

 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b>		
केन्द्रीय कर, शुल्क भवन, 7 <sup>th</sup> Floor, Central Excise Building, सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic, आम्बावाडी, अहमदाबाद-380015, Ambavadi, Ahmedabad-380015		
☎ 079-26305065		☎ टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/4/Ahd-I/2017-18 / 9026 to 9031  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-130-2017-18  
दिनांक Date : 27.10.2017 जारी करने की तारीख Date of Issue 22-11-17

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

ग Joint Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 10/CX-  
I/Ahmd/JC/KP/2017 दिनांक: 1/30/2017, से सृजित

Arising out of Order-in-Original No. 10/CX-I/Ahmd/JC/KP/2017 दिनांक: 1/30/2017 issued by Joint  
Commissioner, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**M/s Windsor Machines Limited  
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, 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 :

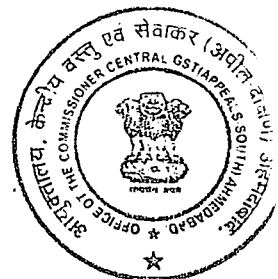
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के  
दौरान हुई हो।

(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.

(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 ...



(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) 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 मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) 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.



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."



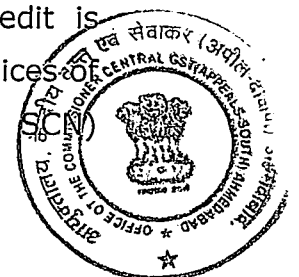
ORDER IN APPEAL

1 M/s.Windsor Machine Ltd., Plot No. 5403, Phase IV, GIDC Vatva, Ahmedabad- 382 405 (Vatva Unit) (hereinafter referred to as 'appellants') holding C.Ex. Registration No. AAAC D4302P XM001, have filed the present appeals against the Order-in-Original number 10/CX-I Ahmd/JC/KP/2017 dated 31.01.2017 (hereinafter referred to as 'impugned orders') passed by the Joint Commissioner, C.Ex., Ahmedabad-I (hereinafter referred to as 'adjudicating authority');

2. The facts of the case, in brief, are that the appellant (Vatva Unit) had taken credit of input service tax directly on invoices (of common input service to all three units), which were issued to registered office at Mumbai office. Mumbai office had neither taken ISD registration nor distributed service tax credit under prescribed challan u/r 2(m) of CCR, 2004 r/w rule 7 of CCR, 2004 r/w rule 4A of STR, 1994. Appellant was having other two units located at Chattral and Thane. Adjudicating authority had disallowed the Cenvat Credit of Rs. 8,26,675/- on three services- (a) Professional/Legal service, (b) Insurance Charge and (c) Credit Card charge, u/r 14 of CCR, 2004 r/w Section 11A(1) of CEA, 1944 with interest liability u/s 11AB, CEA 1944. Penalty of Rs. 2,000/- was imposed u/r 15(3) of CCR, 2004.

3. Being aggrieved with the impugned order, the appellant filed an appeal wherein it is stated that-

- i. at para 21.2 of OIO it is held that cenvat credit of Rs. 1,20,104/- pertains to Insurance Charge of Vatva unit and as the said service is utilized for Vatva Unit and Input Services invoices are in name & address of Vatva Unit, credit is admissible to them. However in order portion it is disallowed against own findings of adjudicating authority.
- ii. Office of manufacturer is required to take ISD registration only if they wish to distribute the credit to their various units. As our office did not distribute credit it was not required to take registration. Further ISD definition did not stipulate that an office of manufacturer should obtain registration.
- iii. Cenvat credit of Rs. 3,43,180/- availed on invoices of Professional/Legal service, mentioned in Annexure A-2, A-3 and A-4 (of SCN) is issued on address of Vatva Unit, therefore credit is admissible to them. Cenvat credit of Rs. 3,57,271/- availed invoices of Professional/Legal service, mentioned in Annexure A-1 (of





introduction of sub clause (d) of rule 7 of CCR inserted vide notification No. 28/2012 (NT) dated 20.06.2012 there was no requirement of distributing credit on turnover pro-rata basis of different units. It has not been concluded in OIO that input service has not been utilized either in HO or in Vatva unit nor it is concluded that irregularity has been committed in availing credit. Further there is nothing in rule that would disentitle to take credit in case ISD registration is not obtained by HO. Therefore I am of considered view that not obtaining ISD registration is procedural and curable lapse. My view is supported by Hon`ble Gujarat HC decision on Dahison Ltd [ 2016 (41) STR 884- Guj HC].

