

	केन्द्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केन्द्रीय कर शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक 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(84)/26/Ahd-I/2017-18 / 10408 to 10412
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-178-2017-18
दिनांक Date : 21-11-2017 जारी करने की तारीख Date of Issue 06-12-17

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

ग Addl Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 19/CX-I
Ahmd/ADC/MK/2017 दिनांक: 31/3/2017, से सृजित

Arising out of Order-in-Original No. 19/CX-I Ahmd/ADC/MK/2017 दिनांक: 31/3/2017 issued by
Addl Commissioner, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s Stovec Industries 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 ...

(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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 वाखिल करने के लिए पूर्व शर्त बना दिया गया है।

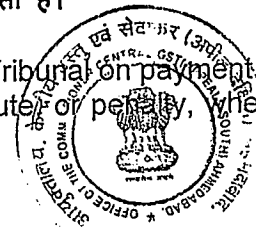
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This appeal has been filed by M/s. Stovec Industries Limited, NIDC, Lambha, Post Narol, Ahmedabad 382213, [for short - 'appellant'] against OIO No. 19/Cx-I Ahmd/ADC/MK/2017 dated 31.3.2017, passed by the Additional Commissioner, Central Excise of the erstwhile Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

2. The facts briefly are that during the course of audit of the appellant for the year 2006-07, it was observed that the appellant had sold their plant and machinery of the Graphic Division to M/s. Technova Imaging System (P) Limited, Ahmedabad vide commercial invoice No. CAP/0607001 dated 30.6.2006 for Rs. 7.85 crores, without reversing CENVAT credit availed on the said goods in terms of Rule 3(5) of the CENVAT Credit Rules, 2004. Therefore, a show cause notice dated 22.6.2007 was issued to the appellant *inter alia* demanding central excise duty of Rs. 18,03,635/- along with interest. The notice further proposed penalty on the appellant.

3. This notice was adjudicated vide OIO No. 70/Joint Commissioner/2007 dated 5.10.2007, wherein the then adjudicating authority ordered recovery of the CEVNAT credit of Rs. 18,03,635/- along with interest. Equivalent penalty under Section 11AC of the Central Excise Act, 1944, read with Rule 15 of the CENVAT Credit Rules, 2004, was also imposed on the appellant. Feeling aggrieved, the appellant approached the Commissioner(A) who vide his OIA No. 33/2008 dated 14.3.2008, upheld the OIO dated 5.10.2007. On an appeal being filed before the Tribunal the Hon'ble CESTAT, vide its order No. A/10896/2016 dated 30.8.2016 held as follows: [relevant extracts]

7. In the result, the impugned order is set aside & the matter is remanded to the adjudicating authority to re-determine quantum of Cenvat Credit by taking into consideration the depreciation allowed under the relevant rules as laid down in Navodhaya Plastic Industries Ltd's case [supra]. The Learned Advocate has argued that the demand is barred by limitation. However, I find that the demand was issued to the appellant on 22.6.2007 for recovery of credit not paid after sale of the said capital goods on 1.6.2006, hence the demand is within the normal period of limitation. On the aspect of penalty, I am of the view that only after re-quantification of the amount of Cenvat credit, the adjudicating authority decide the aspect of imposition of penalty keeping in mind that demand is for normal period."

4. In pursuance of the above direction of the Hon'ble Tribunal, the aforementioned impugned OIO dated 31.3.2017 was issued, wherein the adjudicating authority ordered recovery of CENVAT credit of Rs. 9,43,420/- along with interest and further imposed equivalent penalty under Section 11AC of the Central Excise Act, 1944, read with Rule 15 of the CENVAT Credit Rules, 2004.

5. Feeling aggrieved, the appellant has filed this appeal raising the following contentions:

- the proceedings should have been kept in abeyance as the appellant had filed a Tax Appeal before the Hon'ble High Court of Gujarat against the order of the Hon'ble Tribunal dated 30.8.2016.



- that the adjudicating authority did not follow the order of the Tribunal by imposing penalty by invoking the larger period;
- that there was no suppression/misstatement;
- that no penalty is imposable when the issue is relating to interpretation.

