



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)190/A-II/2016-17
Stay Appl.No. NA/2016-17

4769
4773

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-033-2017-18
दिनांक 26.07.2017 जारी करने की तारीख Date of Issue

8/8/17

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Addl. Commissioner, केन्द्रीय कर, Service Tax द्वारा जारी मूल आदेश सं
AHM-SVTAX-000-ADC-17-16-17 दिनांक: 03/10/2016, से सृजित

Arising out of Order-in-Original No AHM-SVTAX-000-ADC-17-16-17 दिनांक: 03/10/2016 issued
by Addl. Commissioner, Central Tax, Service Tax

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Gujarat State Export Corporation Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 हैं।

(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 मान्च 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 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 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 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."



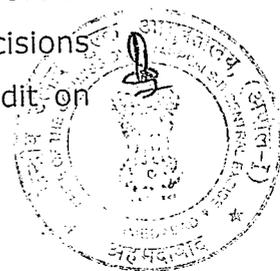
ORDER-IN-APPEAL

M/s Gujarat State Export Corporation Ltd, 2nd Floor, Gujarat Chamber Building, Nr. Natraj Theatre, Ashram Road, Navrangpura, Ahmedabad - 380 009 (henceforth, "appellant") has filed the present appeal against Order-in-Original No. AHM-SVTAX-000-ADC-17-2016-17 dated 3.10.2016 (henceforth, "impugned order") passed by the Additional Commissioner of Service Tax, Ahmedabad (henceforth, "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant was holding centralized service tax registration for providing different taxable services, one of them being 'cargo handling service'. A show cause notice bearing F.No.STC/4-49/O&A/13-14, issued on 9.10.2015 on the basis of audit conducted by the department, was served on the appellant for recovery of Cenvat credit taken on construction services/ works contract services used in the development of cargo airport at Shahibaug in Ahmedabad. The issue was decided by the adjudicating authority vide impugned order and Cenvat credit to the tune of Rs.10,47,914/- was ordered to be recovered from the appellant under proviso to Section 73(1) of the Finance Act, 1994, read with Cenvat Credit Rules, 2004, alongwith interest in terms of Section 75 of the Finance Act, 1994. A penalty equivalent to the said credit amount was also imposed under Section 78 of Finance Act, 1994.

3. In his grounds of appeal, the appellant has stated that construction services/ works contract services were used for construction of frame structure at cargo airport which was required for providing better output services (cargo handling service); that construction of framed structure has increased efficiency in loading, unloading and movement of goods required for handling of cargo. Thus, as per appellant, impugned services were used for providing output service and therefore should be considered input service as per Cenvat Credit Rules, 2004.

3.1 The appellant further states that till 31.3.2011, setting up of premises used for providing output service fell in the inclusive part of the definition of 'input service'. Appellant has relied on some decisions in favour of his arguments. With regard to disallowance of credit on



the ground that the premises namely cargo airport was not included in the list of premises provided under centralized registration certificate, appellant has relied on decisions of Tribunals in case of Well Known Polysters Ltd v. C.C.Ex. [2011 (267) ELT 221] and in case of C. Metric Solutions Pvt Ltd v. Commr. of C.Ex. [2012(286) ELT 58] wherein Cenvat credit had been allowed even if a premises was not registered with the department.

3.2 The appellant has also challenged the recovery of credit amount on the ground of limitation.

4. A personal hearing was held on 19.7.2017, wherein Shri Hardik Modh, Advocate represented the appellant and reiterated the grounds of appeal and submitted a compilation of case laws. He pointed out Para 5.2 of the impugned order and submitted that for the period prior to 1.4.2011, setting up business was included in the definition of 'input service' and hence credit was allowable.

5. I have carefully gone through facts of the case and grounds of appeal. The dispute is regarding admissibility of Cenvat credit of Rs.10,47,914/- in respect of construction services/ works contract services used by the appellant in the construction of cargo airport at Shahibaug. As per his own submissions (Annexure-D to the appeal), total credit of Rs.10,47,914/- has been taken on a single R.A. Bill No.6/54.1.2011 of BPC Projects and Infrastructure Pvt Ltd in two parts, first credit of Rs.9,65,820/- taken in the year 2010-11 and that of remaining amount of Rs.82,094/- in the next year, i.e., 2011-12.

