
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर भवन, 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015		
सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
☎ : 079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/11&16/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-205&206-2017-18
दिनांक Date : 30-11-2017 जारी करने की तारीख Date of Issue 21-12-2017

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

ग Arising out of Order-in-Original No. MP/62&64/AC/2016-17 दिनांक: 27/2/2017 & 06/03/2017
respectively, issued by Asst. Commissioner, Central Tax, Ahmedabad-South

Arising out of Order-in-Original No. MP/62&64/AC/2016-17 दिनांक: 27/2/2017 & 06/03/2017
respectively issued by Asst. Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Rikin Industries
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 निश्चित किए गए हों।

(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 मैटल 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 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 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.

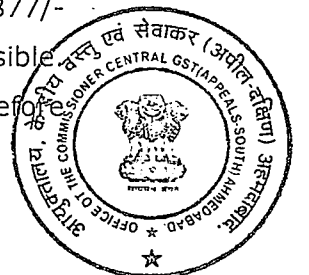
इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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. Rikin Industries (hereinafter referred to as "the appellant"), Plot No. C-428, Phase-II, GIDC, Vatva, Ahmadabad, (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number MP/62/AC/2016-17 Ref, dated 27.02.2017 and MP/64/AC/2016-17 Ref, dated 06.03.2017, (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Central Excise, Division-III, Ahmadabad-I. (hereinafter referred to as 'adjudicating authority')
2. The facts of the case, in brief, are that the appellants have filed the refund claim dated 04.08.2016 for **Rs. 7,51,828/-**. **Rs. 6,66,877/-**. The appellant is registered with Central Excise Department having Central Excise Registration No. AACFR5130NXM001 for manufacturing excisable goods falling under Chapter 32 of the Central Excise Tariff Act, 1985. The appellant used services of foreign commission agent for sale of finished goods to their overseas customers. The appellant paid service tax of Rs. 7,51,828/- under Reverse Charge Mechanism and availed the CENVAT credit of the same on 23.10.2013. The appellant reversed the said amount of Rs. 7,51,828/- "under protest" on 23.10.2013 itself vide RG23A Part-II Entry No. 170, 172 & 174 dated 23.10.2013. SCN was issued and credit was disallowed vide OIO No. 42/Additional Commissioner/2014 dated 05.11.2014. The said OIO was challenged before the Commissioner Appeals, the Appellate Authority under Order In Appeal No. AHM-EXCUS-001-APP-104-2014-15 dated 16.03.2015 upheld the disallowance of CENVAT credit of Rs.7,51,828/-. Aggrieved against the said order, the appellant filed an appeal before Honorable CESTAT, which is pending.
3. The appellant **paid service tax of Rs. 7,36,976/-** under Reverse Charge Mechanism for the period June 2012 to December, 2012. The Appellant availed the CENVAT credit of Rs. 70,099/- for the period June 2012 and Rs. 6,66,877/- for the period July 2012 to December 2012, **totaling to Rs. 7,36,976/-**. The appellant reversed the said amount of Rs. 7,36,976/- "under protest" on 19.06.2013 vide R.G.23A Part II Entry No. 64 dated 19.06.2013. SCN was issued and credit was disallowed vide OIO No. 19/Additional Commissioner/2014 dated 10.03.2014. The said OIO was challenged before the Commissioner Appeals. The Appellant Authority under Order-In-Appeal no. AHM-EXCUS-001-APP-37-2014-15 dated 17.07.2014 considered that CENVAT credit of Rs. 6,66,877/- availed for the period July 2012 to December 2012 is not admissible. Aggrieved against the said order, the appellant filed an appeal before Honorable CESTAT which is pending.

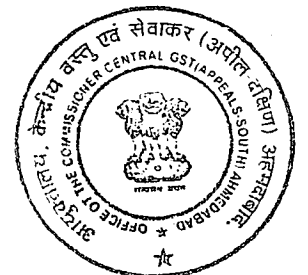
4. The appellant filed refund application dated 04.08.2016 for Rs. 7,51,828/- and for Rs. 6,66,877/-. The adjudicating authority issued SCN No. CH.32/18/3265/15-Reb/203 and SCN No. CH.32/18-20/16-17-Ref/205 both dated 27.10.2016. Both the refunds were rejected vide Order-in-Original number MP/64/AC/2016-17 Ref, dated 06.03.2017 and OIO No. MP/62/AC/2016-17 Ref, dated 27.02.2017, contending that the refund applications filed are inadmissible and pre mature.
5. Being aggrieved the appellant has filed the present appeals against impugned orders, on the grounds that;

