

• आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातवाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटैकनिक के पास, अम्बाबाडी,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/73/ Ahd-I/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-018-2016-17
दिनांक Date : 22.08.2016 जारी करने की तारीख Date of Issue 22.08.2016

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Abhai Kumar Srivastav, Commissioner (Appeal-1)

ग Joint Commissioner, केन्द्रीय उत्पाद शुल्क, A'bad-I द्वारा जारी मूल आदेश सं 21/CX-1 Ahmd/JC/
GPM/2015 दिनांक: 18.08.2015 से सृजित

Arising out of Order-in-Original No. 21/CX-1 Ahmd/JC/ GPM/2015 Dated : 18.08.2015
issued by Joint Commissioner, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Cadmach Machinery Co.Pvt.Ltd., Ahmedabad

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 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।

(b) 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।



- (c) 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।

- (d) 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 :-

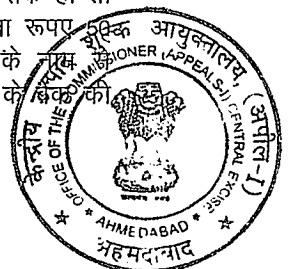
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



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 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. 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 सन्दर्भ में 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

M/s. Cadmach Machinery Company Private Ltd., 3604-3605, Phase-IV, GIDC, Vatwa, Ahmedabad (hereinafter referred to as the *appellant*) has filed this appeal against OIO No. 21/CX-IAhmd/JC/GPM/2015 dated 18.08.2015, passed by the Joint Commissioner, Central Excise, Ahmedabad-I (hereinafter referred to as *adjudicating authority*).

2. Briefly, the facts are that during the course of audit, it was observed that the appellant had wrongly availed the CENVAT credit of Rs.25,87,798/- on input services under the category of Market Research, during the period from July, 2010 to February, 2013.

3. A show cause notice dated 08.04.2015, was therefore issued, *inter alia*, proposing recovery of wrongly availed credit on input services along with interest and further proposing imposition of penalty. The adjudicating authority, vide the impugned order, confirmed the recovery of CENVAT credit wrongly availed along with interest. Penalty was also imposed on the appellant.

4. Aggrieved, the appellant has filed this appeal on the grounds that,-

- they had availed the services of market research enabling them to manufacture the goods up to the international standard, formulating market strategies, customer services and pricing policies for achieving proposed specific product growth plan;
- this service helped the appellant to get the export order from the merchant exporters;
- CBEC vide circular no. 120/01/2010-S.T. dated 19.1.2010, has clarified that there is no requirement of one to one nexus for the availment of the CENVAT Credit;
- that even after issuance of Circular No.943/4/2011-C.X. dated 29.4.2011, the credit of service tax paid on sales promotion activities would be admissible as credit;
- several citations hold that the credit availed is admissible;
- since the issue is legal in nature, the imposition of penalty is incorrect and required to be set aside.

The appellant further requested that the OIO be set aside with consequential relief.

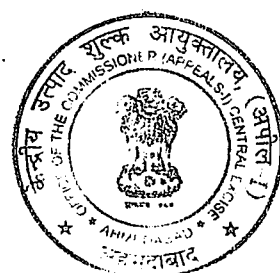
5. Personal hearing was held on 08.08.2016. Shri Vipul Khandhar, C.A. appeared on behalf of the appellant and reiterated the submissions made in the grounds of appeal.

Abhat 6. I have gone through the facts of the case and the averments made in the appeal. The only issue to be decided in this appeal is whether CENVAT Credit is admissible to the appellant on the service tax paid towards Market Research Services. The period of dispute is from July 2010 to February 2013 – after which the agreement with the consultant in respect of market research was terminated.

7. Rule 2(l) of the CENVAT Credit Rules, 2004, which defines input service, states as follows :

[(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;]

[emphasis supplied]

8. The salient features of the Market Research Agreement between the appellant and Mr. Axel Friedmann, from Germany are:-

- (i) to establish the company's sales/ service operation in Europe via the appointment of various sales representatives/ distributors;
- (ii) to identify & approach potential customers, consulting companies, research centers etc. for promoting the products & services;
- (iii) to design and co-ordinate marketing approach locally within European region;
- (iv) to process all paper work related to actual sales & liaison with the Indian Head Office.

The adjudicating authority has in para 23 of his OIO dated 18.8.2015, however, questioned the legality of the agreement since the agreement though signed by the Executive Director of the appellant had no signature of Mr. Alex Friedmann.

