



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,

Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/50/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

11496 to 114500

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-234-2017-18
दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue

12-1-2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं AC/03/DIV-II/2016-17
दिनांक: 19/5/2017, से सृजित

Arising out of Order-in-Original No. AC/03/DIV-II/2016-17 दिनांक: 19/5/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Parth Equipments 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 :

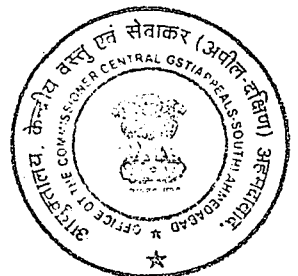
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.

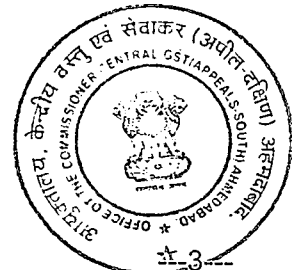
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 रूपए 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।

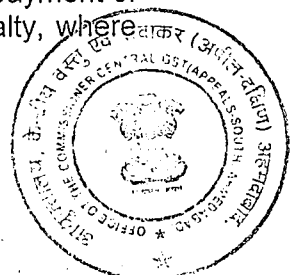
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Parth Equipment Limited, 4208, Phase IV, GIDC Vata, Ahmedabad [for short – ‘appellant’] against OIO No. AC/03/Div II/2016-17 dated 19.5.2017 issued by the Assistant Commissioner, Central Excise, Division II, Ahmedabad-I Commissionerate [for short – ‘adjudicating authority’].

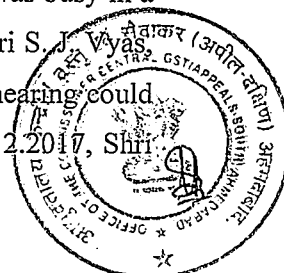
2. Briefly stated the facts are that the appellant was issued a show cause notice dated 12.4.2016, based on FAR No. 898/2015-16-CE dated 29.3.2016, *inter alia* alleging that they had wrongly availed CENVAT credit on various items. The notice therefore demanded the amount wrongly availed as CENVAT credit along with interest and further proposed penalty on the appellant under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11A and 11AC of the Central Excise Act, 1944. The notice also proposed appropriating the amount already paid towards the CENVAT credit and the interest.

3. This notice was adjudicated vide the impugned OIO dated 19.5.2017 wherein the adjudicating authority confirmed the amount along with interest and further imposed penalty on the appellant. The amount already paid was appropriated against the demand so confirmed.

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

- (a) the impugned OIO is incorrect and non maintainable;
- (b) the disputed credit objected to by audit was reversed with interest, much before the issue of the show cause notice;
- (c) Section 11AC(1)(c)(d)(e) of the Central Excise Act, 1944, does not apply as the duty is deposited with interest, prior to issuance of SCN;
- (d) that the CENVAT credit is duly reflected in the returns regularly filed; that the documents are available with the appellant and there is no question of any concealment or mis statement;
- (e) the availing of the credit was therefore open to inspection by the department;
- (f) that there is no possibility of appellant hiding the credit; that the appellant could not have planned evasion or availment of credit with intention to evade duty; that a longer period could therefore never be available to the department;
- (g) that the rate of interest itself is penal; that the matter is also legal in nature; that the question invoking extended period does not arise;
- (h) that in respect of CENVAT availed on air travelling agent’s service, the definition of input service includes two portion- the *means portion* and the *includes portion*; that the show cause notice examines the *means portion* and has not examined the *includes portion*; that the *includes portion* of the definition is wide and covers the *activities in relation to business*; that the cost of travel forms part of the value of manufactured goods and therefore component of cost included in the value of payment of duty cannot be denied as credit;
- (i) that in respect of CENVAT credit availed on catering services, what is excluded is services which are used primarily for personal use and consumption of employees; that catering service is provided within the factory and has a close nexus with the manufacturing activity;
- (j) that in respect of CENVAT credit availed on security services, the services were availed in the factory; that the credit is clearly in relation to factory and has nexus with manufacturing facility; that when the credit is admissible, question of interest or penalty does not arise;
- (k) that the credit pertains to period from April 2011 to October 2015, while the notice is dated 12.4.2016 and is therefore barred by limitation.

5. Personal hearing in the matter was fixed on 18.12.2017, but since I was busy in a meeting with the Chief Commissioner, the personal hearing could not be held. Shri S. J. Vyas Advocate, who was present for the personal hearing, had to return as the personal hearing could not be held. However, thereafter vide his letter dated 18.12.2017, received on 20.12.2017, Shri



Vyas, Advocate, requested that the matter may be decided on the basis of grounds of appeal. In the letter, he further reiterated the submissions made in the grounds of appeal.

