

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

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(54)/118&119/Ahd-I/2016-17 *1906 to 9068*
Stay Appl.No. NA/2016-17
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-136&137-2017-18
दिनांक 27.10.2017 जारी करने की तारीख Date of Issue 28-11-17
- श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)
- ग Deputy.Comm., Div-II केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 2&3/DIV-I/Refund/2016-17 दिनांक: 27/12/2016, से सृजित
Arising out of Order-in-Original No. 2&3/DIV-I/Refund/2016-17 दिनांक: 27/12/2016 issued by Deputy.Comm. Div-II Central Excise, Ahmedabad-I
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Arvind limited
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति 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.

(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 हैं।

(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 हैं।

(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 दिनोंक 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.

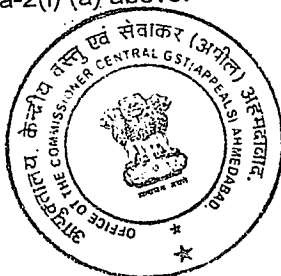
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 यथार्थिती अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिती 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।

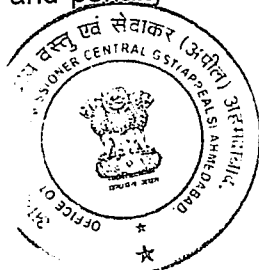
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

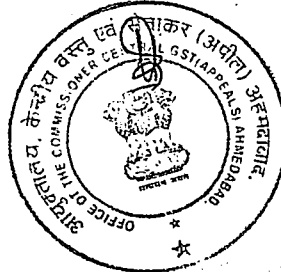
Two appeals have been filed by M/s. Arvind Limited (Division Arvind Intex), Rajpur Road, Gomptipur, Ahmedabad 380 021 [for short – ‘appellant’] against OIO Nos. 2/Div I/Refund/2016-17 dated 27.12.2016 and 2/Div I/Refund/2016-17 dated 27.12.2016 passed by Deputy Commissioner, Central Excise, Division-I of the erstwhile Ahmedabad-I Commissionerate [for short – ‘adjudicating authority’]. Since the issues are exactly similar, both the appeals are being dealt vide this common OIA.

2. The facts of the case are that the appellant filed two refund claims (i) on 8.11.2016 for Rs. 6,35,450/- and (ii) on 24.11.2016 for Rs. 1,07,140/-. While the first refund claim was filed enclosing a statement of capital goods/spare parts having value per piece Rs. 10,000/- received during the period from 1.4.2016 to 30.9.2016, the second claim was covering the period from 1.10.2016 to 29.10.2016. The appellant contended that they had filed the refund since the definition of *input* was amended vide Budget 2016 where under capital goods upto value of Rs. 10,000/- per piece was specifically included as input. The appellant was availing the benefit of notification No. 30/2004-CE dated 9.7.2004, which allowed availing the benefit of CENVAT credit on capital goods vide M.F. (D.R.) Corrigendum F.No. 334/3/2004-TRU (Pt. 1), dated 9-7-2004. Two show cause notices, both dated 6.12.2016, was issued to the appellant listing infirmities in the refund claim. Consequently, vide the impugned OIOs, the refund was rejected by the adjudicating authority.

3. Feeling aggrieved, the appellant has filed these two appeals raising the following contentions:

- that in the impugned OIO in para 8, contentions raised by appellant is accepted; it is also held that no permission is required to be granted for availing credit;
- that the appellant is at loss to understand as to [a] which provisions of section 11B of the Central Excise Act, 1944, is not followed & [b] what infirmity is found in the refund application;
- that though no permission is required for availing credit, the appellant had referred to a safer course of filing refund claim, thereby forcing the department to take a specific stand;
- that the grounds of refund refer to the provisions of CENVAT Credit Rules as the basis of the claim; that had the appellant taken the credit & reversed it with a very next entry the claim would have been maintainable;
- that the original copies of the invoices bearing pages 1 to 256 & 1 to 45, respectively are enclosed;
- that duty payment and details of suppliers are available from copies of invoices and statement showing the total transactions involved;
- that the relief claimed is permission to avail credit and the refund of credit is outside the purview of unjust enrichment;
- that the availability of credit is time bound these has rendered the appellant remedy-less forcing the refund application;

4. Personal hearing in respect of both the appeals was held on 6.10.2017 wherein Shri S.J.Vyas, Advocate, appeared on behalf of the appellants. He reiterated the grounds of appeals.



