiple Commissionerate, said plea of the appellant is not acceptable. I observe from the above that the offence is of the nature mentioned in 26(2)(ii) of the Central Excise Rules 2002, and hence penalty has rightly been imposed on the appellant. It is also contested that a person referred in rule 26(2) indicates a natural person and not the company and hence penalty is not justifiable. In this regard I find that proviso at sub section 2(ii) of Rule 26 of Central Excise Rules, 2002 specifically provides for imposition of penalty on any person **who issues excise duty invoice/any other document** on the basis of which the user of said **invoice or document is likely to take or has taken any ineligible benefit** under the Act or the rules made there under like **claiming of CENVAT credit under the CENVAT Credit Rules, 2004** or refund. The case law cited by the appellant i.e. Steel Tubes of India v/s CCE (2007) 217 ELT 506 & Woodman Industries v/s CCE (2004) 154 ELT 339 etc. does not address the issue of passing on of excess credit and hence ratio of the same cannot be made applicable to the present case.

8. In view of the above observations, I reject the appeal filed by the appellant.

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.

(Gopi Nath)

Commissioner,CGST (Appeals)

Date:



Attested

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

By R.P.A.D.

To,

M/s. Hanon Automative Systems India Pvt Ltd. (Formerly known as M/s. Visteon Automative Systems Pvt Ltd.), Noticee No. 2, Keelakarani Village, Malrosapuram, Chengelpet, Chennai-603204.

Copy to:

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