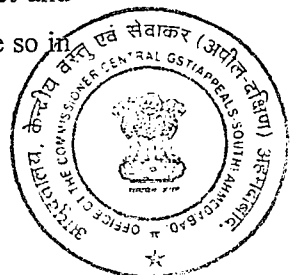
6. I have gone through the facts of the case, the grounds of appeal and the submission reiterated by Shri Vyas in his letter dated 18.12.2017. The issue to be decided is whether the confirmation of the demand along with interest and imposition of penalty is correct or otherwise.

7. Before proceeding further, it would be prudent to mention that the appellant has already paid the amount along with interest in respect of the wrongly availed CENVAT Credit in respect of [a]CENVAT credit wrongly availed on ineligible import duty, education cess and secondary and higher secondary education cess; [b]CENVAT credit wrongly availed on repair of motor vehicles; [c]CENVAT credit wrongly availed on air travel ticket booking; [d] CENVAT credit wrongly availed on insurance of motor vehicles; and [e] CENVAT credit wrongly availed on outdoor catering services. The appellant has not paid the amount in respect of CENVAT credit wrongly availed on security services.

8. The appellant has not put forth any argument in as far as the confirmation of demand in respect of [a]CENVAT credit wrongly availed on ineligible import duty, education cess and secondary and higher secondary education cess; [b]CENVAT credit wrongly availed on repair of motor vehicles; and [c]CENVAT credit wrongly availed on insurance of motor vehicles.

9. In respect of CENVAT credit availed on air travel ticket booking, the adjudicating authority has confirmed the demand by relying on notification no. 18/2012-CE(NT) dated 17.3.2012 and further holding that benefit of CENVAT credit does not include, leave or home travel concession when such services are used primarily for personal use or consumption of employee, as Director is also an employee of the Company. The appellant has contested this by stating that the show cause notice did not examine the *include portion* of the definition of input service and ignored the words 'activities in relation to business'. I do not find any merit in the argument raised since these words were removed from the definition of input service vide the new definition introduced through Notification No. 3/2011 -Central Excise (N.T.) dated 1st March 2011 effective from 1st April 2011. Hence, I uphold the confirmation of the demand along with interest in this respect.

10. In respect of CENVAT credit wrongly availed on outdoor catering services. The adjudicating authority has held that the catering services were provided for workers and staff and that the same was not eligible for availment of CENVAT credit in view of definition of input service read with Board's circular No. 943/04/2011-Cx dated 29.4.2011. The appellant has contested this by stating that the service was provided within the factory and has a direct and close nexus with the manufacturing activity. I do not find any merit in the argument more so in



view of Board's clarification dated 29.4.2011 and therefore, the confirmation of the demand along with interest in this respect is upheld.

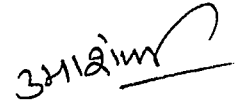
11. In respect of CENVAT credit wrongly availed on security services, the adjudicating authority has held that in this case, the appellant had to pay 75% of the liability as service recipient while the service provider was required to pay only 25%; that the CENVAT credit was wrongly availed since the provider paid the entire amount. When the amount on which CENVAT was availed is not service tax since the service provider was not required to pay the amount in view of notification No. 30/2012-ST dated 20.6.2012, the question of availment of credit in respect of the amount which is not tax in the first instance does not arise. I do not find any merit in the argument and the same is rejected and the confirmation of the demand and interest in this respect is upheld.

12. Now coming to the question of penalty, I find that adjudicating authority has clearly held that there was a willful intention to avail ineligible CENVAT credit; that the statute itself does not provide any relief from penalty even if duty and interest is paid before issue of show cause notice. None of the argument made in respect of relief from penalty is legally tenable. The penalty is imposed in terms of Section 11A(5) which covers cases such as that of the appellant. Therefore, I do not find any reason to interfere with the penalty imposed by the adjudicating authority and reject the contention.

13. In view of the foregoing, the appeal is rejected and the impugned OIO is upheld.

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

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

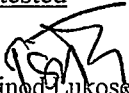


(उमा शंकर)

आयुक्त (अपील्स)

Date : 29.12.2017

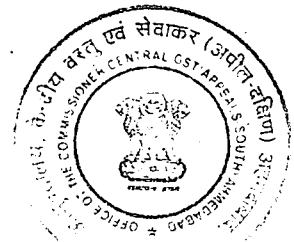
Attested


(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise, Ahmedabad.

By RPAD.

To,

Parth Equipment Limited,
4208, Phase IV, GIDC Vatwa,
Ahmedabad.



Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Excise Division-II, Ahmedabad South..
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
- ✓ 5. Guard File.
6. P.A.

