

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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)90/ Ahd-I/2015-16 / 2855/2059

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-023-2016-17
दिनांक Date : 28.10.2016 जारी करने की तारीख Date of Issue 9/11.2016

श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri Uma Shanker, Commissioner (Appeal-I)

ग Deputy Commissioner, केन्द्रीय उत्पाद शुल्क, A'bad-I द्वारा जारी मूल आदेश सं MP/07/Dem/
2015-16 दिनांक: 29.10.2015 से सृजित

Arising out of Order-in-Original No. MP/07/Dem/ 2015-16 दिनांक: 29.10.2015 issued by
Deputy Commissioner, Central Excise, Div-V, Ahmedabad-I

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

M/s. Dynamic Autolooms India Pvt.Ltd., Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 निर्माण 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. पुराम, 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टट) 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 इ.ए-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 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 वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की 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 पढ़ी 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 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. Dynamic Autolooms India Private Limited, Plot No. 2, Road No. 1, Phase-I, GIDC Kathwada, Ahmedabad-382 430, (for short - 'appellant') had filed this appeal against OIO No. MP/07/Dem./2015-16 dated 26.10.2015, passed by the Deputy Commissioner, Central Excise, Division-V, Ahmedabad-I (for short - 'adjudicating authority').

2. Briefly, the facts are that, based on an audit objection, a show cause notice dated 6.4.2015, was issued to the appellant, alleging that during the period from April 2012 to February 2014, though they had availed input credit of service in respect of Security, Telephone and Mobiles, Inward freight, Courier services, etc, which were used towards both excisable goods and exempted services i.e. trading of goods, they had failed to maintain separate records in respect of input services used in the manufacture of excisable goods and for providing exempted services, as stipulated in Rule 6(2) of the CENVAT Credit Rules, 2004 [for short - "CCR '04"]. The show cause notice, therefore, demanded recovery of an amount under Rule 6(3) of the Rules, *ibid*, along with interest and further proposed penalty, on the appellant.

3. The adjudicating authority, in his aforementioned OIO dated 26.10.2015, confirmed the demand along with interest and imposed penalty on the appellant. Feeling aggrieved, the appellant has filed this appeal wherein he has raised the following contentions:

- that account of CENVAT credit in respect of common input services were maintained, which was to the tune of Rs. 77,391/-; that they have already reversed the amount of Rs. 77,391/-; that they were required to pay only Rs. 784/- towards availment of CENVAT credit on common input services; that they were ready to debit the amount of common input credit proportionately but the audit officers wanted to recover the amount of 6% on traded goods; that it was not possible to maintain separate accounts of the common input services used in the manufacture and provision of traded goods;
- that they wish to rely on the case law of Colgate Palmolive [20] 2(25) STR268];
- that as per formula in Rule 6(3A)(iii), they were only required to debit Rs. 1,912/-; that though they had not opted for this benefit, they cannot be denied this option, being a procedural lapse; that they wish to rely on the case of Mangalore Chemicals [1991(55) ELT 437], Apex Steels [1995(80) ELT 308], Vijaylaxmi Bottlers [1991(53) ELT 105], British Physical Laboratories [1994(74) ELT 593], Triton Valves [1993(65) ELT 239], Thermal Coatings [1993(63) ELT 176];
- that as per Rule 6(3D) (c) of CCR '04, they were required to reverse only Rs. 76,468/-;
- that extended period is not invocable in this case;
- that they wish to rely on the case of GAC Shipping (India) Private Limited [2008(9) STR 534, ITW Signode (India) Limited [2015(322) ELT 699], Chemphar Drugs [1989(40) ELT 276], Continental Foundation [2007(216) ELT 177], Larsen and Toubro [2007 (211) ELT 513].

D

5. Personal hearing in the matter was held on 18.10.2016. Shri P.G.Mehta, Advocate, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He also relied on the following citations Himalaya Drug Company [2012(27) STR 95], Mercedes Benz India [2015(40) STR 381], Tata Technologies Limited [2016(42) STR 290].

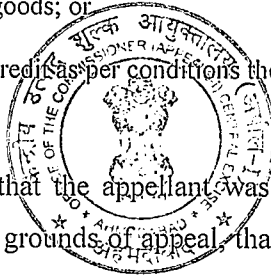
6. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. The issue to be decided is whether the demand of Rs. 2,38,483/-, confirmed under Rule 6 of the CCR '04 along with interest and penalty, is correct or otherwise.

