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(84)13/North/Appeals/ 2019-20** /12223 To 12227

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-80-19-20**

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 पूवोक्त 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

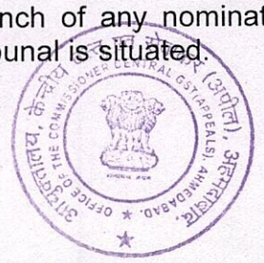
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 हास्पिटल 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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.),Plot No.AV-11, BOL Industrial Estate,GIDC,Sanand-II,Sanand,Ahmedabad-382110(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, 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 on the basis of the goods received from another manufacturing unit of the appellant on stock transfer basis was issued to the appellant 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.

3. Aggrieved, the appellant preferred this appeal contesting inter *alia* that their unit at Chennai (Hanon Chennai) centrally procures inputs by way of import under bill of entries, avails CENVAT credit, uses some portion of it in manufacture and clears remaining inputs as such to the appellants premise at Sanand and Pune; that the adjudicating authority failed to appreciate that unit price were fixed by them for every parts, standard cost is fed into system, exchange rate are normally updated only once in the system, unit price of the product of stock transferred by Hanon Chennai is auto calculated by the computer, due time gap between import and clearance identification of actual credit availed for particular raw material is not possible etc.; that due to voluminous stock transfers it would not be practically possible to trace the original consignment when stock is transferred and to find out the corresponding exact amount of cenvat credit of CVD & SAD taken; that amount of cenvat credit reversed were not less than availed at the time of imports; that marginal excess payment of duty by Hanon Chennai for transfer of imported goods were only on account of practical difficulties as system was not able to make one to one correlation between the bill of entries and the tax invoice; that there is no revenue loss to the government and there is no objective to pass on any credit without input; that as provided under Rule10A of the Cenvat Credit Rules,2004, excess SAD of one unit can be transferred to

another unit of same manufacturer and hence there is no violation in the system based valuation adopted by the appellant; that there can be violation of rule 3(5) of Cenvat Credit Rules when there is no reversal of cenvat credit on removal of inputs which is not the case here ; they cited various case laws in support of their claim. It is further contested by the appellant that the show cause notice is partially barred by the period of limitation; that penalty cannot be imposed as credit has been availed rightly.

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 carefully gone through the appeal wherein the issue of eligibility of CENVAT credit of inputs received by the appellant from their another manufacturing unit on stock transfer basis is involved. The Chennai unit of the appellant firm has imported the goods in question and subsequently removed 'as such' to the manufacturing premise of the appellant situated at Sanand. It is an undisputed fact that the duty paid and passed on by the supplier unit were higher than which were availed at the time of import. Removal of inputs and capital goods "as such" is governed by rule 3(5) of Cenvat Credit Rules, 2004, which is reproduced below;

> (5) When inputs or capital goods, on which **CENVAT credit has been taken**, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, **shall pay an amount equal to the credit availed** in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:
>
> **Provided** that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service :

5.1 Plain reading of above provisions make it clear that the manufacturer or provider of output service clearing the input or capital goods as such shall be liable to pay an amount equal to the credit availed on such input or capital goods and such movement of goods should be under the cover of an invoice. The provision not only makes it mandatory on supplier unit to pay duty but makes clarification too that duty equal to the credit availed at the time of its receipt has to be paid, leaving no scope on the quantum of duty to be paid thereof. Once the quantum/limit to which extent duty needs to be paid on such removal has

been prescribed under the provisions, there appears no room for the supplier to deviate from it. I observe that in spite of such clarity in the provisions itself, the supplier in the instant case, preferred to pay duty on higher value of the input which ultimately resulted availment of cenvat credit by the recipient of input on higher side. Since, the Cenvat Credit Rules,2004, nowhere makes restrictions or intervenes on the issue of determining value/rate of the input removed as such, the supplier are at liberty to charge value higher or lesser than the rate it was procured. Rule 3(5) of Cenvat Credit Rules, 2004, specifies on the quantum of duty to be paid while removal of input as such. Thus the whole intention of the provision is to control the portion of cenvat credit to be passed on while removal of inputs before use. In order not to deviate from said provision, the manufacturer/service provider who procured the input and removes it without taking into use may charge its unit price without changing the duty portion involved. I observe that at the time of removal of input as such by manufacturer or service provider, the duty portion attributable to such input if changed either downward or upward, the provision meant for it i.e. rule 3(5) of Cenvat Credit Rules, 2004, are not adhered to. The appellant has inter alia argued that marginal excess payment of duty by Hanon Chennai for transfer of imported goods were only on account of practical difficulties as system was not able to make one to one correlation between the bill of entries and the tax invoice. In this regard I observe that once raw material has been procured in the factory and cenvat credit of the same has been availed and after that if the manufacturer decides for removal of such raw material/input without use in factory, it becomes an obligation on the manufacturer to strictly follow the provisions meant for that purpose i.e. removal of input as such. Practical difficulties related to system etc should not come into the way.

