



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:- 20240564SW000011641B

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/46/2024/6056-60
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-32/2024-25 dated 20.05.2024
(ग)	पारित किया गया / Passed By	श्री ग्यानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	30.05.2024
(ङ)	Arising out of Order-In-Original No. 05/AC/Dem/NA/2023-24 dated 30.6.2023 passed by The Assistant Commissioner, CGST Division-V, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Kotak Polypack Industries Plot No.789 Paiki 819 Kotak Nr. Aegis Auto Gas, NH No.8A, Bavla Bavla, Ahmedabad-382220

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:**

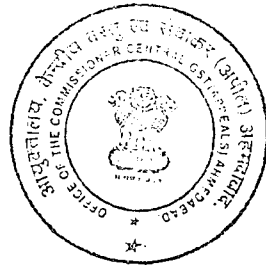
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary; to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 :-

(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 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 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 भीतरमूल-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 रूपये या उससे कम होतो रूपये 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.

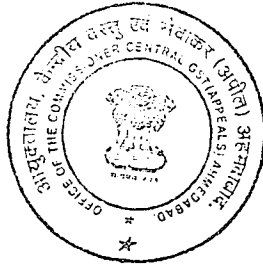
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 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 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 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)।

- (16) खंड (Section) 11D के तहत निर्धारित राशि;
- (17) लिया गलत सेनवैट क्रेडिट की राशि;
- (18) 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।

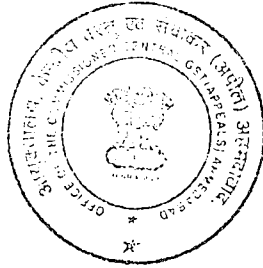
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xvi) amount determined under Section 11 D;
- (xvii) amount of erroneous Cenvat Credit taken;
- (xviii) 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. Kotak Polypack Industries, Plot No 789 Paiki 819, Kotak Nr. Aegis Auth gas, NH No 8A, bavla, Ahmedabad-382220, (hereinafter referred to as "the appellant") against Order-in-Original No. 05/AC/Dem/NA/2023-24 dated 30.06.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division V, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Central Excise No AAJFK2218DXM001 for manufacturing of PP Fabrics, Laminated Fabrics, PP Bags etc. and STC No. AAJFK2218DST001 for GTA services. During the course of departmental audit for the period from 2016-17 and 2017-18(upto june-17), the Following Revenue Paras were raised:

**Revenue Para No 1.Wrong availment of in-admissible Cenvat Credit:**

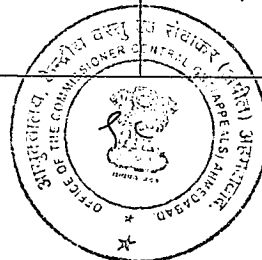
The assessee wrongly availed Cenvat Credit of total Rs. 52,034/-on 04 under mentioned invoices which was not available to them;

Sr. No.	Invoice No & Date	Issued By	Description of goods	Amount of Cred wrongly availed
1	10/01.04.2017	Darpan Ispat Pvt. Ltd.	M S Angle (CTH 7216)	7,828/-
2	140/26.05.2017	Shree Yogi Steel Pvt. Ltd.	M S Channel (CTH 7216)	24,073/-
3	181/12.06.2017	Shree Yogi Steel Pvt. Ltd.	M S Channel (CTH 7216)	12,426/-
4	71/21.06.2017	M/s Maruti Roofings	CC Trap Sheet (CTH 7210)	7,707/-
<b>Total</b>				<b>52,034/-</b>

**Revenue Para No 2: Excise Duty Short paid on reconciliation of value shown in ER1 with value in Trial Balance/Ledgers:**

On reconciliation of value of ER-1 filed for the relevant period, with the value of Balance sheet/Ledger a difference was noticed and the excise duty was payable on the same. Detailed of the same are as under:

Period	Taxable Value as per Ledger	Taxable Value as per ER1	Difference of Value	Excise Duty
2016-17	21,52,64,879/-	21,52,60,744/-	4,135/-	620/-
2017-18 (upto June-17)	46064924/-	45796721/-	268203/-	40230/-



<b>Total</b>						<b>40,851/-</b>
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**Revenue Para No 3. Short payment of service tax on GTA expenses made for GTA:**

During the F.Y. 2016-17, the assessee has made expenses for GTA services and short paid the service tax. The details are as under:

Period	Value as per Ledger	Value as per ST-3	Difference	Abatement	Taxable	Service tax Payable
2016-17	16,84,983/-	14,91,115/-	193,868/-	1,35,708/-	58,160/-	7,189/-

