



• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/87/Ahd-I/2015-16
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-028-2016-17
दिनांक 17.11.2016 जारी करने की तारीख Date of Issue 21/11/16

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

ग DEPUTY Commissioner, Div-III केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/12/DC/2015-16 दिनांक: 09-10-2015, से सृजित

Arising out of Order-in-Original No. MP/12/DC/2015-16 दिनांक: 09-10-2015 issued by DEPUTY
Commissioner, Div-III Central Excise, Ahmedabad-I

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

M/s. Windsor Machine 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 प्रक्रिया 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.

(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।



... 2 ...

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।

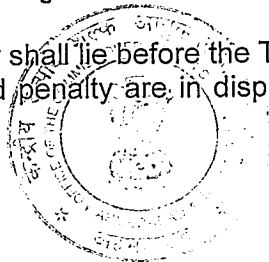
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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."



2

(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.



ORDER-IN-APPEAL

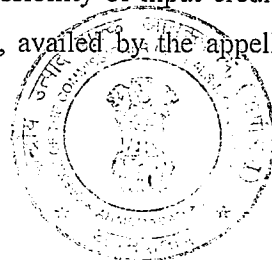
This appeal has been filed by M/s Windsor Machines Ltd., Plot No.5403, Phase-IV, GIDC Vatva, Ahmedabad (hereafter referred to as "the appellant) against Order-in-Original No.MP/12/DC/2015-16 dated 09.10.2015 (hereinafter referred to as" the impugned order") passed by the Deputy Commissioner, Central Excise, Division-III, Ahmedabad (hereinafter referred to as "the adjudicating authority).

2. Briefly stated, a show cause notice dated 03.11.2014 was issued to the appellant on the basis of Audit Report, alleging that they had wrongly availed Cenvat credit amounting to Rs.1,13,109/- paid on "Work Contract service" used for the construction of building during the period from April 2013 to August 2014. The notice, further alleged that as per Board's circular No.98/01/2008-ST dated 04.01.2008, "Commercial or Industrial Construction Service/"Erection, Installation and Commissioning Service" is an input service for the output namely "Immovable property" i.e construction of building and is neither subject to central excise duty nor to service tax; that immovable property is neither service or goods, input credit cannot be taken. The notice therefore, *inter alia*, demanded service tax credit of Rs. 1,13,109/-wrongly taken along with interest and also proposed penalty under Rule 15(2) of Cenvat Credit Rules, 2004 (CCR 2004) read with Section 11 AC(1)(b) of the Central Excise Act, 1944. The adjudicating authority, vide the impugned order, has disallowed the said Cenvat credit wrongly taken and demanded the same with interest. He also imposed penalty of Rs.56,555/- in terms of Rule 15 (2) of CCR 2004.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that the adjudicating authority has passed the impugned order against the principles of judicial discipline; that the Commissioner (Appeals) on the identical issue has set aside earlier demand and the adjudicating authority has not considered the order; that the credit was disallowed by misplacing the reliance on notification No.01/2006-ST; that the Board's circular is inapplicable in their case as the clarification is applicable in the context of availing commercial or industrial construction service towards the output service of renting of immovable property; that in the present case, the cenvat credit is taken as a manufacturer of excisable goods. The adjudicating authority has not disputed credit on the ground of definition of input service and more over the Commissioner (Appeals) has considered the provisions of Rule 2(1) of CCR and held the credit as admissible. The appellant has cited various case laws in support of their argument.

4. A personal hearing in the matter was held on 18.10.2016. Shri P.G.Mehta; Advocate appeared for the same on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The instant appeal involves the issue of admissibility of input credit of service tax paid on the service under "Work Contract service", availed by the appellant for the period from April 2013 to August 2014.



6. The definition of "input service" under Rule 2(l) of Cenvat Credit Rule states that:

(l) "input service" means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the 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 modernization, 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, activities relating to business, such as 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] specified in sub-clause (p), (zn), (zzl), (zzm), (zzq), (zzzh) of clause 105 of Section 65 of the Finance Act (hereinafter referred to as specified service), in so far as they are used for-

(a) Construction or execution of works contract of a building or civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital goods

[B]

The clause [A] has been amended with effect from 20.06.2012 which reads as under-

[A] service portion in the execution of a work contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred to as specified services) in so far as they are used for-

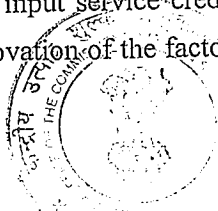
(a) Construction or execution of works contract of a building or civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital goods, except for the provisions of one or more of the specified service; or

