



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
 26305065-079 : टेलीफैक्स 26305136 - 079 :
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DIN-20210464SW0000777FCA

स्पीड पोस्ट

- क फाइल संख्या : File No : File No : GAPPL/COM/CEXP/111/2020-Appeal / 121 T 1215
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-001/2021-22**
 दिनांक Date : **19.04.2021** जारी करने की तारीख Date of Issue : **23.04.2021**
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **04/DC/20-21/DEM** dated **25.06.2020**, passed by
 Assistant/Deputy Commissioner, Central GST & Central Excise, Div.-I, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- - M/s Ingersoll Rand (India), Limited.

Respondent- Assistant/Deputy Commissioner, Central GST & Central Excise, Div.-I,
 Ahmedabad-North

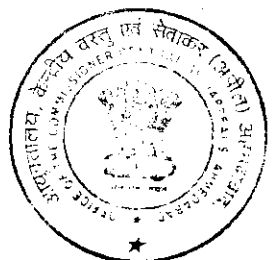
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
 बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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 प्रक्रिया 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 a
 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 मामले 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 ईए-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, अपीलों 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 पढ़ी 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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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।

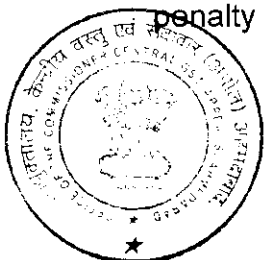
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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

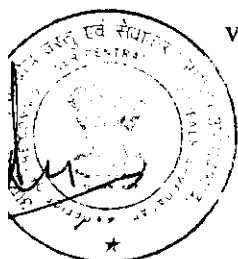
This appeal has been filed by M/s. Ingersoll Rand (India) Limited, 21-30, GIDC Estate, Naroda, Ahmedabad – 382 330 (henceforth referred as “*appellant*”) against the Order-In-Original No. 04/DC/20-21/DEM dated 25.06.2020 (henceforth referred as “*impugned order*”) passed by the Deputy Commissioner, Central GST & CX, Division-I, Ahmedabad-North (henceforth referred as “*adjudicating authority*”).

2.1. The fact of the case, in brief, are that the appellant is engaged in manufacturer of goods viz., Air Compressor, Air Motors and parts thereof etc falling under Chapter 84 of the First Schedule of the Central Excise Tariff Act, 1985 and was having Central Excise Registration No. AACI3099QM003, Service Tax Registration No. AACI3099QST002 and GST Registration No. 24AACI3099Q1Z2. The appellant has filed a refund claim for an amount of Rs.1,56,577/- under the provisions of Section 142(3) of Central Goods and Service Tax Act, 2017 [CGST Act] read with Section 11B of the Central Excise Act, 1944. The backdrop for filing the said refund claim is that during the course of audit of the records of the appellant, a short payment of Service Tax under Reverse Charge Mechanism (RCM) in respect of legal consultancy service for the period F.Y. 2015-16 was noticed. Accordingly, Service Tax amounting to Rs.1,56,577/- along with interest was paid by the appellant under Challan No. 69103330606201850093 dated 06.06.2018. It has been claimed that the Service Tax amounting to Rs.1,56,577/- paid by appellant under RCM is eligible as Cenvat credit and they could not take such credit during GST period after 01.07.2017, they had filed refund of said Service Tax amount in question under Section 142(3) of CGST Act and the said refund claim was sanctioned by the Deputy Commissioner, Central GST & CX, Division-I, Ahmedabad-North vide Order-In-Original No. 01/DC/19-20/Refund dated 20.06.2019.

2.2. Subsequently it was contended by the department that the refund sanctioned and paid is not a Cenvat Credit/ITC as per Section 142(3) and 142(6) of the CGST Act, 2017 and accordingly, Show Cause Notice dated 06.05.2020 was issued for rejection and recovery of erroneous refund of Rs.1,56,577/- already sanctioned and paid to the appellant vide order dated 20.06.2019. The said SCN issued for recovery of erroneous refund granted has been decided by the adjudicating authority vide the impugned order wherein he has ordered for recovery of Rs.1,56,577/- alongwith interest under the provisions of Section 142(3) of the CGST Act, 2017 read with Section 11B of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- That the appellant is rightfully eligible to avail the cenvat credit towards service tax paid vide e-challan under RCM pertaining to Legal Consultancy Services;



