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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(85)/178&178/Ahd-I/2017-18 / ~~1701~~ - '1636-1700.
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-320&321-2017-18
दिनांक Date : 21-02-2018 जारी करने की तारीख Date of Issue 22-03-18.

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 5&6/AC/Div-I/Ref/2017-18 दिनांक: 21/9/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Aryind Limited
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।

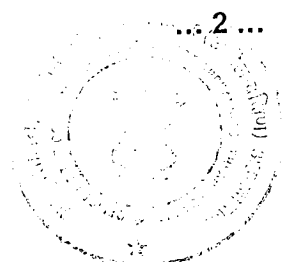
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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।



(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 मैटल हॉस्पिटल 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 दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

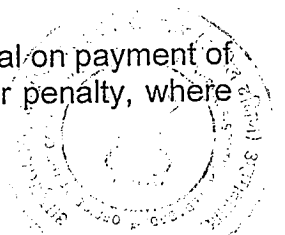
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 order arises out of two appeals filed by M/s. Arvind Ltd.(Division of Arvind Intex), Rajpur Road, Gomtipur, Ahmedbad-380021 (in short 'appellant') against Order-in-Original Nos. as detailed below (in short 'impugned orders') passed by the the Assistant Commissioner, CGST Division-I, Ahmedabad South (in short 'adjudicating authority').

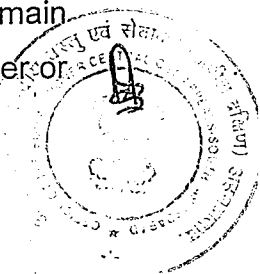
S.No.	O.I.O.No. & date	Period involved	Amount involved (Rs.)	Appeal No.
1	05/Div.I/Refund/2017-18 dtd.21.09.2017	April-2017 to May-2017	1,27,864/-	177/Ahd-I/ 2017-18
2	06/Div.I/Refund/2017-18 dtd.21.09.2017	June-2017 (upto 29.06.17)	2,97,051/-	178/Ahd-I/ 2017-18

2. Briefly stated that the appellant filed two refund claims as shown above on the ground that in Budget 2016 the definition of 'input' has been amended where under capital goods upto value of Rs.10,000/- per piece is specifically included as 'input'. However, there is no corresponding exclusion from the definition of 'capital goods'. Hence, two SCNs dated 07.08.2017 were issued for rejection of said refund claims. These SCNs were adjudicated by the adjudicating authority vide impugned orders rejecting the refund claims on the ground that, inter alia, the claim is not made under any specific Section or Rules or Notification issued under the Act or the rules made there under wherein the amount of refund claimed is permissible.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, *inter alia*, submitted that relief claimed is permission to avail credit and the refund of credit is outside the purview of unjust enrichment; that refund claimed arose in peculiar circumstances which caused dilemma and conflict with exemption notification; that despite representation, no clarification is issued; that availability of credit is time bound rendered them remedy-less forcing to file refund application; that in such a situation, provisions of Section 11B need not be read strictly.

4. The appellant vide e-mail dated 07.02.2018 waived personal hearing and submitted that the said matter is covered by the OIA No. AHM-EXCUS-001-136 & 137-2017-18 dated 27.10.2017/23.11.2017 and requested to decide the matter w.r.t. said OIA.

5. I have carefully gone through the appeal memorandum, submission made by e-mail dtd.07.02.2018 and evidences available on records. I find that the main issue to be decided is whether the impugned orders are just, legal and proper or



otherwise. Since the issue involved in both the appeal is common, I proceed to decide it by a common order on merits.

6. Prima facie, I find that the refund claim was rejected by the adjudicating authority on the following grounds:

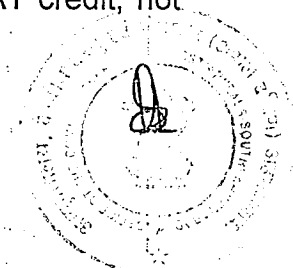
- that the claimant has not clarified the irregularities raised in the SCN such as under which provisions of Central Excise Act, Rules, Notifications the refund claim is filed;
- that it is only upto the claimant to either opt for availing CENVAT credit on inputs and clear the goods on payment of duty or follow the amended provision of Rule 2 of CENVAT Credit Rules, 2004.

7. Facts leading to the refund are that vide Notification No. 13/2016-C.E. (N.T.) dated 1-3-2016, the definition of *input* was amended as follows:

- (c) *in clause (k),-*
(iii) *after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely :-*
"(v) all capital goods which have a value upto ten thousand rupees per piece .";

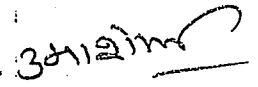
However, there was no corresponding change in the definition of '**capital goods**'. The effect of the amendment was that capital goods having a value upto Rs.10,000/- per piece, were included under the definition of '**input**'. The appellant, operating under Notification No. 30/2004-CE dated 9.7.2004, [which allowed availing of CENVAT credit on capital goods only], feeling apprehensive, that if they were to avail CENVAT credit on capital goods below Rs. 10,000/-, it would be construed as having availed CENVAT credit on inputs and may lead to situation wherein they would be denied even the benefit of Notification No. 30/2004-CE dated 9.7.2004, has without availing the CENVAT credit filed this refund.

8. The appellant has in his grounds, claimed that that the relief needed is [a] permission to avail CENVAT credit and [b] refund of the said credit claiming that refund of credit is outside the purview of unjust enrichment. Surprisingly, I do not find any condition under the CENVAT Credit Rules, 2004, which obliges an assessee, to seek permission to avail CENVAT credit. For availing CENVAT credit on inputs, capital goods and input services, the appellant has to fall within the ambit of the definitions of the inputs, capital goods, input services along with fulfilling the conditions enumerated in any exemption notification, in case he is availing any such benefit. In this era of self assessment, such a request of seeking permission to avail CENVAT credit, not being legally tenable, I reject the same.



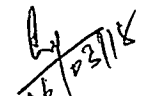
9. The second relief claimed is regarding grant of refund which stands rejected by the original authority. Going by the facts of the case, I find that the appellant had purchased these goods [i.e. capital goods having a value of upto rupees ten thousand per piece] on payment of duty. It is nowhere claimed that these goods were exempted. Further, neither has the appellant produced any notification, rule, section etc. which provides refund in case he purchases such goods on payment of duty in case they are availing the benefit of the notification, *ibid*. Therefore, it is surprising that the appellant has sought refund from the Government of a tax which the manufacturer of the goods was legally bound to pay which being a purchaser, the appellant was to borne finally being a purchaser of the said goods. The appellant being the one who has borne the excise duty on the capital goods by no stretch of imagination can seek refund of the same just because he is working under a specific exemption. In view of the foregoing, I uphold the decision of the adjudicating authority in rejecting the refund. Hence, the appeals stands rejected.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)
Dt. 21.02.2018

Attested:


(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.

BY SPEED POST TO:

M/s. Arvind Ltd.(Division of Arvind Intex),
Rajpur Road, Gomtipur,
Ahmedabad-380021.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Principal Commissioner, CGST, Ahmedabad South (RRA Section).
- (3) The Asstt. Commr, CGST, Division-I(Rakhial), Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax , Ahmedabad-South
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

