



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20240364SW0000823854

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/283/2023 / 11000-11001
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-289/23-24 dated 20.03.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	30.03.2024
(ङ)	Arising out of Order-In-Original No. 05/AC/Refund/2023-24/AM dated 12.5.2023 passed by The Assistant Commissioner, CGST Division-IV, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Harsha Engineers Limiteda Sarkhej-Bavla Road P.O. Changodar Ahmedabad - 382213

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:-

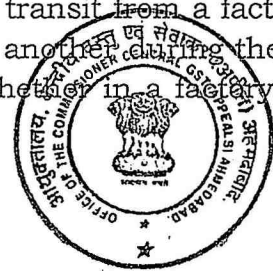
Revision application to Government of India:

(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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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 in 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

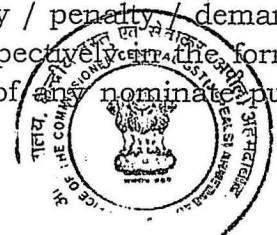
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 a nominated 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 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 अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 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) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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

The present appeal has been filed by M/s. Harsha Engineers Limited, Sarkhej Bavla Road, PO. Changodar, Ahmedabad-382213, (hereinafter referred to as "the appellant") against Order-in-Original No. 05/AC/Refund/23-24 dated 12.05.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division IV, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding C. Ex. Reg. No. AAACH4828CXM002 & AAACH4828CXM003 during pre-GST regime and now holding GSTN 24AAACH5549Q1Z2. They filed refund of Rs.5,09,118/-, unutilized closing balance of Education Cess, Secondary. & Higher Education Cess, lying as CENVAT credit balance as on 30.06.2017.

The appellant were issued Show Cause Notice No. V/27-50/Refund/Harsha/2022-23 dated 13.04.2023 for rejecting their refund claim of Rs. 5,09,118/- on the ground of time limitation and absence of provision as per existing law to allow cash refund of accumulated Cenvat Credit in respect of Education Cess and Secondary & Higher Education Cess.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the refund claim of Rs. 5,09,118/- was rejected on the grounds mentioned above.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- The appellant submitted that the claimed cess were availed for various capital goods, inputs and input services. The claimed cenvat was closing balance as on 30.06.2017 and the same was not transferred through Tran-1 in terms of the Section 140 of the CGST Act, 2017. The appellant submitted that they were unable to utilise the credit lying in balance and therefore they were entitled for cash refund.
- The appellant submitted that they have filed refund claim on the basis of the CESTAT, Ahmedabad order No A/10198/2023 dated 06.01.2023 in case of M/S USV Private Limited Vs. Commissioner of Central Excise & ST, Daman as the facts of both the cases are same..
- The appellant submitted that the limitation of one year does not apply to the refund of unutilized and un-utilisable credit lying in balance as per above decision. They made reference of the case of Union Of India vs. Slovak India Trading Co. Pvt. Ltd. [2006 (7) TMI9-karnataka High Court] wherein it is held that there is no express prohibition in terms of Rule 5 of Cenvat Credit Rules, 2004 and the same is not available for purpose of



rejection. The court ordered refund in case of the assessee coming out of modvat scheme. The decision was also upheld by the apex court.

- They prayed to set aside the impugned OIO and allow their appeal.

4. Personal hearing in the case was held on 15.03.2024. Shri Manoj B Bhavsar, appeared for personal hearing on behalf of the appellant. He stated that the appellant is eligible for refund of Edu. Cess and SHE Cess pending as on 30.06.2017 in light of the Ahmedabad CESTAT judgement in the case of USV Pvt. Ltd. Vs. Commissioner of C. Ex. and ST. Daman.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, denying the refund of unutilized EC & SHEC, in the facts and circumstance of the case, is legal and proper or otherwise.

6. AS per submission before me, It is observed that the appellant filed a refund claim of Edu. Cess & SHEC total amount Rs. 5,09,118/-, which was the closing balance as on 30.06.2017 and the same was not available through Tran-1 in terms of Explanation 3 to the Section 140 of the CGST Act, 2017. The appellant was also unable to utilize the credit lying in balance due to introduction of GST regime.

In this regard I find that the Hon'ble CESTAT in case of USV Pvt Ltd Vs Commissioner of Central Excise & ST, Daman-2023(2) TMI 230 held that "the assessee is legally entitled for cash refund of accumulated and unutilized Cenvat Credit of Education Cess and Secondary and Higher Education Cess as per Rule 3 of the Cenvat Credit Rules, 2004 and such refund are not time barred."

Further, I find that Hon'ble Karnataka High Court in case of Union Of India vs. Slovak India Trading Co. Pvt. Ltd. [2006 (7) TMI9-karnataka High Court=2006(201) E.L.T. 559(kar.)] held that "The Tribunal, in our view, is fully justified in ordering refund particularly in light of the closure of the factory and in the light of the assessee coming out of the Modvat Scheme. The above order has been upheld by the Hon'ble Supreme Court at 2008(223)ELT A170(SC).

I also find that the Hon'ble CESTAT, Delhi in case of Bharat Heavy Electricals Ltd. Vs. Commr. of CGST, Cex. & Customs held that "the credits earned were a vested right in terms of the Hon'ble Apex judgement in Eicher Motors case and will not extinguish with the change of law unless there is a specific provision which debars such refund. There is no provision in newly enacted law that such credit would lapse. Thus merely by change of legislation suddenly the appellant could not be put in a position to lose this valuable right. Thus we find that the ratio of Apex Courts judgement is applicable as decided in cases where the assessee could not utilize the credit due to closure or shifting of factory to a non dutiable area where it became impossible to



use these credits. Accordingly the ratio of such cases would be squarely applicable to the appellant's case. Following the judgement of Hon'ble Karnataka High Court in the case of 2006(201) ELT559(kar.) in case of Slovak India Trading Co. Pvt. Ltd. and similar other judgements/decisions cited supra, I hold that the assessee is eligible for cash refund of the Cesses lying as cenvat credit balance as on 30.06.2017 in their account."

6.1 Further I find that jurisdictional CESTAT, Ahmedabad, vide Final Order No A/10198/2023 dated 06.02.2023 in the excise appeal no 10345 of 2021 in the case between USV Private Limited Versus Commissioner of Central Excise & S. Tax, Daman [2023(2)(TMI). 230] has allowed cash refund against the accumulated and unutilized Cenvat Credit of Education and Secondary and Higher Education Cess. Following judicial discipline, I find that the appellant is entitled for the cash refund of credit of Edu. Cess and SHE Cess.

7. In view of the above, I am of the considered view that the case in hand is similar to above cases and the ratio of the above cases would be squarely applicable in this case. Therefore, the appellant is eligible for refund of the closing balance of Edu. Cess and SHE Cess as on 30.06.2017.

8. In view of above, I hold that the impugned order passed by the adjudicating authority denying refund of un-utilized balance of Edu. Cess and SHE Cess as on 30.06.2017 is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant with consequential relief.

9. अपील कर्ता 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

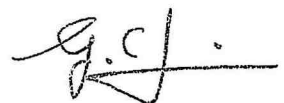


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Harsha Engineers Limited,
Sarkhej Bavla Road, PO. Changodar,
Ahmedabad-382213

The Assistant Commissioner,
CGST, Division-IV,
Ahmedabad North



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 20.03.24



Appellant

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division IV, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- 5) Guard File
- 6) PA file