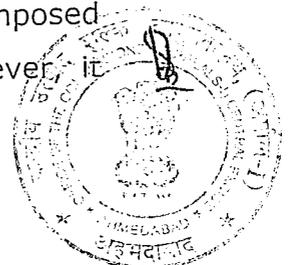
6. The relevant fact of the matter is that the impugned services have been used in the construction of a civil structure namely cargo airport from where the appellant intended to provide his output service of cargo handling. For the period prior to 1.4.2011, I agree with the appellant's argument that the inclusive part of the definition of 'input service' as given under rule 2(I) of the Cenvat Credit Rules, 2004 included the services used in relation to setting up of premises of output service. From 1.4.2011, the definition went through a change and this part *-setting up -* was removed. Furthermore, construction services/ works contract services specified in sub-clauses (zzh), (zzq), (zzzza) of clause (105) of section 65 of the Finance Act, 1994 and



used for construction of a building or a civil structure or a part thereof were specifically excluded from the definition of 'input service'. I therefore find that the Cenvat credit of Rs.9,65,820/- taken before 1.4.2011 is admissible to the appellant, however, credit amounting to Rs.82,094/- taken in the subsequent year when definition of input service specifically excluded construction services/ works contract services, the claim of appellant over Cenvat credit is without legal backing and requires to be rejected.

7. Further, with regard to denial of credit on the ground that the premises where construction services/ works contract services were used was not included in the list of premises provided in the centralized registration certificate, I am of the view that there is no specific requirement under the Cenvat Credit Rules, 2004 that the premises should be registered before taking Cenvat credit. Moreover, the appellant has added the cargo airport premises in his centralized registration later on, there is no reason to deny Cenvat credit on this ground alone. In similar situations, there are decisions of Tribunals allowing credit, e.g., in case of Exfo Electro-optical Engineering (I) P Ltd v. Commr. of C.Ex., Pune-III [2016(41) STR 65 (Trib.-Mumbai)], appellant was held entitled to avail credit and consequent refund of unutilized credit. Also, the availment of Cenvat credit being a substantial right, it cannot be denied on procedural lapses.

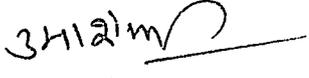
8. Thus, out of total credit of Rs.10,47,914/-, an amount of Rs.82,094/- only is found to be inadmissible and with regard to that, applicability of extended period of limitation is also justified considering that the appellant took the credit even after 1.4.2011 when impugned services came to be specifically excluded from the ambit of input services, leaving no room for any other interpretation regarding admissibility of credit on impugned services. The suppression of facts from the department is evident in light of the fact that availment of inadmissible credit could be detected during auditing only. The intent of evasion is also clear when appellant is certifying the availment of wrongful credit as correctly taken in the self assessment memorandum of relevant periodic return. The extended period as provided in proviso to Section 73(1) of the Finance Act, 1994, therefore, has been invoked correctly. Consequently, penalty imposed under Section 78 of the Finance Act, 1994 is justified, however, it



needs to be reduced to the level of credit wrongly taken, i.e., Rs.82,094/-.

9. In view of the above, the appeal is allowed to the extent of availment of Cenvat credit of Rs.9,65,820/-. For the remaining amount of Rs.82,094/-, the appellant is liable to pay the same, alongwith interest. The appellant is also liable to pay penalty of Rs.82,094/- in terms of Section 78 of the Finance Act, 1994.

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)

Date: 26/07/2017

Attested


(Sanwamal Hudda)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s Gujarat State Export Corporation Ltd,
2nd Floor, Gujarat Chamber Building,
Nr. Natraj Theatre, Ashram Road,
Navrangpura, Ahmedabad - 380 009

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad South Commissionerate.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Deputy Commissioner, Central Tax, Division-VI, Ahmedabad South.
5. Guard File.
6. P.A.

