



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

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

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/23/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

1881 10885

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-301-2017-18
दिनांक Date : 30-01-2018 जारी करने की तारीख Date of Issue 02/02/18

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 MP/24/AC/Div.III/2016-17 दिनांक: 29/03/2017, से सृजित

Arising out of Order-in-Original No. MP/24/AC/Div.III/2016-17 दिनांक: 29/03/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Kiri 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 अतल 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।

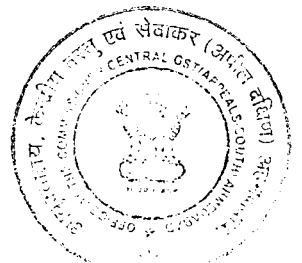
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 ...

On file



(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 मैनटल 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 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 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।

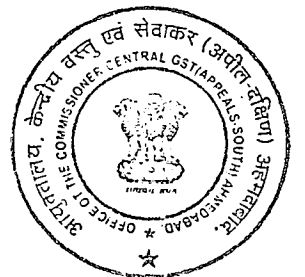
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Kiri Industries Ltd., Plot No. 299/1/A , 299/1/B, 293/2, 365,366, Phase-II, GIDC, Vatav, Ahmedabad- 382 445 (C. Ex. Registration No. AAAC K9025C XM004) (*hereinafter referred to as 'appellants'*) have filed the present appeals against the Order-in-Original number MP/24/AC/Div-II/2016-17 dated 29.03.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, C. Ex., Div.-III, Ambawadi C. Ex. Building, Ahmedabad-I (*hereinafter referred to as 'adjudicating authority'*).

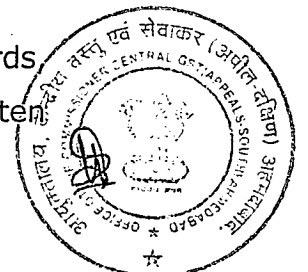
2. The facts of the case, in brief are that appellant had availed cenvat credit of Rs. 8,47,939/- on five different legal services which adjudicating vide impugned OIO held that said services are input services in terms of rule 2(L) of CCR, as said five services have no nexus, directly or indirectly, with manufacturing activity or with in relation to manufacturing activity. Further it was ordered to recover interest u/r 14(ii) of CCR, 2004 R/W Section 11AA of CEA, 1944 and imposed penalty of Rs. 8,47,939/- u/r 15(2) of CER, 2004 R/W Section 11AC of CEA, 1944.

3. Being aggrieved with the impugned order, the appellants preferred an appeal on 25.05.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that input services as defined u/r 2(L) of CCR, 2004 has very wide scope and the only aspect that is required to examine is as to whether the input services are used in relation to business and said input services do not fall under exclusion clause of the definition of input services.

4. Personal hearing in the case was granted on 01.11.2017. Shree Anil Gidwani, Consultant and Shri Y. K. Mankad appeared before me and reiterated the grounds of appeal. They stated that consultant were appointed for procuring raw materials as well as marketing of their goods. He clarified that companies were acquired and they have taken services of legal consultant also.

DISUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records grounds of appeal in the Appeal Memorandum and oral/written



submissions made by the appellants, evidences produced at the time of personal hearing.

6. I observe that CENVAT of following five services has been denied giving finding that all these services has no nexus with the manufacturing activity even at remote end directly or indirectly.

Service & Cenvat denied)	Where said service is pleaded to be used by appellant
Retainer fees for due diligence (5,15,000/-)	Service is utilized to evaluate target company for its assets before its acquisition.
Acquisition of mines (34,799/-)	It is consulting and legal charges towards acquisition of coal mines on lease as coal is one of the integral part of their hot air generation of drying process.
Acquisition of shares (1,86,897/-)	Legal charges paid towards analyzing the acquisition of shares of the counter party i.e. to make feasibility study to acquire the company supplying raw material.
Sales of shares in Rudolf Kiri Chemicals. (65,887/-)	Legal charges in analyzing and advice with respect to SPA.
Service relating to plant purchase agreement for unauthorized debit (45,356/-)	They have not provided information as to how this service is utilized in or in relation to manufacturing activity, but has stated that it is input covered in definition given in rule 2(L) of CCR, 2004.

