

• 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(29)/69/ Ahd-I/2015-16

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ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-019-2016-17  
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, केंद्रीय उत्पाद शुल्क, A'bad-I द्वारा जारी मूल आदेश सं 20/CX-1 Ahmd/JC/  
PMR/2015 दिनांक: 27.05.2015 से सृजित

Arising out of Order-in-Original No. 20/CX-1 Ahmd/JC/ PMR/2015 Dated : 27.05.2015  
issued by Joint Commissioner, Central Excise, Ahmedabad-I

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

**M/s. Metro Global Limited (Unit-I)**

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) केंद्रीय 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.

(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 हों।

- (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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल 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 न्यायाधिकरणों 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 वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक है वहां रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (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।

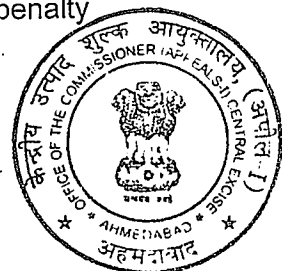
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 मांग 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. Metrochem Industries Ltd (Unit-II) (Now M/s. Metro Global Limited (Unit-I), Plot No.472-475 and 489-492, Phase-II, GIDC, Vatva, Ahmedabad (hereinafter referred to as the appellant) has filed this appeal against OIO No. 20/CX-I Ahmd/JC/PMR/2015 dated 27.05.2015, passed by the Joint Commissioner, Central Excise, Ahmedabad-I (hereinafter referred to as the "adjudicating authority").

2. The facts in brief are that during the course of audit pertaining to the period from January, 2011 to March, 2012, it was observed that the appellant had availed CENVAT credit of Rs.14,89,907/- paid on the foreign bank charges based on invoices issued by their Head Office [which was registered with the department as an Input Service Distributor (ISD)]. This amount of Rs.14,89,907/- was paid by the appellant vide challans dated 23.04.2011 and 21.07.2011 based on an earlier objection raised by Audit which had examined the records for the period from March, 2008 to December, 2010, wherein the objection raised was that the appellant had not paid service tax on charges deducted by the Foreign (Overseas) Bank, taxable under Section 66A of the Finance Act, 1994, relating to exports done by the appellant's erstwhile unit, based at Baroda, during the years 2006-07 to 2008-09. Appellant's manufacturing unit at Baroda was demerged/ sold to M/s. Huntsman Group and a resulting company namely, M/s. Baroda Textile Effects Ltd. was formed. The demerger was approved by the Hon'ble High Court of Gujarat vide order dated 11.6.2009 and the ownership of the Baroda unit changed w.e.f. 21.06.2009.

3. The Head Office of the appellant, after payment of service tax on the audit objection, supra, obtained registration as 'Input Service Distributor' on 29.8.2011 and thereafter distributed the said credit to the appellant. The audit objected to the availment of CENVAT Credit on the ground that said credit of service tax paid on the foreign bank charges pertained to the erstwhile Baroda unit, which was sold, and was not a part of the appellant at the time of obtaining ISD registration.

4. A show cause notice dated 30.10.2014 was issued to the appellant, *inter alia*, demanding recovery of the CENVAT credit wrongly availed along with interest. The notice also proposed penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC(b) of the Central Excise Act, 1944. Vide the aforementioned OIO dated 27.5.2015, the adjudicating authority confirmed the demand along with interest and also imposed penalty on the appellant.

5. Aggrieved, the appellant has filed this appeal mainly on the following grounds:

- i) that the impugned order is a non-speaking order; that, once the department took a stand that the Head Office of the appellant was liable to pay Service Tax on the services rendered by the Baroda Unit, in respect of the period prior to demerger, the availment of CENVAT credit on the same, cannot be disallowed on the ground that the Baroda unit had demerged in 2009.
- ii) as per the Order of the Hon'ble High Court of Gujarat, the contractual agreement with M/s. Baroda Textile Effects Limited was only to indemnify against the prior period tax liability; that, therefore



the insistence of the department to pay service tax was incorrect and against the contractual liability of the appellant.

- iii) they had correctly availed credit based on ISD invoice as per the provisions of Rule 9(1) (g) of the CENVAT Credit Rules, 2004 and Rule 4A of the Service Tax Rules, 1994.
- iv) Service Tax amounting to Rs.14,89,907/- was not payable on the charges deducted by the Foreign (Overseas) Bank for the remittance of the export proceeds, pertaining to the exports made from the Baroda Unit.
- v) as they had no intention to evade payment of excise duty, no interest is chargeable and no penalty can be imposed.
- v) In view of the above, they requested to set aside the impugned OIO.

6. Personal hearing in the matter was held on 26.7.2016. Advocate, Ms. Priyanka Kalwani and Mr. Sunil Desai, Dy. General Manager, appeared on behalf of the appellant. They reiterated the submission advanced in their grounds of appeal and relied upon the High Court judgement in the case of Doshion Ltd. reported at [2016(41)STR 884(Guj)].

