



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
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DIN-20201264SW000000DCB1

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(84)1/Ahd-North/2020-21 & File No : V2(84)85/Ahd-II/14-15
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-038/2020-21
दिनांक Date : 15.12.2020 जारी करने की तारीख Date of Issue : 29.12.2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
ग Arising out of Order-in-Original No. MP/01/Dem/AC/14/NJ दिनांक: 28.07.2014, passed by
Assistant/Deputy Commissioner, (erstwhile Central Excise, Division-II) Central GST & Central
Excise, Ahmedabad-North and also Hon'ble CESTAT, Ahmedabad's Final Order No.
A/13752/2017 dated 10.11.2017 passed against OIA No. AHM-EXCUS-002-APP-199-14-15
dated 10.03.2015 passed by Commr.(Appeals-II), C.Ex. Ahmedabad.
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Appellant-M/s Lubi Submersible LLP (earlier known as M/s Lubi Industries Ltd.), Near
Kalyan Mills, Naroda Road, Ahmedabad-380025
Respondent- Assistant/Deputy Commissioner, (erstwhile Central Excise, Division-II), AR-II,
Div.-II (Naroda Raod) Central GST & Central Excise, Ahmedabad-North

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 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को
उप-धारा के प्रथम परन्तुक 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।
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या
किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी
कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।
(ii) 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
warehouse or in storage whether in a factory or in a warehouse.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद - 380004.

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 यथारिथिति 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 यथारिथिति 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।

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

This order arises out of Hon'ble CESTAT, Ahmedabad's Final Order No.A/13752/2017 dated 10.11.2017 passed against Order-in-Appeal No. AHM-EXCUS-002-APP-199-14-15 dated 10.03.2015 passed by the Commissioner (Appeals -II), Central Excise, Ahmedabad in the case of M/s Lubi Submersible LLP, (earlier known as M/s. Lubi Submersibles Ltd., Near Kalyan Mills, Naroda Road, Ahmedabad 380 025.

2. Facts of the case, in brief, are that the appellant are engaged in the manufacture of PD Submersible Pumps & parts, Submersible Electric Motors & parts falling under Chapter Heading 84137010, 84139120, 85015210 and 85030090 etc of the erstwhile Central Excise Tariff Act, 1985. It was having Central Excise Registration No AAEFL7190CEM004. During the course of scrutiny of records of the appellant by the departmental Audit for the period from February-2011 to June-2012, it was observed that the appellant had availed Cenvat Credit of Service Tax paid on Construction Service which was inadmissible as the Construction Service was not falling under the definition of input service w.e.f 01.04.2011 as defined under Rule 2(I) of the Cenvat Credit Rules, 2004. The audit officer quantified the inadmissible CENVAT credit at Rs. 46,867/- for the period April-2011 to June-2013. Based on audit observation, Show Cause Notice dated 03.03.2014 was issued to the appellant for recovery of wrongly taken and availed Cenvat Credit under the provision of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act,1944 alongwith Interest under Section 11AA of the Central Excise Act,1944. Penalty was also proposed to be imposed under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC (1)(b) of the Central Excise Act, 1944 .

2.1 The Assistant Commissioner, Central Excise, Division-II, Ahmedabad-II Commissionerate (hereinafter referred to as the ("*adjudicating authority*"), vide Order-In-Original No. MP/01/Dem/AC/14/NJ dated 28.07.2014 (*hereinafter referred to as "impugned order"*), has confirmed the demand amounting to Rs. 46,867/- against wrongly availed Cenvat Credit on Construction Service under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A (5) of the Central Excise Act, 1944 along with interest and order for appropriation of amount of Rs. 46,867/- already paid. He



also imposed penalty of Rs. 23,435/- under the provisions of under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 .

2.2 Aggrieved with the impugned order, the appellant had filed an appeal before the Commissioner (Appeals), Central Excise, Ahmedabad. The said appeal was decided, vide Order-in-Appeal No. AHM-EXCUS-002-APP-199-14-15 dated 10.03.2015 wherein the Commissioner (Appeals) has upheld the impugned order and rejected the appeal filed by the appellant.

2.3 The order of Commissioner (Appeals) was challenged by the appellant before the Hon'ble CESTAT, Ahmedabad who vide Final Order No.A/13752/2017 dated 10.11.2017, to ascertain the facts that the service was received by the appellant from the contractor relates to repair i.e modification work of NSD roof sheeting in the factory, has remanded to the Commissioner (Appeals) to adduce evidence, which the appellant did not place before him. The, relevant text of Hon'ble CESTAT, Ahmedabad order dated 10.11.2017 is reproduced below:

3. *Ld. Counsel for the Appellant submits that the service received by them from the contractor relates to repair i.e modification work of NSD roof sheeting in the factory. It is his contention that since the said work is repair and maintenance work of the factory would fall within the inclusive clause of the definition of 'input service', hence, the credit availed on the service tax paid on such service cannot be denied.*

4. *Ld. A.R. for the Revenue submits that even though the Ld. Commissioner (Appeals) has accepted the contention that the repair and maintenance work fall within the inclusive clause of the definition of 'input service', however, due to lack of evidence, the contention of the Appellant was not accepted.*

5. *I find that this Tribunal after analyzing the definition of 'input service' with effect from 01.04.2011 observed in the case of M/s Ion Exchange (I) Ltd vs. C.C.E., Surat-II vide Order No. A/13513/2017 dated 08.11.2017 that renovation, modernization or repair and maintenance work within the factory premises, is admissible to credit. Thus, in principle though the credit is admissible on repair and maintenance work, as claimed by the Appellant, however, to ascertain the said fact, the matter is remanded to the Ld. Commissioner (Appeals) to adduce evidence, which they did not place before*



him. The Appeal is allowed by way of remand to the Ld. Commissioner (Appeals).