**Revenue Para No 4. Service tax not paid on commission income shown under the head of indirect income:** During the scrutiny of the records, it was observed that they have shown income as commission income but didn't discharged service tax liability upon the same. Details are as under:

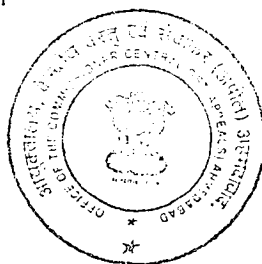
Period	Value as per Ledger	Value as per ST-3	Difference	Service tax Payable
2016-17	9,11,340/-	0	9,11,340/-	1,36,701/-

**Revenue Para No 5. Short payment of duty on cylinder charges shown under the head of indirect income:** During the scrutiny of the records, it was observed that during the subject period, the assessee has collected charges as additional consideration and not included the same in taxable value and evaded the duty payment on the same. Details are as under:

Period	Value as Per B/S	Excise duty payable
2016-17	1,62,152/-	24,323/-
2017-18 (upto June-17)	2,27,551/-	34,133/-
<b>Total</b>		<b>58,455/-</b>

It appeared that they have evaded excise duty and service tax. The appellant were called upon to file his submission vide query memo dated 01.10.2019. However, the appellant had not replied to the query memo issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CTA/04-188/Cir-VII/AP-43/2018-19 dated 04.12.2019 demanding Excise duty of Rs. 52,034/- under the provisions of Section 11A(4) of the Excise Act, 1944 (Covered in Revenue Para-1), Excise duty of Rs. 40,851/- under the provisions of Section 11A(4) of the Excise Act, 1944



(Covered in Revenue Para-2), Service Tax amounting to Rs. 7,189/- under the provisions of Section 73(1) of the Finance Act,1994 (Covered in Revenue Para-3), Service Tax amounting to Rs. 1,36,701/- under the provisions of Section 73(1) of the Finance Act,1994 (Covered in Revenue Para-4) and Excise duty of Rs. 58,455/- under the provisions of Section 11A(4) of the Excise Act,1944 (Covered in Revenue Para-5) ,for the period F.Y. 2016-17 to 2017-18 (Upto June-2017). The SCN also proposed recovery of interest under the provisions of Section 11AA of the Excise Act,1944 and under Section 75 of the Finance Act, 1994; and imposition of penalties under the provisions of Section 11AC(1)(c) of the Excise Act,1944 and under Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the OIO No 10/AC/Demand/2021-22/NBS dated 29.07.2021 by the adjudicating authority wherein the demand of Excise duty of Rs. 52,034/-under the provisions of Section 11A(4) of the Excise Act,1944(Covered in Revenue Para-1), Excise duty of Rs. 40,851/- under the provisions of Section 11A(4) of the Excise Act,1944 (Covered in Revenue Para-2), Service Tax amounting to Rs. 7,189/- under the provisions of Section 73(1) of the Finance Act,1994 (Covered in Revenue Para-3), Service Tax amounting to Rs. 1,36,701/- under the provisions of Section 73(1) of the Finance Act,1994 (Covered in Revenue Para-4) and Excise duty of Rs. 58,455/- under the provisions of Section 11A(4) of the Excise Act,1944 (Covered in Revenue Para-5) was confirmed along with the applicable interest for the period F.Y. 2016-17 to 2017-18 (Upto June-2017). Further (i) Penalty of Rs. 52,034/-(For C. Ex. duty involved in Revenue Para-1) was imposed on the appellant under Section 11AC(1)(c) of the Excise Act,1944; (ii) Penalty of Rs. 40,851/-(For C. Ex. duty involved in Revenue Para-2) was imposed on the appellant under Section 11AC(1)(c) of the Excise Act,1944; (iii) Penalty of Rs. 7,189/-(For service tax amount involved in Revenue Para 3) was imposed on the appellant under Section 78 of the Finance Act, 1994; (iv) Penalty of Rs. 1,36,701/-(For service tax amount involved in Revenue Para 4) was imposed on the appellant under Section 78 of the Finance Act, 1994 and (v) Penalty of Rs. 58,455/-(For C. Ex. duty involved in Revenue Para-5) was imposed on the appellant under Section 11AC(1)(c) of the Excise Act,1944.

2.3 Aggrieved with the above order dated 29.07.2021, the appellant filed appeal before the Hon'ble Commissioner (Appeals). The Commissioner (Appeals) vide OIA No AHM-EXCUS-002-APP-29 to 30/2022-23 dated 02.09.2022 set aside the above OIO and remanded the matter back to the adjudicating authority.