7. I have gone through the fact of the case, the appellant's grounds of appeal, and submissions at the time of personal hearing. The primary issue to be decided in this appeal is whether the CENVAT credit availed by the appellant based on the invoice issued by the ISD in respect of service tax paid on exports made by their erstwhile Baroda unit, is correct?

8. The appellant had obtained centralized Service Tax registration for all the three manufacturing units [which included the Baroda unit] and maintained common accounting system of the three units at their head office located at 505/506, 'Surya Rath', Near White House, Panchvati, Ellisbridge, Ahmedabad. Ellisbridge. The Baroda unit, in the mean time was sold to the Huntsman Group in July, 2009, and the ownership of the Baroda unit changed w.e.f. 21.06.2009.

9. The appellant while challenging the impugned OIO has contended that their Head Office was not required to pay the service tax in the first instance and that the credit was correctly availed since payment of service tax is not in dispute.

10. Whether the appellant was liable to service tax is presently not within the scope of the notice. The notice is only challenging the availment of CENVAT Credit, which was an act subsequent to the payment of service tax by the Head Office. Further, it is also a fact that the Head office of the appellant after discharging the service tax, which as per the appellant's say was not required to be paid, had never challenged the payment.

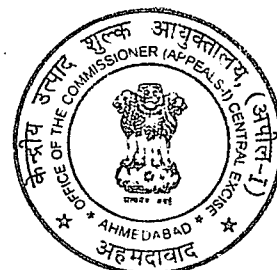
11. It is observed that the appellant had taken registration under the category of Input Service Distributor(ISD) on 29.8.2011. ISD as defined under Rule 2(m) of the CENVAT Credit Rules, 2004, is an office of the manufacturer/producer of final products or the provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchase of



input services and issues invoice/bill/challan for the purpose of distributing credit of the service tax paid on the said input services to such manufacturer/ producer or service provider. Rule 3(1) of the Service Tax (Registration of Special Category of Persons) Rules, 2005 requires an ISD to obtain registration with the department. On going through the form ST-2 it is observed that the Baroda unit does not figure under "*Address of all the premises from where taxable services are provided or intended to be provided*" and under "*Address of premises to which credit of input service is distributed or intended to be distributed*". It is a fact that when appellant had obtained ISD Registration in 2011, the Baroda unit was not under its ownership, as it was sold in 2009 itself. Therefore, the Head office of the appellant, as an ISD, could not have distributed the CENVAT credit pertaining to its erstwhile Baroda unit which did not figure either under the *premises from where taxable services are provided or intended to be provided* or *under premises to which credit of input service is distributed or intended to be distributed*.

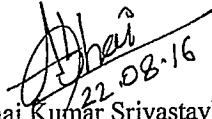
12. There are plethora of judgements including the judgement of High Court of Gujarat in the case of *M/s. Doshion* [2016(41)STR 884(Guj)] referred to by the appellant during personal hearing, holding that there was no requirement of distributing CENVAT credit of input services on *pro rata* basis to various units during the relevant period and that the omission to take registration as ISD is only a procedural lapse. It is a fairly settled law that assessee should not be deprived of benefits of CENVAT scheme for procedural lapses or defects. However, Hon'ble Supreme Court, in case of *Mangalore Chemicals & Fertilizers Ltd* [1991(55) ELT 437], observed that there is a distinction between procedural condition of a technical nature and substantive condition. Non-observance of former is condonable while that of a latter is not condonable. Hon'ble Tribunals and Courts have followed this principle. In this case, Revenue's contention is that the since the erstwhile Baroda unit of the appellant is no longer covered under the ISD registration on account of it being sold much earlier, the disputed credit in respect of service tax paid for exports effected by the Baroda Unit, should accrue to the said unit only and cannot be distributed by the head office of the appellant to its other units. This distribution, being a non-observance of a condition of substantive nature, cannot be condoned. Rule 7 of the said rules provides for distribution by an Input Service Distributor. As the Baroda unit was not part of the Input Service Distributor, the question of distribution through Rule 7 does not arise.

13. Argument of the appellant that extended period is not applicable in this case and that no interest and penalty is imposable has already been addressed by the original adjudicating authority. It is observed that at no point of time the appellant had disclosed the availment of CENVAT credit of Service Tax on Foreign (Overseas) Bank charges to the department. The availment of credit came to the knowledge only during the course of audit. Hence, I uphold the confirmation of the demand by invoking the extended period. In fact most of the contentions raised by the appellant in the grounds of appeal are akin to those raised before the adjudicating authority, which have been properly addressed in the Order-in-Original.




14. In view of the above observations, I uphold the Order of the adjudicating authority and reject the appeal filed by the appellant. The appeal stands disposed off accordingly.

Date : 22.08.2016

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

ATTESTED

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

BY R.P.A.D.

To,

M/s. Metrochem Industries, Unit-II,  
Plot No.472-475 & 489-492, Phase-II,  
GIDC, Vatva,  
Ahmedabad



Copy To:-

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

