



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,  
सातवीं मंजिल, पोलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/76/Ahd-I/2017-18 /10670 to 10691  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-194-2017-18  
दिनांक Date : 30-11-2017 जारी करने की तारीख Date of Issue 11-12-17

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

ग Superintendent, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं 06/Supdt/AR-V/Div.III/ST/2017  
दिनांक: 18/4/2017, से सृजित

Arising out of Order-in-Original No. 06/Supdt/AR-V/Div.III/ST/2017 दिनांक: 18/4/2017 issued by  
Superintendent, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Zeus Fitness Pvt. 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, 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 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, 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

This appeal is filed by M/s. Zeus Fitness Point Private Limited, 101, Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015 [for short – ‘appellant’] against OIO No. 06/Supdt./AR-V/Div.III/ST/2017 dated 18.04.2017 [ for short – ‘the impugned order’] issued by the Superintendent, AR V, Division III, Service Tax Commissionerate, Ahmedabad[for short – ‘adjudicating authority’].

2. Briefly the facts are that during the course of scrutiny of the CENVAT credit availed by the appellant during the FY 2014-15, it was observed that the appellant had availed CENVAT credit of service tax paid on *renting of premises*. While the appellant’s registered premises was 101 Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015, the appellant had in addition to availing CENVAT credit in respect of the said premise, had also wrongly availed CENVAT credit in respect of shop nos. 102, 103 and 104 of Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015, which did not find a mention in his registration Certificate. During the course of scrutiny of the records of the said appellants, it was further noticed that they had taken and utilized input service credit on the strength of invoices which they failed to produce in spite of being given many opportunities and it appeared that they were not in possession of the invoices on the strength of which cenvat credit of Rs. 43,293 was taken and utilized. Therefore, the show cause notice dated 09.01.2017 proposed recovery of the CENVAT credit wrongly availed of Rs. 6,34,008/- along with interest and further proposed penalty on the appellant under section 78 of the Finance Act, 1994.

3. This notice was adjudicated vide the impugned OIO wherein the adjudicating authority disallowed the CENVAT credit, ordered recovery of interest and further imposed penalty on the appellant.

4. Feeling aggrieved the appellant has filed this appeal on the following grounds:

- that the appellant is registered under the Companies Act, 1956; that they are engaged in providing service of “Health Club and Fitness Centre” for which they are registered with department; that their registration no. is AAACZ5385JSD001;
- their corporate and registered office address is 101, Venus Atlantis, Nr. Petrol Pump, Prahaladnagar, Satellite, Ahmedabad;
- that the invoice in the present case has been raised on the registered and corporate office address as mentioned above;
- that they have not contravened any of the provisions of the Act or the rules made thereunder;
- that no proper opportunity was granted to the appellant; that the rent is used in providing of output services and he is paying service tax on output services;
- that on all invoices issued by the appellant, pertain to 101-104, Venus Atlantis, Ahmedabad, which are accounted in the books and on which service tax also stands paid; that a copy of a invoice is also enclosed;
- that copy of ground plan is enclosed which clearly shows that equipments/instruments used for the purpose of providing output services from 101-104 Venus Atlantis;
- that there is a technical lapse in obtaining centralized registration under service tax for all the premises from 101 to 104;
- that they wish to rely on the case of Dashion Limited [2016(66 Taxman.com(Gujarat High Court)];
- The appellants sought support from the following case laws:  
M/s WNS Global Services Pvt. Ltd. Vs. CCE, Pune-II – (2013) 30 taxman.com (Mum. Cestat) and M/s Reliance Industries Ltd. Vs. CCE and ST-LTU – (2013) 29 taxman.com (Mum. Cestat).

5. Personal hearing in the matter was held on 07.11.2017 wherein Shri Keyur Bavishi, Authorized Representative appeared on behalf of the appellant. He reiterated the grounds of appeal and further stated that he would be submitting the lease agreement in respect of the



premises within seven days. Thereafter, vide his letter dated 03.11.2017, he submitted copies of lease deeds for the premises 101 to 104 and the copy of the invoice dtd. 01.03.2015 with service tax of Rs. 43,292/-.

6. I have carefully gone through the facts of the case on records and submissions made by the appellant. The issue to be decided in the present appeal is whether the appellant is eligible for CENVAT credit in respect of service tax paid on renting of premises which did not figure in the registration certificate.

7. As is evident the appellant had rented four shops 101, 102, 103 and 104 on the first floor of Venus Atlantis, Nr. Reliance Petrol Pump, Prahladnagar, Ahmedabad 380 015, by entering into a 'Bhadano Karar'/Lease deed/rent agreement. The copies of the same have been provided consequent to the personal hearing. A copy of the ground plan attached with the appeal, shows that the premises are adjoining shops and accommodate various sections of the Health Club and Fitness Centre. The appellant availed CENVAT credit on service tax paid on renting of premises. The department has disallowed the CENVAT credit in respect of shops no. 102, 103, and 104 on the grounds that [a] only shop no. 101 was the registered premises as per the Registration Certificate and [b] the invoices in respect of shops no. 102, 103 and 104, were not addressed to the registered premises of the appellant. In-fact the invoices were addressed to shops no. 102, 103 and 104 and not 101.

