



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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**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/CEXP/252/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad/23037/2308
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-012/2021-22**  
दिनांक Date : **24.06.2021** जारी करने की तारीख Date of Issue : **20.07.2021**  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **06/DC/D/AKJ/20-21** dated **31.08.2020**, passed by Deputy Commissioner, Central GST & Central Excise, Division-III, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** - M/s Supreme Treves Pvt. Ltd. (Now known as M/s Supreme Treon Pvt. Ltd.)

**Respondent-** Deputy Commissioner, Central GST & Central Excise, Division-III, 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, 4<sup>th</sup> 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 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 filed 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।

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 Supreme Treves Pvt. Ltd., ( Now known as M/s Supreme Treon Pvt. Ltd.,) Plot No. E-6A, Tata Motors Vendors Park, Road No. VR-7, North Kotpura, P.O. Virochanagar, Ahmedabad- 382 170 (hereinafter referred as "the appellant") against Order-in-Original No. 06/DC/D/AKJ/20-21 dated 31.08.2020 (hereinafter referred as "impugned order") passed by the Deputy Commissioner, CGST & Central Excise, Division-III, Ahmedabad North [hereinafter referred as "adjudicating authority"].

2. Briefly stated, the fact of the case are that the appellant is engaged in the manufacture of Motor Vehicles Parts falling under CH 82 of Central Excise Tariff Act, 1985. During the course of Audit conducted by the officers of Central Tax Audit, Ahmedabad on records of the appellant for the period from January, 2016 to June, 2017, It was observed that the appellant has procured duty paid Tools/Mould on behalf of M/s Ford India Ltd Pvt. Ltd., and availed Cenvat Credit of duty involved under the provisions of Cenvat Credit Rules, 2004. It was further observed that the appellant has sold Tools/Mould amounting to Rs. 3,08,50,000/- to M/s Ford India Pvt. Ltd., Sanand without payment of central excise duty by issuing commercial invoices. The said appellant has paid VAT and not paid central excise duty on such sales as the said Tools/Mould were not removed from the factory. It was also observed that the appellant has reduced the inventory of the said Tools/Mould in their books of account. Based on audit observations, a show cause notice dated 14.06.2019 was issued to them for recovery of Central Excise duty amount of Rs.38,56,250/- under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with the Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 along with interest under Section 11AA of the Central Excise Act, 1944. It was also proposed to impose penalty under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004. The said SCN was decided by the adjudicating authority vide impugned order wherein he confirmed the demand of duty along with interest and imposed penalty on following grounds:



- ✓ The excisable goods removed from the inventory, it is as equal as clearance of the excisable goods;
- ✓ The appellant is paying central excise duty on clearance of tools/moulds to M/s Suzuki Motors and thereby followed divergent practices in the same issue in present case and hence violated the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004;
- ✓ The excisable goods are manufactured & the same is removed from the inventory, it is equal as clearance of the excisable goods and hence, the appellant is not eligible for taking benefit under Notification No. 67/1995-CE dated 01.03.1995;
- ✓ The various judgement referred by the appellant will not be applicable in the present case as the facts of that case are different;

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

- The impugned order is based on presumptions and assumptions not permissible in law and on inferences not supported by evidence.
- They had procured duty paid tools, dies and moulds (capital goods) from third party vendors on behalf of M/s Ford India Pvt. Ltd., and taken Cenvat credit thereof.
- As per the mutual agreement, appellant has not removed these capital goods from their factory premises but used the said moulds and dies for the manufacture of components and parts taken Cenvat credit thereof.
- As per the requirements for component to be manufactured from the aforesaid capital goods in future, will accordingly make modifications in the said mould and on approval of such moulds and dies, the appellant sells such moulds and dies to M/s Ford India Pvt. Ltd., by discharging appropriate VAT without removal of the said moulds from their factory.
- Since such tools, dies and moulds got manufactured for M/s Ford India are sold to M/s Ford India and was never removed from the factory of the appellant, the question of payment of Central Excise duty does not arise.
- The auditors in the EA-2000 audit report No. 1601 referred to in the SCN have not considered letter dated 13.03.2019 of the appellant whereby they clarified that the value of moulds and dies have been amortized in



the motor vehicle parts and components manufactured for M/s Ford India.