2.4 The matter was again adjudicated vide impugned OIO dated 30.06.2023 wherein the demand of Excise duty of Rs. 52,034/- under the provisions of Section 11A(4) of the Excise Act, 1944 (Covered in Revenue Para-1) and Excise duty of Rs. 40,851/- under the provisions of Section 11A(4) of the Excise Act, 1944 (Covered in Revenue Para-2) were confirmed along with the interest and penalty and the remaining demand were dropped.

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 adjudicating authority didn't considered their submission dated 10.02.2023 and wrongly disallowed the cenvat credit Rs. 52,034/- and also confirmed the demand of excise duty of Rs. 40,851/- along with interest and penalty.
- They stated that adjudicating authority wrongly held that subject goods i.e. MS angles, MS Channels and CC trap sheets are neither covered under the definition of the "inputs" nor the "capital goods". They have used the above goods in manufacturing of lamination machine and further this lamination machines were used for manufacturing of their finished goods i.e. PP Fabrics, Laminated Fabrics and PP Bags etc.. The definition of the "input" has been substituted w.e.f. 01.04.2011 by the Noti. No 03/2011-CE(NT) dated 01.03.2011 is as under:

(k) "input" means-

*(i) all goods used in the factory by the manufacturer of the final product; or*

*(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or*

*(iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or*

*(iv) all goods used for providing any [output service, or];*

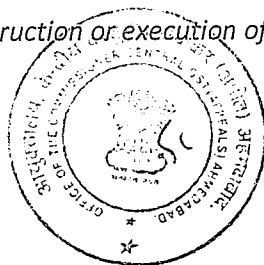
*[v) all capital goods which have a value upto ten thousand rupees per piece.]*

**but excludes -**

*(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;*

*[(B) any goods 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 service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

They submitted that as per (K)(i) of the above, all goods used in the factory by the manufacturer of the final product are covered under the definition of input. As in their case the goods are used in manufacturing of lamination machine and further the lamination machines were used for manufacturing of their finished goods i.e. PP Fabrics, Laminated Fabrics and PP Bags etc. Therefore the same are covered under the ambit of "input" as defined under rule 2(K) of CCR.

They made the reference of case decision by the single bench of Honourable Tribunal in case of CC&CE, Visakhapatnam-II V/s A.P.P. Mills Ltd. cited at 2013(291)ELT-585(Tri.-Bang) following the judgement of Honourable Supreme Court in the case of CCE,Jaipur V.s Rajasthan Spinning & Weaving Mills Ltd. cited at 2010(255)ELT-481(S.C.) but departing from the decision of Honourable Tribunal in case of Vandana Global Ltd has held as under:

*"The view of the Tribunal's Larger Bench in the case of Vandana Global Ltd. (supra), taken much before the Hon'ble Supreme Court decided the case of Rajasthan Spinning & Weaving Mills Ltd. (supra), was to the effect that the supporting structure for a machinery could not be considered to be part or accessories of the machinery and, therefore, the steel items used for constructing such supporting structure would not be 'capital goods' for the purpose of CENVAT credit. This view of the Larger Bench is no longer valid as it runs contrary to the subsequent ruling of the Apex Court."*

They sated that in light of the above judgement of Hon'ble Supreme Court, the steel items used for constructing supporting structure would also be covered under the ambit of capital goods and cenvat credit is available on the same.

- The appellant submitted that cenvat credit cannot be denied for wrong declaration of inputs as capital goods if the cenvat credit is otherwise admissible. They placed reliance on the case of CCE, Pune-II V/s.Core Fitness Pvt. Ltd. cited at 2017(4) GSTL-80(Tri.-Mumbai). The Honourable Tribunal relying on Larger Bench decision in the case of CC&CE, Meerut-I V/s. Modi Rubber Ltd. cited at 2000(119)ELT-197(Tri.-LB) has held as under:

9. In view of the above decision of the Tribunal we have no hesitation in holding that 'exercise equipment' is, indeed, utilised as input for rendering taxable service and that the duty paid on this equipment is permissible as Cenvat credit, irrespective of whether it was initially claimed as 'capital goods'. Accordingly, the credit has been taken in accordance with the law and cannot, therefore, be denied as sought by Revenue.