5. I have carefully gone through the facts of the case and the grounds of the appeals. The issue to be decided in the present appeal is whether the appellant is eligible for refund or otherwise.

6. The refund was rejected by the adjudicating authority on the below mentioned grounds:

- that they have submitted original copies of invoices;
- that the claimant is reluctant to admit as to under which provisions of Central Excise Act, Rules, Notifications the refund claim is filed;
- that it is only upto the claimant to either opt for availing CENVAT credit on inputs and clear the goods on payment of duty or follow the amended provision of Rule 2 of CENVAT Credit Rules, 2004.

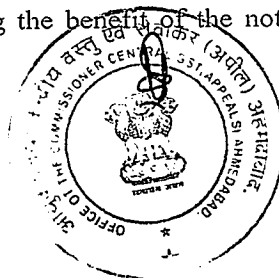
7. Facts leading to the refund are that vide notification No. 13/2016-C.E. (N.T.), dated 1-3-2016, the definition of *input* was amended as follows:

- (c) in clause (k),-
(iii) after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely :-
“(v) all capital goods which have a value upto ten thousand rupees per piece.”;

However, there was no consequent to the definition of capital goods. The effect of the amendment was that capital goods having a value of upto rupees ten thousand per piece, were included under the definition of *input*. The appellant, operating under notification No. 30/2004-CE dated 9.7.2004, [which allowed availing of CENVAT credit on capital goods only], feeling apprehensive, that if they were to avail CENVAT credit on capital goods below Rs. 10,000/-, it would be construed as having availed CENVAT credit on inputs and may lead to situation wherein they would be denied even the benefit of notification No. 30/2004-CE dated 9.7.2004, has without availing the CENVAT credit filed this refund.

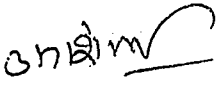
8. The appellant has in his grounds, claimed that that the relief needed is [a] permission to avail CENVAT credit and [b] refund of the said credit, claiming that refund of credit is outside the purview of unjust enrichment. Surprisingly, I do not find any condition under the CENVAT Credit Rules, 2004, which obliges an assessee, to seek permission to avail CENVAT credit. For availing CENVAT credit on inputs, capital goods and input services, the appellant has to fall within the ambit of the definitions of the inputs, capital goods, input services along with fulfilling the conditions enumerated in any exemption notification, in case he is availing any such benefit. In this era of self assessment, such a request of seeking permission to avail CENVAT credit, not being legally tenable, I reject the same.

9. The second relief claimed is regarding grant of refund which stands rejected by the original authority. Going by the facts of the case, I find that the appellant had purchased these goods [i.e. capital goods having a value of upto rupees ten thousand per piece] on payment of duty. It is no where claimed that these goods were exempted. Further, neither has the appellant produced any notification, rule, section, which provides refund in case he purchases such goods on payment of duty in case they are availing the benefit of the notification, *ibid*.



Therefore, it is surprising that the appellant has sought refund from the Government of a tax which the manufacturer of the goods was legally bound to pay which being a purchaser, the appellant was to borne finally being a purchaser of the said goods. The appellant being the one who has borne the excise duty on the capital goods by no stretch of imagination can seek refund of the same just because he is working under a specific exemption. In view of the foregoing, I uphold the decision of the adjudicating authority in rejecting the refund. Hence, the appeal stands rejected.

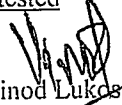
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
10. The appeal filed by the appellant stands disposed of in above terms.


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 27.10.2017

Attested


(Vinod Lukose)
Superintendent,
Central Tax(Appeals),
Ahmedabad.

By RPAD.

To,

M/s. Arvind Limited (Division Arvind Intex),
Rajpur Road,
Gomptipur,
Ahmedabad 380 021

Copy to:-

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