7. The dispute as is evident revolves around Rule 6 of the CCR '04, which is extensively quoted in the show cause notice and the OIO dated 29.10.2015. The text of the rule is, therefore, not re-produced. However, since both the department and the appellant have come to a different conclusion, in respect of Rule 6(1), (2) and (3) of the CCR '04, it would be prudent, to first examine the sub-rules, which I hope, would result in a smooth resolution of the dispute.

8. Rule 6(1) of CCR '04, clearly states that CENVAT credit shall not be allowed on input service used in manufacture of exempted goods or provision of exempted services except in the circumstances mentioned in sub-rule(2). Rule 6(2), *ibid*, puts an obligation on a manufacturer who avails CENVAT credit in respect of inputs and input services, used in both dutiable and exempted final products, to maintain separate records. Rule 6(3), *ibid*, a non-obstante clause, gives a facility to a manufacturer, opting not to maintain separate accounts to either

[a] pay an amount of 6% of the value of exempted goods; or
 [b] pay an amount as determined under rule 3A; or
 [c] maintain separate accounts and take CENVAT credit as per conditions therein and thereafter, pay an amount as per sub rule 3A of CCR '04.

9. The fact, which is undisputed, is that the appellant was engaged in trading activity also. The appellant is on record in his grounds of appeal, that it was not possible to maintain separate accounts of the common input services, used in the manufacture of dutiable goods and trading goods. Thus, there is no dispute as far as the allegation of non maintenance of separate accounts, is concerned. It was imperative on the appellant, to either, not take CENVAT credit in respect of input service used in trading activity or maintain separate accounts as per Rule 6(2), *ibid*. However, as is already mentioned, the appellant took CENVAT credit in respect of input service used in trading activity and also failed to maintain separate accounts.



②

10. Now since applicability of Rule 6 of the CCR '04, is the bone of contention, I would like to address the averments raised by the appellant. The appellant during the course of personal hearing and in his grounds of appeal has reiterated that the entire credit on common inputs, amounting to Rs. 77,391/- has already been paid/stands reversed. Since this amount stands reversed, it cannot be said that the assessee has taken credit for the duty paid on the common inputs utilised in the provision of exempted services. This principle was followed in the case of Chandrapur Magnet Wires (P) Ltd [1996(81) ELT 3(SC)]. Further, the Hon'ble High Court of Gujarat in the case of M/s. Ashima Dyecot Limited [2008(232)ELT 580(Guj)] held that reversal of Modvat credit amounts to non-taking of credit on the inputs. In view of the foregoing, consequent to the reversal, supra, question of applicability of Rule 6 of the CENVAT Credit Rules, 2004, does not arise.

11. The Hon'ble High Court of Gujarat in the case of M/s. Maan Pharmaceuticals Ltd [2011(263)ELT 661(Guj)], decided the question of law viz. "Whether the Hon'ble Tribunal is right in accepting reversal of credit taken by the assessee in this case instead of upholding the adjudicating authorities order to the assessee to pay an amount equal to 8% of total price of the exempted goods as per the Rules 6(3)(b) of Cenvat Credit Rules, 2002?" proposed by the department – by holding as follows :

8. Examining the impugned order of the Tribunal in the light of the aforesaid decision of this Court, it is not possible to state that the Tribunal has committed any legal infirmity so as to warrant interference. In the circumstances, no question of law, much less, a substantial question of law can be stated to arise out of the impugned order of the Tribunal. The appeal is accordingly dismissed.

Even otherwise, demanding Rs. 2,38,483/- for availing CENVAT Credit of Rs. 77,391/- on common inputs, would be too harsh.

12. In view of the foregoing, adhering to judicial discipline, the OIO demanding reversal of an amount of Rs. 2,38,483/- as per Rule 6(3)(i) of the CCR '04 along with interest and penalty, is set aside since the appellant has contended that they have reversed CENVAT credit of Rs. 77,391/- availed on common inputs. However, the appeal is allowed subject to verification by the jurisdictional officer that the entire credit on common inputs, amounting to Rs. 77,391/- stands reversed.

D

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

13. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date : 28.10.2016

Attested

Vinod

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

BY RPAD.

To,

M/s. Dynamic Autolooms India Private Limited,
Plot No. 2,
Road No. 1, Phase-I,
GIDC Kathwada,
Ahmedabad-382 420

Copy to:-

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