8. I find that the appellant in his invoices issued to customers [a copy of which has been submitted with the appeal papers] used to mention his address as follows:

*Zeus Fitness Point Pvt Ltd  
101-104 Venus Atlantis, Near Shall Petrol Pump,  
Prahladnagar Main Road, Prahladnagar, Ahmedabad- 380 015.*

9. I find that the issue is no longer *res integra*. The issue has already been decided by the Court and the Appellate Tribunal, viz.

(i) Intent Design Pvt. Ltd. [2016(46) STR 579 (Tri)]

In this case the department had objected to the CENVAT credit availed on service tax paid on renting of immovable property on the ground that services were not received in the manufacturing premises and the premises where it has been received was not registered under Service Tax statute. The Hon'ble Tribunal held that there is no such requirement as far as the input services are concerned that the same should have been received in the manufacturing premises and the premises where received should be registered one.

(ii) Eltek Sgs Pvt. Ltd [2016(46) STR 465]

The dispute in this case was that the respondents had wrongly availed the CENVAT credit of service tax paid on renting of immovable property located at a place other than registered premises for manufacturing activity. The Hon'ble Tribunal, in this case, held as follows:

*"The original authority has denied the benefit only on the ground that renting of the property was located on different address than that of the registered premises of the respondents. The respondents have produced copies of the invoice issued by their address located at 390-391, Udyog Vihar, Phase-IV, Gurgaon before the adjudicating authority and Commissioner (Appeals) in support of their contention that the manufacturing activities were taking place on that premises also. Therefore, since that activity of manufacture was taking place in the premises located on 390-391, Udyog Vihar, Gurgaon benefit of Cenvat credit cannot be denied to the respondents. Accordingly, I do not find any infirmity in the findings of the Commissioner (Appeals) and I uphold the same and reject the appeal."*

(iii) mPortal India Wireless Solutions (P) Ltd. [2012 (27) STR 134]

In this case, in para 7 the Hon'ble Karnataka High Court, held as follows:

*"7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, stated"*



*finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."*

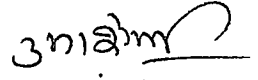
10. From the above decisions, it is clearly evident that Court/Tribunals have held that there is no requirement under law, as far as the input services are concerned, that the premises where it is received should be a registered one, for availing CENVAT credit. Therefore, the finding that because shop Nos. 102,103 and 104, were not mentioned in the registration certificate, credit in respect of the service tax paid on renting of the said premises would not be eligible, is not legally tenable. The second ground that the invoices in respect of shop Nos. 102, 103 and 104, were not addressed to the registered premises of the appellant is not a tenable ground since in the address in the invoices raised by the appellant all the shops i.e. Nos. 101,102,103 and 104 form the entire Zeus Fitness Point Pvt. Ltd. Further even in the copy of ground plan submitted with the appeal it is clearly forthcoming that the services are provided from all the shops 101 to 104. The ground plan clearly depicts that all the shops are interlinked and the service is provided by the appellant from all the shops put together.

11 I have also seen the copy of the invoice dtd. 01.03.2015 for cenvat credit of Rs. 43,292/-. This cenvat credit was sought to be denied on the ground that the appellants had failed to produce the copy of the invoice at the time of verification. While checking the details of the invoice dtd. 01.03.2015, I find that the invoice contains all the details as prescribed under rules and provisions. Accordingly, I conclude that the credit has been sought to be denied on technical lapse and which could have been corrected by the appellants. I therefore hold that denial of cenvat credit on technical or procedural lapse is not justifiable

12. In view of the foregoing, following the judicial discipline, I do not find the view of the adjudicating authority is legally tenable. I therefore find that the appellant is eligible for the CENVAT credit. Hence, the appeal is allowed and the impugned OIO is set aside.

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

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

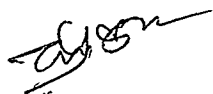
  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक: 30/11/2017

सत्यापित



(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स)

केन्द्रीय कर, अहमदाबाद

By RPAD.

To,

M/s. Zeus Fitness Point Private Limited, 101,  
Venus Atlantis, Nr. Reliance Petrol Pump,  
Prahladnagar, Ahmedabad 380 015.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad.
2. The Principal Commissioner of Central Tax, Ahmedabad-I.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-I.
4. The Assistant Commissioner, Central Tax, Division-VII, Ahmedabad-I.
5. Guard File.
6. P.A.

