



# 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(85)9/North/Appeals/ 2019-20 /12923 To 12927

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-92-19-20

दिनांक (Date): 24/10/2019 जारी करने की तारीख (Date of issue): 07/11/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Gopi Nath , 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 11/DC/D/2018/AKJ Dated: 12/03/2019

issued by: Deputy Commissioner-Central Excise (Div-IV), Ahmedabad North,

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

**M/s Transformers & Rectifiers (India) 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 मैनटल हॉस्पिटल कम्पाउण्ड, मेघानी 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 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 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. Transformers & Rectifiers (India) Ltd.,344 to 350,Sarkhej-Bavla Highway, Changodar,Dist-Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.11/DC/D/2018-19/AKJ dated 12.03.2019(henceforth,"impugned order") passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North(henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that based on audit by CERA of the record of sister concern unit at Moraiya of the appellant who issued invoices transferring SAD, a show cause notice for recovery of CENVAT credit 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 of SAD which were availed by the appellant was transferred pre-maturely from unit located at Moraiya in contravention of Rule 10A and Rule 4 of Cenvat Credit Rules, 2004 and hence not admissible.

3. Aggrieved, the appellant preferred this appeal contesting *inter alia* that Moraiya unit of the appellant had paid interest on the issue of premature transfer of SAD; this is not a case of transfer of inadmissible CENVAT credit but only case of early transfer; that at the time of transfer, physical balance was available with Moraiya unit who has transferred it; that in both the incidence, 4% SAD has been transferred early by two months; that demand beyond normal limitation is time bared. Etc.,

4. In the personal hearing held on 13.09.2019, Shri Mukesh pandya, Jr. Officer reiterated the grounds of appeal and requested to allow the appeal.

5. I have carefully gone through the appeal wherein the issue of eligibility of CENVAT credit of 4% SAD transferred under the provisions of Rule 10A of Cenvat Credit Rules, 2004 is involved on account of its premature transfer. Rule 10A of Cenvat Credit Rules, 2004 allows transfer of CENVAT credit of Additional duty of Customs (SAD) to another unit registered with same PAN. The same is reproduced 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.]

5.1 As provided under above provision, a manufacturer having more than one registered premises obtained registration based on single PAN, 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. I find that CENVAT credit of SAD availed by the appellant firm were transferred by their Moraiya unit on two occasions i.e. on 31.10.2013 and 31.07.2014 and hence it was held by the impugned authority that





said transfer which took place pre-maturely i.e. before the end of quarters is wrongly availed and not admissible. The appellant has also clarified that in both the incidences, credit has been transferred in advance by two months. Thus, the crux of the issue is whether such pre-mature transfer of credit of SAD which ultimately resulted in early/pre-mature availment of credit by the appellant is lawful or not. The adjudicating authority has observed that the appellant has NIL closing balance at the end of November 2013 and July 2014 and hence the credit has been wrongly utilized too. The impugned order further observes that cenvat credit has been taken and utilized wrongly and hence the same is recoverable in term of Rule 14(1)(ii) of Cenvat Credit Rules,2004. On the other hand, it is contented by the appellant that this is a case of early transfer of credit only for which interest has already been paid by the transferee unit, hence the issue is settled at rest.

6. I observe that Rule 10A of Cenvat Credit Rules, 2004 allows transfer of CENVAT credit of Additional duty of Customs to another unit of manufacturer registered with same PAN. In order to extend the scope of utilization of cenvat credit in genuine cases, the provision appears to have been adopted keeping full faith on manufacturers who use it. The use of the provision has however been restricted only for the manufacturers 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. I observe that the use of the facility available under this provision is purely at liberty of the manufacturers and one may refrain from using the said mechanism if wishes so. Looking to the factors like inventory of imported goods, production capacity at each unit, structure of duty liability etc., factors, manufacturer may opt for the same or may not take help of said provision. However, once, it has been decided to transfer credit of SAD accumulated in the account of one unit to another of same manufacturer in term of this provision, It becomes an obligation of transferee as well as recipient unit to comply with the all conditions of said provision with complete genuineness. I find from impugned order that the appellant unit received and used credit of SAD Rs.15,89,298/- in November 2013 keeping NIL closing balance in the month end. In another incidence, they received and used credit of SAD Rs.19,07,442/- in July,2014 keeping NIL closing balance in the month end. Thus credit so availed has been utilized immediately. Therefore, it can be safely presumed that the appellant might have had deposited duty in cash





during said months if no transfer of said credit has happened. This shows that the transactions were not genuine one. It is also not understandable as to why only these two transactions of such pre-mature transfer of SAD occurred with regularity in other occasions. On this count only, transactions do not qualify as genuine. In view of these facts, I observe that in both the occasions, the appellant indulged in availing and utilizing improper/inadmissible credit, probably with pre-determined mind that on pointing out by the department, the issue may be resolved by interest only. I observe that these types of approach may lead to misuse of such provisions and cannot be allowed, more particularly when the same is pre-arranged like case on hand.

7. It would be now appropriate to produce below the provisions of Rule 14(1) (ii) of Cenvat Credit Rules, 2004 under which the CENVAT credit has been disallowed:

**[RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded.** — (1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply *mutatis mutandis* for effecting such recoveries;

(ii) Where the CENVAT credit has been **taken and utilised wrongly** or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

7.1 Above sub-rule (ii) empower recovery of CENVAT credit along with interest which has been **taken and utilized** wrongly. Looking to the chronology of the transactions no one can deny that the transfer of the credit was not available to the appellant on the dates on which it stands transferred. The issue could have been justified with appropriate interest only if credit so availed were kept unutilized by the appellant till end of quarters. Above provision, which is meant for recovery of wrongly taken CENVAT credit, has lefts no room for the lower authority but to hold it recoverable. I therefore, I agree with the finding of the adjudicating authority disallowing CENVAT credit under above mentioned provision. In view of above unambiguous provisions of recovery of CENVAT credit which has been taken and utilized wrongly, the argument of the appellant that Moraiya unit of the appellant had paid interest on pre-mature transfer of SAD hence the issue is settled at rest; that physical



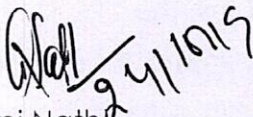


balance was available with Moraiya unit who has transferred it etc do not deserve merit. The appeal hence deserves no merit and is liable for rejection.

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।

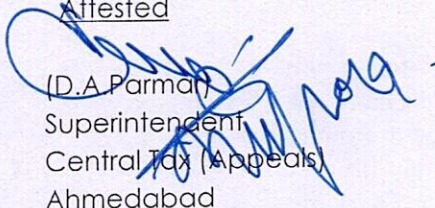
The appeal filed by the appellant stands disposed of in above terms.

  
(Gopi Nath)

Commissioner,CGST (Appeals)  
Date:



Attested

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

By R.P.A.D.

To,  
M/s. Transformers & Rectifiers (India) Ltd.,  
344 to 350,Sarkhej-Bavla Highway,  
Opp:PWD Store, Changodar,Dist-Ahmedabad-382213.

Copy to:

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