7. It is contended by appellant that they are manufacturer of S. O. Dyes and are in requirement of un-interrupted supply of raw material at cost effective price for which legal consultancy service is hired (ST credit Rs. 5,15,000/-). The said service is utilized to make business operations effective. Financial services are eligible as input service due to fact that service availed for disinvestment of shares proceeds have been allowed in case of Tamilnadu Petrochemicals Ltd [2017 (52) STR 427 (Tri. Chennai.) and GMR industries Ltd. [2015 (38) STR 509 (Tri. Bang.). Regarding Service related to acquisition of coal mines (Legal Consultancy service received from J. Sagar Associates) it is stated that appellant requires uninterrupted steam and hot air for which uninterrupted supply of coal for fuel purpose is required for coal mines are required to be taken



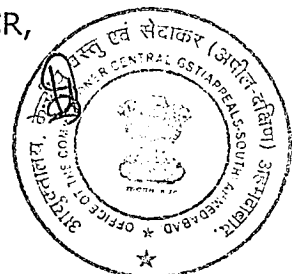
on lease. Legal Consultancy service received from J. Sagar Associates is utilized in acquiring coal mines on lease (ST credit Rs. 34,799/-) and also in service related to acquisition of shares (ST credit Rs. 1,86,897/-) and in service related to sale of shares in Rudolf Chemicals (ST credit Rs. 65,887/-). Various legal services relating to plant purchase agreement/ notice for un-authorized debt of client etc (ST credit Rs. 45,356/-) are utilized in relation to manufacturing activity only.

8. It is contended with following supporting citation that all service falls within ambit of definition therefore it should be allowed to the. Appellant has relied upon judgment in case of Tamilnadu Petroproducts Ltd. Vs C. Ex. Reported at 2017 (52) STR 427 (Tri. Chennai), GMR Industries Ltd. reported at 2015 (38) STR 509 (Tri. Bang.), Maruti Suzuki Ltd. reported at 2009 (240) ELT 641 (S, C.) and Jenson & Nicolson (India) reported at 2014 (34) STR 509, Integra software Service Ltd. reported at 2017 (48) STR 137 (Tri- Chennai) is not squarely applicable to appellant.

9. I find that adjudicating authority has at no point been able to justify that the said services were not related to business neither it has been able to point out that the same were not in relation to manufacturing activity. Modern business is very dynamic and complex, and their activities and availment of services needs to be viewed accordingly. Appellant have succeeded in establishing that said five services has strong nexus with the manufacturing activity and are found to integrally connected with the manufacturing activity.

10. I am of the considered view that if that said services would not have been availed it would have hampered the manufacturing activity directly or indirectly. Therefore, it is established that, said services have connection in relation to manufacturing directly or indirectly even at remote end. I find that the above service qualify as 'input service' in the light of first part of the definition of 'input service' given in rule 2(L) of CCR, 2004 ,i.e. in or in relation to the manufacture of final products, or under inclusive part of the definition, i.e. the activities relating to business. I further observe that the case laws cited by the appellant in their support are applicable in the instant case. Having allowed the credit , I set aside the penalty of Rs. 8,47,939/- imposed u/r 15(2) of CCR, 2004 r/w Section 11AC 1 (c) of CEA, 1944.

9. In view of above, appeal filed by the appellants is allowed.



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

R.R. Patel

(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

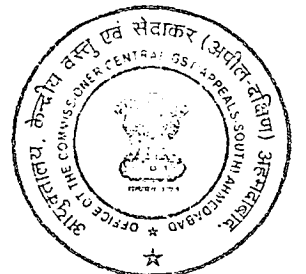
M/s. Kiri Industries Ltd.,

Plot No. 299/1/A , 299/1/B, 293/2, 365,366,

Phase-II, GIDC, Vatav, Ahmedabad- 382 445

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST,Ahmedabad South.
- 3) The Additional Commissioner, Central Tax , Ahmedabad
- 4) The Asst. Commissioner, Central Tax, Div-____, Ahmedabad South
- 5) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 6) Guard File.
- 7) P.A. File.



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