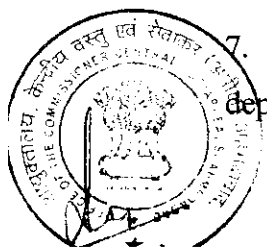
- They have claimed refund of Service Tax paid under RCM in June-2018 i.e after repeal of Finance Act, 1944 and introduction of GST; that the payment of such Service Tax is eligible as Cenvat under GST regime, as there was no mechanism in GST returns as well as to claim the CENVAT credit of earlier regime other than through the Form GST TRAN-1;
- That the appellant applied for claiming the amount of service tax paid as refund under Section 142(3) of CGST Act and filed under Section 11B of Central Excise Act read with Section 83 of the Finance Act;
- That there is explicit provision under Section 142(3) of the CGST ACT granting refund claim under existing law i.e erstwhile regime;
- The appellant has relied on following decisions in their favour in support of their submissions [i] OIA No. CCESASRT/(Appeal) PS-426/2018-19 dated 14.08.2018 in case of Goldstab Organics Pvt. Ltd issued by the Commissioner, CGST(Appeals) Surat (ii) OIO No. Div.VII/41/RR KABEL/REF/17-18 dated 20.06.2018 in case of R R Kabel Ltd etc.;
- That in any event, taxes cannot be withheld without the authority of law;
- That in any event, the repeal of any existing or amended act shall not affect any right acquired or accrued to appellant under the said repeal or amended act.

4. Personal hearing in the matter was held on 19.02.2021 through virtual mode. Shri Ashish Dave, Assistant Manager (Finance), appeared on behalf of appellant for the hearing. He reiterated the submission made in appeal memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The issue to be decided in the present appeal is whether the impugned order for recovery of erroneous refund granted vide order dated 20.06.2019 alongwith interest under the provisions of Section 142(3) of Central Goods and Service Tax Act, 2017 read with Section 11B of the Central Excise Act, 1944 is legally correct or otherwise.

6. It is observed that in the instant case the appellant had filed the refund claim under Section 142(3) of the CGST Act on the grounds that since the Service Tax amounting to Rs.1,56,577/- paid by them under RCM was eligible as Cenvat credit and they could not take such credit during GST period after 01.07.2017. The refund claim was sanctioned vide OIO No. 01/DC/19-20/Refund dated 20.06.2019 by the Deputy Commissioner, CGST & CE, Division-I, Naroda, Ahmedabad North. Thereafter, protective demand/SCN dated 06.05.2020 was issued by the Deputy Commissioner, CGST & CE, Division-I, Naroda, Ahmedabad North to the appellant for recovery of erroneous refund granted and the adjudicating authority vide impugned order confirmed the demand and order for recovery of Rs.1,56,577/- alongwith interest under the provisions of Section 142(3) of Central Goods and Service Tax Act, 2017 read with Section 11B of the Central Excise Act, 1944.

7. It is further observed from the records that, no appeal had been preferred by the department against the order dated 20.06.2019 under which refund was sanctioned to the



appellant. It was also ascertained from the Review Bench of CGST & CX, Ahmedabad-North Commissionerate whether the OIO No. 01/DC/19-20/Refund dated 20.06.2019 passed by the Deputy Commissioner, CGST & CE, Division-I, Naroda, Ahmedabad North was reviewed by the department or otherwise. In reply to the same, the Deputy Commissioner (RRA), CGST & CX, Ahmedabad-North vide their letter F.No.GEXCOM/REV/MISC/195/2020-REV dated 16.04.2021 informed that the said OIO dated 20.06.2019 has been accepted by the department on monetary grounds on 08.11.2019. Therefore, I find that in absence of any review order challenging the OIO No. 01/DC/19-20/Refund dated 20.06.2019, the SCN issued for recovery of erroneously granted refund claim is legally not sustainable. As the SCN issued in the case is legally not sustainable, being issued without any authority of law, any proceedings arising out of it is also legally not sustainable. Accordingly, I find that the impugned order passed by the adjudicating authority is not correct and sustainable in the eyes of law. In view of the above, I set aside impugned order and allowed the appeal filed by the appellant.

8. In view of the facts as discussed hereinabove, I set aside the impugned order and allow 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.

Attested

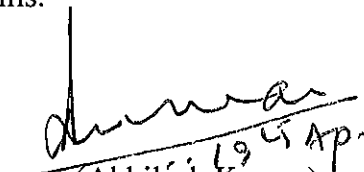
(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D.

To,
M/s. Ingersoll Rand (India) Limited,
21-30, GIDC Estate,
Naroda, Ahmedabad – 382 330

Copy to:

1. The Principal 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 Deputy Commissioner, CGST & CX, Division-I, Ahmedabad-North.
- ✓ 5. Guard File.
6. P.A. File


(Akhilésh Kumar)
Commissioner, CGST (Appeals)
Date: .04.2021