4.1 Personal Hearing in the matter was held on 24.11.2020 through virtual mode. Shri Jayendra R Shah, GST/Excise Executive of the appellant appeared for hearing. He stated that in similar issue, the Hon'ble Tribunal has allowed the appeal in their favour in respect of their sister concern.

4.2. The appellant also submitted further written submission vide letter dated 24.11.2020 wherein they stated that the period involved in the case is February-2011 to June-2013 and the department has taken a view that after the change of definition of the "input services", the input service credit on construction activity is not admissible but they contended that this construction activity is done in existing premises and not in the new premises and rightly claimed credit; that they have debited the said amount against the objection raised by audit and against Show Cause Notice. They further submitted copies of invoices involved in the case as demanded and submitted copy of Hon'ble CESTAT Order No. A/13975/2017 dated 12.01.2018 for construction service (repairing) in favour of their another company namely M/s Lubi Electricals Ltd.

5. I have carefully gone through the facts of the case and submissions made in the Appeal Memorandum and the Hon'ble CESTAT's order dated 10.11.2017. I have also gone through further written submission vide letter dated 24.11.2020 and documents submitted. I find that the issue to be decided in the matter is whether the service received by the appellant from the contractor relates to renovation, modernization or repair & maintenance i.e modification work of NSD roof sheeting in the factory, and hence admissible as cenvat credit as inputs under the Cenvat Credit Rule, 2004 or otherwise.

6. I find that the Hon'ble CESTAT has remanded the issue in question to ascertain the facts on the basis of invoices that the service received by the appellant from the contractor relates to renovation, modernization or repair & maintenance i.e modification work of NSD roof sheeting in the factory.

7. In order to ascertain the actual receipt of the service by the appellant, I have gone through the Annexure A and Annexure B to Show Cause Notice and invoices submitted by the appellant and found that the invoices submitted by the appellant are reflected in the said annexure. I also found from the invoices that the appellant had



received services from M/s Maan Enterprise who provided labour bill for installation erection of structure as per drawing with sheet fixing and coating of zinc chromate primer & synthetic enamel pain and M/s Shivam Engineers who provided epoxy screed with coating and surface treatment work which relates to renovation, modernization or repair and maintenance work in the factory premises of appellant. Thus, I find that the aforesaid service provider had carried out the work of repair i.e modification work of NSD roof sheeting in the factory and eligible for credit under input service.

7.1. The definition of "input service" as defined under Rule 2(l) of CCR, 2004 with effect from 01.04.2011 is reproduced herein below:

[(l) "input service" means any service, -

- (i) used by a provider of [output service] for providing an output service; or*
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or*
- (b) laying of foundation or making of structures for support of capital goods,*

except for the provision of one or more of the specified services; or]

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or



[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

[**Explanation.** - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]

7.3. From the above, I find that the service provider had carried out the work of renovation, modernization or repair & maintenance i.e modification work of NSD roof sheeting in the factory and same falls within the purview of "input service" as defined under Rule 2(1) of CCR, 2004 with effect from 01.04.2011.

8. The appellant has relied on the Hon'ble Tribunal Order No. A/13975/2017 dated 12.01.2018 in case of their own another company namely M/s Lubi Electricals Ltd wherein it is held that:

2. Shri J. R. Shah, Senior Executive for the Appellant has submitted that various repair and maintenance activates like painting, tilling etc., had been carried out during the said period in their factory premises, therefore credit of service tax paid on repair and maintenance is admissible to the credit. In support, he has referred to the judgement of this Tribunal in the case of Ion Exchange I Ltd vs C.C.E.C & S. Tax, Surat-II vide order No. A/13513/2017 dated 08.11.2017.

3. Ld. A.R. for the Revenue has reiterated the findings of the Id. Commissioner (Appeals).

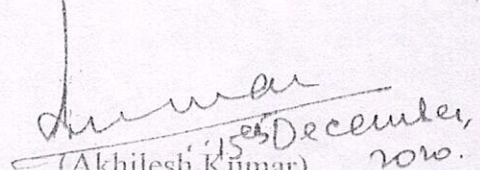
4. I find from the input invoices enclosed with the Appeal memorandum that the construction service had been used in repair and maintenance of the factory premises, therefore, eligible to credit, as held by this Tribunal in Ion Exchange




I Ltd.'s case. In the result, the impugned order is set aside and the Appeal is allowed with consequential relief if any, as per law.

9. Looking into the facts and circumstances of the instant case and by following the decision of the Hon'ble Tribunal referred to above, I find that the service received by the appellant from the contractors relates to repair and maintenance of the factory premise i.e modification work of NSD roof sheeting in the factory and same falls within the definition of "input service" as defined under Rule 2(l) of CCR, 2004 with effect from 01.04.2011 and accordingly, the appellant has correctly availed the cenvat credit. Therefore, I set aside the impugned order with respect to demand of Central Excise duty amounting to Rs. 46,867/- along with interest and penalty imposed thereof and allow the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
Ahmedabad
15 December 2020.
/ /2020

Attested


(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

To,
M/s Lubi Submersible LLP,
(earlier known as M/s. Lubi Industries Ltd.),
Near Kalyan Mills,
Naroda Road, Ahmedabad 380 025

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad North
3. The Assistant Commissioner, CGST, Division -II, Ahmedabad North
4. The Assistant Commissioner, System-CGST Ahmedabad North
5. Guard File.
6. P.A. File.