A. CENVAT credit is admissible and appellant is eligible for Refund

- i) Considering the Explanation inserted vide Notification No. 02/2016 CE (NT) dated 03.02.2016, "**services by way of sale of dutiable goods on commission basis**" is now covered in the definition of "input services".
- ii) **Para 20 of judgement of Honorable CESTAT Ahmedabad in case of Essar India Steel Ltd vs C.Ex & S.T, Surat-I 2016-TIOL-520-CESTAT-AHM**, provides as under:-

*"..the Hon'ble Gujarat High Court in the case of Cadila Healthcare Ltd (supra) was unable to concur with the contrary view taken by the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana Vs Ambika Overseas (supra). The Hon'ble Gujarat High Court held that this issue is concerned; the question is answered in favour of the Revenue and against the Appellant. In this background, legislature explained the meaning of the sales promotion by inserting Explanation in Rule 2(I) of Rules 2004 and declared that sales promotion includes services by way of sale of dutiable goods on commission basis. In other way, Explanation to Rule 2(I) of Rules says in clear terms that there is no bar on availment of the CENVAT Credit on sales promotion service by way of sale of dutiable goods on commission basis. Further, by inserting the Explanation in the Rule 2(I), it has confirmed the Board Circular and resolved the different views of the High Courts. Taking into circumstances under which the Explanation was inserted in Rule 2(I) of Rules 2004 and consequence of the Explanation to extend the benefit to the Appellant as per Board Circular, we hold that the **Explanation inserted in Rule 2(I) of Rules 2004 by Notification No.2/2016-CX(NT) (supra) should be declaratory in nature and effective retrospectively.**"*





- iii) that the refund amount is admissible in view of the Explanation inserted vide Notification No. 02/2016 CE (NT) dated 03.02.2016 and in view of the judgment of Honorable CESTAT Ahmedabad in case of Essar India Steel Ltd.

B. Though the matter is pending before Hon'ble CESTAT, the appellant's refund claim is to be treated as separate matter:

6. Personal hearing was held on 11.10.2017, Shri Bishan Shah C.A. appeared on behalf of the company and he reiterated the grounds of appeal, he further submitted citation of Stanley 2017(3) GST (137).
7. I have gone through the facts of the case, earlier OIA's and grounds of appeal, also I have carefully gone through the citation and Notification No. 02/2016 CE (NT) dated 03.02.2016, also I have gone through the judgment of Honorable CESTAT Ahmadabad in case of Essar India Steel Ltd.

- 7.1 It is pertinent to discuss the situations when a party can claim/file refund;

There are situation when the refund can be filed under Section 11B.

i.e. in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made there under, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;

8. In the present case there is no such incidence occurred when the appellant can file the refund, as they paid the duty under protest department issued SCN for confirming the demand and vacating the protest, which was confirmed by way of Order-in-Originals, issued by the competent authority. The appellant filed appeal against both the OIO's, wherein appellate authority confirmed the reversal and penalties were set aside. Being aggrieved with the Orders of appellate authority the appellant has filed appeal before the CESTAT Ahmadabad, which are pending. Thus it can be concluded that the matter has not attained finality/ ^{has arisen} and hence there is no situation ~~arouse~~ for the appellant to file/claim refund. The appellant made their own interpretation that CENVAT credit is admissible and appellant is eligible for Refund in view of Notification No. 02/2016 CE (NT) dated 03.02.2016, though their own matter is pending before the CESTAT Ahmadabad.



9. In view of above discussed facts, I conclude that no interference is warranted in the present situation with the decision of the original adjudicating authority. I reject the appeal filed by the appellant and uphold the OIO's.
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
10. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

K.H. Singhal
(K.H.Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.
BY R.P.A.D.

To,

M/s. Rikin Industries
Plot No. C-428, Phase-II; GIDC, Vatva,
Ahmadabad.

Copy To:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner Central Tax, GST South,, Ahmedabad-.
- 3) The Additional Commissioner, Central Tax , GST South, Ahmedabad
- 4) The Asst. Commissioner, Central Tax GST South, Div-III, Ahmedabad South.
- 5) The Asst. Commissioner (System), GST South, Hq, Ahmedabad.
- 6) Guard File.