9. The adjudicating authority, in his impugned OIO has further held that:-

- the input service had no nexus with the manufacture of the final product and clearance of final product upto the place of removal;
- that they had not utilized the service of market research agency in or in relation to manufacture/exporting the finished goods or any other goods to earn foreign exchange;
- that there was no export to Germany;
- that the payments were released to the consultant before the agreement was entered into.

10. Courts have interpreted input service time and again – giving an in-depth analysis as to what constitutes an input service and what falls within the exclusion of input service as defined supra. The first part gives the basic definition and which limits the scope of input services to that which has a nexus directly or indirectly in or in relation to manufacture and clearance of final products. The dispute, however in this case, is in respect of the second part – known as the inclusive part, which is the relevant portion. This inclusive portion expands the meaning in the



basic definition. The service of market research, sales promotion and advertising, for example may not be used in the actual process of manufacture, which is necessary for their inclusion in the basic definition of input service, yet they find mention in the inclusive definition, as their use does promote sale of the final product. The common thread running through all the services specifically included in the extended definition is that each of these is linked to the manufacture, storage or sale of the final product. In other words, the services which do not otherwise fall within the sweep of the main part of the definition are set out, in the inclusive clause wherein certain specific services are enumerated. Thus, some services which could fall within the ambit of the main definition but in respect of which doubts may arise –are included in the second and inclusive part of the definition. It is in this background that the above dispute needs to be examined.

11. The service of Market Research – [on which there is no dispute by Revenue] cannot be held as having no relation to the clearance/sale of final product. The contention that there was no sale to Germany, seems irrelevant since the agreement itself stated that the task of the consultant was towards the whole of Europe and was not restricted to Germany. In-fact, it is clearly mentioned by the Excise Manager of the appellant in his statement dated 30.1.2015, that their products were being exported to USA, United Kingdom, Australia, South Africa, Gulf and African Countries through merchant exporter, a group company. The only other finding against the appellant is that some of the payments were released before the commencement of the contract. There is no rule which prohibits/restricts availment of CENVAT credit in respect of Market Research when there is no contract, undertaken by the parties involved. Though the legality of the contract is challenged, there is however, no dispute as far as payment of market research service charges of 1,50,000 Euro per annum plus actual reimbursement of expenses incurred by the Consultant Mr. Alex Friedmann of Germany. Further even the payment of service tax by the appellant on reverse charge mechanism is also not under any dispute.

12. Denial of CENVAT credit in respect of Market Research on the basis that the Consultant was not effective in increasing the exports/sale would not be a legally tenable argument. This cannot be one of the criteria for allowing availment of input service credit under the CENVAT Credit Rules, 2004. It is also a fact that the services were terminated in February 2013.

13. As has already been held, there is a nexus between the input service in question and manufacture and clearance of final product, the case laws relied upon by the adjudicating authority to deny CENVAT credit, stands distinguished on this count itself. The appellant has relied upon a plethora of case laws on varied subjects viz. availment of credit in respect of overseas commission agents, outdoor catering services, garden maintenance services, telephone, courier and travelling expenses, housekeeping and gardening services, rent a cab for transportation services, Customs house agent services, installation /erection of gasifier plant at customer premises services, credit on components spares and accessories of captive power plant etc. As these are not relevant to the issue at hand, these case laws are not being discussed.



14. In view of the foregoing, the denial of the input service credit in respect of Market Research services, to the appellant is not legally tenable. I, however, find that the original order has nowhere confirmed that the service in fact was provided by Ms. Alex Friedmann. This needs to be verified through reasonable evidence/documentary evidence. This is more so since the department has already questioned the veracity of the agreement, in the absence of signature of Mr Friedman on the contract, as mentioned supra. Needless to state, the onus is on the claimant to provide documents to the satisfaction of the department that the services were in fact provided.

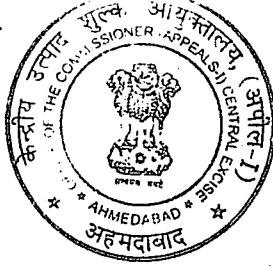
15. In view of the foregoing, the appeal is allowed and the matter is remanded to the original authority to comply with the directions mentioned in the para supra. The appeal is disposed of accordingly.

Date: 22.08.2016

Abhai
22.08.16
(Abhai Kumar Srivastav)
Commissioner (Appeal-I)
Central Excise, Ahmedabad.

Attested

Vinod
(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise,
Ahmedabad.



BY R.P.A.D.

To,
M/s. Cadmach Machinery Co.Pvt.Ltd.,
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Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Principal Commissioner, Central Excise, Ahmedabad-I.
3. The Joint Commissioner, Central Excise, Ahmedabad-I.
4. The Deputy/Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I.
5. The Additional Commissioner, System, Ahmedabad
6. Guard File.
7. P.A..