- The value of such tools, dies and moulds got manufactured for M/s Ford India are eventually amortized in the motor vehicle parts and components manufactured for M/s Ford India.
- The sale can be affected even without the delivery of goods if agreed upon by the seller and the buyer under the provision of the Sale of Goods Act.
- For the purpose of claiming Cenvat credit, in terms of Rule 3 of CCR, ownership of the goods is not a criterion at all; Since no removal of excisable goods were taken place then levy of central excise duty under Rule 4 read with Rule 8 of CER, 2002 and hence invocation of Rule 3 (5A) of CCR, 2004 will not arise at all.
- There is no loss of revenue or leakage of revenue in the instant case since the value of moulds got manufactured by the appellant has been amortized in the value of the parts and components cleared by the appellant on payment of duty of central excise. Therefore, the value of moulds has not escaped the levy of duty of central excise merely because the same though sold, have been retained in the factory of the appellant.'
- That if the duty have been paid, such duty would have been availed as Cenvat Credit by M/s Ford India Pvt. Ltd and hence there is revenue natural situation. Therefore, no demand can survive and they relied on various case laws in favour of their arguments.
- They also submitted that no penalty under Section 11AC of CEA can be imposed.

4.1. Personal hearing in the matter was held on 28.04.2021. Shri Mrugesh G Pandya, Advocate appeared on behalf of appellant. He reiterated the submissions made in appeal memorandum as well as those made in additional submission. He has produced the invoice, CA Certificate and Cost Accountant Certificate in respect of contention that no removal had taken place from the factory of appellant and stated that proper amortization were done for cost of moulds and appropriate duty were paid by them.

4.2. The appellant vide their letter dated 28.04.2021 submitted further written submission and stated that sale of such capital goods which are



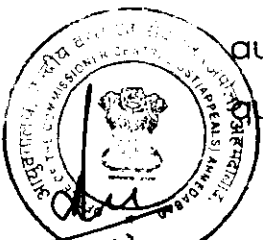
retained in the factory of the appellant cannot be equated with the term "Removal". They relied upon various judgements and stated that the duty of excise or cenvat credit can be recovered only upon "Removal" of capital goods from the factory. Their contention is also supported by the statutory provision laid down in Rule 3(5A) of CCR, 2004 which used the expression "are removed after being used". They further stated that the impugned order is passed without considering the legal position and also without considering the documentary evidence of cost of moulds are amortized in the value of components and excise duty elements was paid against the components supplied by the appellant to the buyer.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in this case is whether the impugned order confirming demand of Central Excise duty in respect of tools sold by the appellant to M/s Ford India Pvt. Ltd is correct or otherwise.

6. At the outset, I find that the adjudicating authority has demanded the duty in respect of the goods in question on the grounds that the appellant had removed the goods i.e tools/mould from the factory premises and hence violated the provisions of Rule 3(5A) of CCR. On the other hand, the appellant has argued that they raised commercial invoices for transfer of title of the goods in question and the goods were not physically removed from their factory and only the ownership of the goods was transferred.

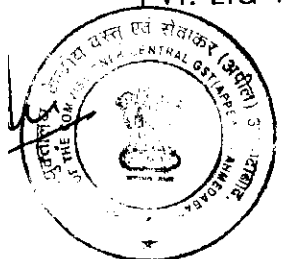
7. Rule 3(5A) (a) of CCR states that "if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit,..."