[B]

7. From the above definition, it is seen that with effect from 20.06.2012, there is exclusion for "works contract service" and "construction service" when these services are used for construction or execution of works contract of a complex, building, civil structure or for laying foundation or making structure for support of capital goods. The inclusive portion of the definition covers service relating to modernization, renovation or repairs of a factory premises of provider of output service or manufacture of final products and clearance of final products upto the place of removal. I further observe that when the inclusive part specifically allows the credit of service tax paid on services pertaining to the modernisation, renovation or repairs of a manufacturer of final products and clearance of final products, what the services that are covered under exclusion part are. In my opinion, the exclusion part covers services in the nature of 'original works' viz., the new constructions or substantial constructions and not the petty works. In other words, if the manufacturer, instead of renovation/repairs to their factory premises/office intends to construct a new building, in such a case no credit of service tax paid to the contractor is eligible.

8. Now, the question arises regarding actual works carried out by the appellant. It is the contention of the appellant that they had taken the input service credit on service tax paid on "work contract services" used in relation to renovation of the factory which is in or

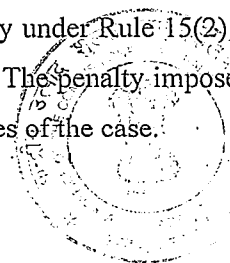


in relation to manufacture of excisable goods. On the other hand, the adjudicating authority contended that the appellant had taken the credit in dispute on service tax paid on "work contract services" used in construction of building. The appellant further argued that the Commissioner (Appeals), vide OIA dated 26.08.2014, pertains to the period of May 2011 to December 2011, has considered the provisions of Rule 2(l) of CCR and allowed the credit in question for the said period.

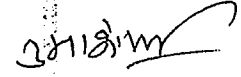
9. In the instant case, I observe that the impugned notice, on the basis of audit objection, was issued to the appellant for wrong availment of input service credit on "work contract service" for construction of building. The authorized person of the appellant has also admitted the fact that during the relevant period in the instant case, they had availed the said credit on "Work contract service" used in respect of construction of building. In the impugned order also, it was mentioned that the said credit was taken by the appellant on the said service for construction of building. Further, the appellant has not produced any evidence to prove that they had only carried out renovation/repair of building. In the circumstances, there is no reason to consider the argument of the appellant that during the period that they had taken the said credit on service tax paid on "work contract services" used in relation to renovation of the factory.

10. Further, I have also perused the OIA dated 26.08.2014, wherein the credit on Work Contract Service" was allowed by the Commissioner (Appeals) for the period from May 2011 to December 2011. I observe that during the relevant period, the Commissioner (Appeals) has considered the issue of admissibility of service tax paid on "Work contract service" in connection with repair of factory premises and not with respect to construction of a building or civil structure. In the instant case, the issue is relating to admissibility of input service credit availed on "Work contract service" in connection with construction of building during April 2013 to August 2014; that this fact was not disputed by the appellant while recording statement of the authorized persons of them under the provisions of Central Excise Act, 1944. In the circumstance, the said OIA dated 26.08.2014 is not applicable to the instance case. For availing Cenvat credit, the prime condition is that the requisite service shall fall within the ambit of input service definition, as specified in the CCR-2004. In the instant case, as per definition of "input service", the service i.e. "work contract" availed by the appellant for construction of building, do not fall within the ambit of "input service". Since the definition of input service itself restricts the appellant from availing the service tax credit of the service of "work contract" used for construction of building, as discussed above, I do not find any merit to discuss further aspect of argument put forth by the appellant in the appeal. Therefore, I uphold that the appellant is not eligible for input service credit availed by them during the period from April 2013 to August 2014. In the circumstances, the same is to be recovered from them with interest.

10. I find that the adjudicating authority has imposed penalty under Rule 15(2) of CCR 2004 read with Section 11 AC of the Central Excise Act, 1944. The penalty imposed under the said Section appears to be apt in the light of the circumstances of the case.



11. In this backdrop, I reject the appeal filed by the appellant. The appeal filed by the appellant stands disposed of in above terms (अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।).




(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 7/11/2016

Attested


(Mohanan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad

By R.P.A.D.

To
M/s Windsor Machines Ltd.,
Plot No.5403,
Phase-IV, GIDC Vatva, Ahmedabad
Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-I
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-I
4. The Dy. / Asstt. Commissioner, Central Excise, Divn. III, Ahmedabad-I
5. Guard file.
6. P.A.