6. It is also pleaded that no revenue loss to the government has occurred and there is no objective to pass on any credit without input, exchange rate are not updated by them etc,. Said arguments are not acceptable as the recipient unit in such a case gets higher amount of cenvat credit than available as per the provisions. It is further argued that unit price was fixed by them for every parts, standard cost is fed into system, exchange rate are normally updated only once in the system, unit price of the product of stock transferred by Hanon Chennai is auto calculated by the computer, due time gap between import and clearance identification of actual credit availed for particular raw material is not possible, due to voluminous stock transfers it would not be

practically possible to trace the original consignment when stock is transferred and to find out the corresponding exact amount of cenvat credit of CVD & SAD taken. These all reasons cannot dilute the provisions meant for. In order to follow the provisions in its spirit, it was expected from the manufacturer to find out solution of such practical difficulties if any by suitably modifying the system/software itself before availing the benefit of such facility of removal of input as such. It is argued by the appellant that Rule10A of the Cenvat Credit Rules, 2004 allows excess SAD of one unit to be transferred to another unit of same manufacturer. Said rule is represented below for ease of reference:

> **RULE [10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act.** — (1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), **may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises** by—
>
> (i) making an entry for such transfer in the documents maintained under rule 9;
>
> (ii)issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),
>
> and such recipient premises may take CENVAT credit on the basis of the transfer challan :
>
> **Provided** that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely :-
>
> (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];
> (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];
> (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];
>
> (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
>
> (v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];
>
> (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];
>
> (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003];
>
> (viii) No. 20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307(E), dated the 25th April, 2007]; and
>
> (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010].

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.]

6.1 Above provision allows transfer of SAD lying in balance at one unit of a manufacturers having same PAN number to another unit of same manufacturer with some conditions in respect of issuance of challans, filling of returns, quarterly transfer of credit etc, and hence the same cannot be compared with the provisions meant for 'removal of input as such' i.e. rule 3(5) of Cenvat Credit Rules, 2004. Rule10A supra, also nowhere allows **passing of SAD higher than the credit availed**. Said plea of the appellant is also without the leg to stand. Various case laws cited by the appellant are on different footings and not relevant to the back ground of the case on hand, to which I do not rely. The appeal hence deserves no merit and is liable for rejection.

7. It is further contested by the appellant that the show cause notice is partially barred by the period of limitation. In this regard I find that the fact of excess passing of cenvat credit was unearthed during investigation by DGGSTI, Pune unit without which the fact of higher availment of cenvat credit by Hanoon Sanand would not have come to light. In a system of self assessment, it is the responsibility of tax payer to voluntarily make disclosure of information to which the appellant has not fulfilled. By the act of willful omission of such information of availing cenvat credit which were not existing and utilizing the same in fraudulent manner, Hanoon Sanand have deliberately suppressed the facts and willfully mis-stated the facts with an intention to evade payment of Central Excise duty. Therefore I find that extended period of limitation as provided under section 11A(4) of the Central Excise Act, 1944 is invokable in the present case. It was also well within the knowledge of the appellant as well as the supplier of the input i.e Hanoon Chennai that the mechanism developed by them are not compatible with the provisions meant for it. Being fully aware of this, the appellant, in order to gain unlawful cenvat credit, deliberately availed inadmissible cenvat credit in contravention of the law to. Therefore, penalty under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules,2004 is justified.

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.

9/9/19

(Gopi Nath)
Commissioner (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.),Plot No.AV-11, BOL Industrial Estate,GIDC,Sanand-II,Sanand,Ahmedabad-382110.

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-III, Ahmedabad - North.
5. Guard File.
6. P.A. File