6. Ms. Varsha Adhikari, Company Secretary, of the appellant appeared for personal hearing on 1.11.2017 and reiterated the grounds of appeal. She further stated that they had filed an appeal against Hon'ble Tribunal's order before the Hon'ble High Court of Gujarat.

7. I have gone through the facts of the case, the grounds mentioned in the appeal and the oral averments, raised during the course of personal hearing. The main issue to be decided is whether the demand confirmed along with interest and imposition of penalty by the adjudicating authority, is correct or otherwise.

8. I have already very briefly mentioned the facts of the case. On the question as to whether the appellant is liable to pay the CENVAT credit of Rs. 9,43,420/- for sale of plant and machinery to M/s. Technova Imaging Systems (P) Ltd., in terms of Rule 3(5) of the CENVAT Credit Rules, 2004, I find that the Hon'ble CESTAT, vide its order dated 30.8.2016, *ibid*, has relying on the case of M/s. Associated Cement Company [2009(236) ELT 240 (Kar.)], held that the issue is no more *res integra*. The Hon'ble High Court of Karnataka, decided the following question of law

"Whether the Tribunal was justified in holding that the capital goods in respect whereof MODVAT credit was availed by the assessee company were not removed by it from the premises of its factory even though it sold the entire power unit to M/s. Tata Electric Company for a consideration of Rs. 90 crores and leased to the said purchaser for 20 years the premises wherein the unit was installed and thus it did not contravene any provisions of Central Excise Act/Central Excise Rules/Central Excise Rules?"

in the 'negative' and against the assessee. Since the issue stands settled by the Hon'ble High Court of Karnataka, in the case of M/s Associated Cement Company and in the case of the appellant by the Hon'ble CESTAT, I find that the demand has been properly confirmed along with interest. It is also a fact that the appellant has not questioned the quantification of the demand in this appeal.

9. Now coming to the question of penalty, I find that appellant's main grouse is that the direction in para 7 of the Hon'ble Tribunal's order dated 30.8.2016 was not followed; that since there was no suppression or mis statement and as no ingredients of Section 11AC was not present, penalty could not have been imposed under Section 11AC of the Central Excise Act, 1944. I find that the Hon'ble Tribunal had in its order stated that *"the adjudicating authority decide the aspect of imposition of penalty keeping in mind that demand is for normal period."* It is a fact that the demand is for the normal period. However, the adjudicating authority has observed that as far as penalty is concerned, there was willful suppression and mis declaration and contravention of provisions of law with an intent to evade payment of duty; that they had not disclosed the facts of non reversal of CENVAT credit on capital good of sale of plant and machinery to M/s. Technova.



10. I find that the adjudicating authority has imposed penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of the CENVAT Credit Rules, 2004. Section 11AC as it then stood, provided for imposition of penalty for short levy or non levy of duty by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with an intent to evade payment of duty. As I have already mentioned, the adjudicating authority has observed that as far as penalty is concerned, there was willful suppression and mis declaration and contravention of provisions of law with an intent to evade payment of duty; that the appellant had not disclosed the facts of non reversal of CENVAT credit on capital good of sale of plant and machinery to M/s. Technova. Firstly, I find that penalty under Section 11AC of the Central Excise Act, 1944, can be imposed if the criterion mentioned in the said section for imposition of penalty is met, even if the demand is for a normal period. Secondly, the appellant has failed to counter the findings of the adjudicating authority with regards to the charges of willful suppression and mis declaration and contravention of provisions of law with an intent to evade payment of duty. Nothing has been provided with the appeal papers, which could compel me to hold that the findings of the adjudicating authority imposing penalty, was not tenable. I find that the adjudicating authority has correctly imposed penalty on the appellant and therefore, the same is upheld.

11. In view of the foregoing, the OIO is upheld and the appeal filed by the appellant is rejected.

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

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

21.11.2017
Date: 10.2017

Attested

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

By RPAD.

To,

M/s. Stovec Industries Limited,
NIDC, Lambha,
Post Narol,
Ahmedabad 382213



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 IV, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.