- The appellant stated that learned adjudicating authority has failed to comprehend the definition of input provided under Rule 2(k) of Cenvat Credit Rules. The adjudicating authority has given her finding on the basis of earlier provisions of Cenvat Credit Rules wherein only the goods used in or in relation to the manufacture of final product were covered under the ambit of 'input'. It is submitted that as per Rule 2(k) (i) all goods used in the factory by the manufacturer of the final product are covered under the ambit of 'input'. The definition of 'input' does not stipulate that goods should be used in or in relation to the manufacture of final products.
- The appellant submitted that the adjudicating authority while denying Cenvat credit has held that disputed goods do not qualify either as inputs under Rule 2(k) or as capital goods under Rule 2(a) of CCR and hit by the exclusion clause (f) of Rule 2(k) of CCR. With respect to Rule 2(k)(f) of CCR, it is submitted that under exclusion to the definition of "input" it has been provided under Clause (F) "any goods which have no relationship whatsoever with the manufacture of a final product". In the present case, MS channel, MS angles and CC trap sheets were used in the manufacture of lamination machine and further, lamination machine was used in the manufacture of PP fabrics, laminated fabrics and PP bags. As such relationship of goods on which Cenvat credit was availed stands established.
- Regarding Revenue Para 2 wherein excise duty short paid Rs. 40,851/- is demanded, the appellant submitted as per sales ledger, the amount of sales for the period April-2017 to June-2017 was Rs. 4,57,96,731/- (As per ER-1 is Rs.4,57,96,721/- whereas in the SCN it is shown as Rs 4,60,64,924/-. The possible reason for this difference of Rs. 2,68,193/- may be sales return which cannot be subject to excise duty. They requested that the demand may be dropped and the impugned may be set aside.

4. Personal hearing in the case was held on 23.04.2024. Shri P. G. Mehta, Advocate appeared for personal hearing on behalf of the appellant. He reiterated the contents of oral and written submission made earlier. Further, he informed that he submitted the gist of case vide email dated 08.04.2024 which may be taken on record.



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, confirming the demand of excise duty against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17 & 2017-18 (Upto June-2017).

6. I find that in the SCN in question, the demand has been raised for the period F.Y. 2016-17 & 2017-18 (Upto June-2017) based on the audit objections. The appellant failed to establish his claim before the adjudicating authority. Therefore, the demand along with interest and penalty was confirmed by the adjudicating authority.

7. Now, as the submission is filed before me. From the submission it is seen that regarding the revenue para 01, the appellant contended that the subject goods i.e. MS Angle, MS Channel and MS Trap Sheets were used in manufacturing of lamination machine and the same machines were used in manufacturing of their finished goods. The adjudicating authority in the impugned OIO has clearly mentioned that the appellant failed to demonstrate the usage of the disputed goods. This was the sole reason to deny the Cenvat Credit to the appellant. Since the appellant has also failed to furnish such documents/proof of actual use of the disputed goods before me and in absence of the same the credit shouldn't be available for them.

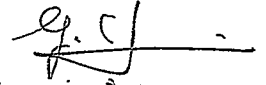
Further , for revenue para 02, the appellant submitted that as per sales ledger, the amount of sales for the period April-2017 to June-2017 was Rs. 4,57,96,731/- and the same was also shown in their ER-1 returns filed for the relevant period. In the SCN the sales value is taken as Rs 4,60,64,924/-. The appellant has given reason for this difference of Rs. 2,68,193/- that it was due to sales return which cannot be subject to excise duty. I find that the adjudicating authority has clearly mentioned in his finding that the appellant didn't produced any evidence of the receipt of such goods. Further, I also find that the appellant has not furnished any such document/evidence before me and in such circumstances their contention is not sustainable.



In view of the above discussion, I am of the considered view that the adjudicating authority correctly held them liable to pay excise duty covered under Revenue Para 1 & 2. The same is recoverable from them along with interest and penalty.

8. In view of the above, I up-held the impugned order and reject the appeal.

9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date : 20.05.24

Attested



Manish Kumar  
Superintendent(Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

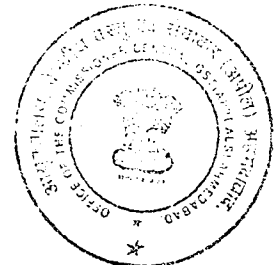
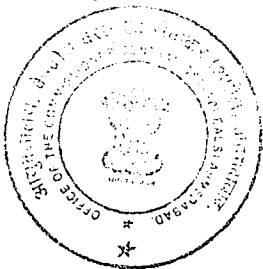
To,  
M/s Kotak Polypack Industries,  
Plot No 789 Paiki 819,  
Kotak Nr. Aegis Auth gas,  
NH No 8A, bavla, Ahmedabad-382220

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

Copy to :

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

- 5) Guard File
- 6) PA file



Appellant

Respondent