7. Now I come to issue regarding availment of cenvat credit of Rs. 7,00,451/- of Professional and legal charges service. From para 12.9 of OIO it is gathered that the appellant had stated that Annexure A-2, A-3 and A-4 of SCN, pertains to details of cenvat credit availed on legal and professional service on invoices issued to and on address of Valava unit. Cenvat credit corresponding to annexure A-2, A-3 and A-4 is of Rs. 3,43,180/-. Adjudicating authority has not denied and refuted these facts in OIO. Therefore said credit is admissible to credit on merit itself leaving aside ISD registration issue. Cenvat credit of Rs. 3,57,271/- availed invoices of Professional/Legal service, mentioned in Annexure A-1 (of OIA) issued address of Mumbai. Office is admissible in view of above discussion. I hold that whole cenvat credit of Rs. 7,00,451/- (Rs. 3,43,180/- + Rs. 3,57,271/-) is admissible to appellant. I set aside the impugned OIO as far it relates to cenvat credit of Rs. 7,00,451/-.

8. Regarding insurance charges credit of Rs. 1,20,104/-, I find form para 21.2 of OIO that said credit is held to be allowed in finding portion, as invoices pertains to be of Vatva unit, but in order portion it ordered to inadmissible. It is not concluded in OIO that said service has not been received and utilized in Vatva unit. Therefore, I hold that said credit is admissible to the appellant. I set aside the impugned OIO as far it relates to cenvat credit of Rs. 1,20,104/-.

9.1 Regarding, the credit of Rs. 6,120/- credit card service, I observe that, appellant have admitted the tax liability and had already paid before adjudication of OIO. Appellant has not put forth any argument in appeal memo or before me to convince, as to how the said credit is admissible to them. Said service tax is paid against Membership Fees for credit card issued in name of Shri. R.R. Nagarajan of Windsor Machinery Ltd. Services utilized by private member/employee of company for own purpose is not admissible.



for cenvat credit. I hold that said credit is correctly denied to the appellant by adjudicating authority and ordered to be recovered with interest. I uphold the impugned OIO as far it relates to cenvat credit of Rs. 6,120/-

9.2 In the present case, wrong availment of Cenvat credit by the appellant is unearthed during the course of Audit and subsequent inquiry is undertaken by the Department. Had it not been detected by the Audit, the said wrong availment of Cenvat credit would have gone unnoticed. I therefore hold that, the adjudicating authority was justified in invoking extended period of limitation.

10. Having allowed the major portion of credit, I am inclined to set aside the penalty of Rs. 2000/- imposed u/r 15(3) of CCR, 2004.

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

11. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

*R.R. Patel*

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD.

By R.P.A.D.:

To,

M/s.Windsor Machine Ltd.,

Plot No. 5403, Phase IV,

GIDC Vatva,

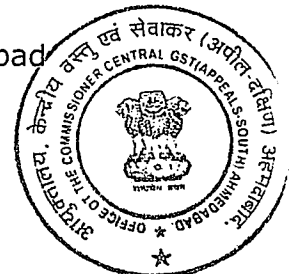
Ahmedabad- 382 405

Copy To:

The Chief Commissioner, Central Tax, Ahmedabad.

The Commissioner Central Tax, GST South, Ahmedabad-.

The Additional Commissioner, Central Tax , GST South, Ahmedabad



The Asst. Commissioner, C.Ex. Div-III, Ahmedabad-I(old jurisdiction).

The Asst. Commissioner(System), GST South, Hq, Ahmedabad.

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P.A. File.