8. The violation of the said Rule, as contended by the adjudicating authority, will be considered to have taken place only if the goods in question, on which Cenvat credit has been taken, are removed. In the



instant case, the appellant has contended that the goods in question i.e. tools and moulds were not physically removed from their factory but ownership of the goods were transferred by way of issuing commercial/sale invoices to M/s Ford Ltd on paying applicable VAT. The adjudicating authority has not agreed with the said contention and stated when excisable goods are removed from the inventory, it is as equal as clearance of excisable goods and excise duty is required to be recovered. It is also observed that the appellant is paying central excise duty on clearance of tools/moulds to M/s Suzuki Motors and it has been held by the adjudicating authority that same practice should have been followed by the appellant when they clear the tools/moulds to M/s Ford India Pvt. Ltd. The adjudicating authority has further held that the Central Excise law has to be followed uniformly for each customer and hence the appellant violated the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004 by not paying the Central Excise duty on the date of issue of invoices in respect of sale of such tools/moulds to M/s Ford India Pvt. Ltd.

9. It is observed that the adjudicating authority has demanded duty only on the grounds that the goods in question were removed by the appellant from their factory on the grounds as stated above. I find from the case records that the moulds/dies cleared to M/s Suzuki have been physically cleared from appellant's factory premises and in case of Ms Ford, the same were not cleared but removed from inventory by issuance of invoices on which VAT has been paid. Hence, the appellant has adopted different procedure for clearance of dies/moulds in respect of M/s Suzuki and M/s Ford and there are difference in material facts in dealing with such goods. Accordingly, I am not in agreement with the adjudicating authority that the appellant should have followed same procedure in respect of both the clients, particularly when the law does not provide for any such restriction. Further, I am not in agreement with the adjudicating authority that the removal of goods in question from the inventory would tantamount to clearance from the factory and excise duty is payable in such circumstances. I find that the appellant has relied upon the case law of CCE, Vadodara Vs Automotive Stampings & Assemblies Ltd 2013 (298) ELT 591 (Tri. Ahmedabad) and Parryware Roca Pvt. Ltd v/s CCE & CGST, Alwar 2018 (363) ELT 1000 (Tri. Del) in support of

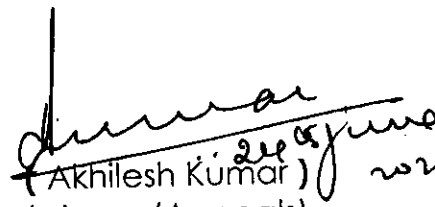




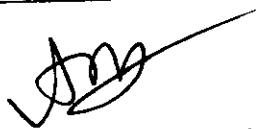
contention that duty is payable only when clearance is made from factory. The adjudicating authority has not given any finding on the case law relied upon by the appellant and has summarily rejected it. Further, there is no evidence on records to prove that the goods in question were physically cleared from factory premises. Therefore, the very basic and important element i.e. removal of the goods, is absent in the present case so as to allege contravention of Rule 3(5A) of the Cenvat Credit Rules, 2004 and hence the impugned order with respect to confirmation of demand of Central Excise duty amounting to Rs. 38,56,250/- along with interest and penalty imposed on the appellant is legally not sustainable and liable to be set aside.

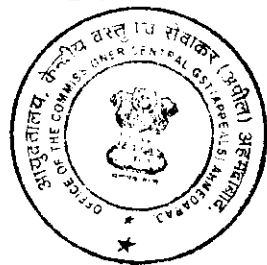
10. In view of the facts as discussed hereinabove, I set aside the impugned order and allow the appeal filed by the appellant.

11. 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)  
Date: .06.2021

Attested

  
(Atulkumar B Amin)  
Superintendent (Appeals),  
CGST, Ahmedabad.



**BY SPEED POST TO:**

M/s Supreme Treon Pvy. Ltd.,  
Earlier known as M/s Supreme Treves Pvt. Ltd.,  
Plot No. E-6A, Tata Motors Venders Park,  
Road No. VR-7, North Kotpura,  
P.O. Virochanagar, Ahmedabad- 382 170

**Copy to:-**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Additional Commissioner, CGST & C. Ex., Ahmedabad North
4. The Deputy Commissioner, CGST & C.Ex., Division-III, Ahmedabad North.
5. The Assistant Commissioner, CGST (System), HQ, Ahmedabad North.
- ✓ 6. Guard file.
7. P.A. File