

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पॉलिटेक्निक 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(ST)/151,152&173/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

1580 to 1584

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-366to368-2017-18
दिनांक Date : 27-02-2018 जारी करने की तारीख Date of Issue

17/3/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS07/Ref-67to69/Pv/17-18 दिनांक: 6/11/2017 issued
by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Softnautics Pvt. 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 :

(i) 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।



(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 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.

ORDER IN APPEAL

Three appeals have been filed by M/s. Softnautics Private Limited, 306, Shivalik II, Above ICICI Bank, 132' Ring road, Satellite, Ahmedabad 380 015 [for short – 'appellant'] against the following OIOs viz:

Sr. No.	OIO No. & date	Period for which refund is filed	Appeal No.	Adjudicating authority
1	CGST/WS07/Ref 67/PV/2017-18 dated 6.11.2017	October 2016 to December 2016	V2(ST)173/Ahd-I/2017-18	Assistant Commissioner, CGST Division III, Ahmedabad South Commissionerate
2	CGST/WS07/Ref 68/PV/2017-18 dated 6.11.2017	January 2017 to March 2017	V2(ST)152/Ahd-I/2017-18	
3	CGST/WS07/Ref 69/PV/2017-18 dated 6.11.2017	April 2017 to June 2017	V2(ST)151/Ahd-I/2017-18	

he issue in all the three OIOs being same, they are being taken up together.

2. Briefly, the facts are that the appellant filed three refund claims under Rule 5 of the CENVAT Credit Rules, 2004 read with notification No. 27/2012-CE dated 18.6.2012, for the periods mentioned *supra*, which was decided by the adjudicating authority vide the aforementioned impugned OIOs, wherein he partly sanctioned the refund claim. The rejection of the remaining amount was because certain invoices on which CENVAT credit was availed was found to be [a]not in the name of the appellant; [b]authenticity of the invoices were doubtful; [c]the appellant had not produced the respective invoice and had only submitted the list; [d]the appellant had failed to produced the bank statement.

3. Feeling aggrieved, the appellant has filed this appeal stating that the adjudicating authority erred in rejecting the refund claim of input credit of service tax on the ground that authenticity of certain invoices is doubtful, that the invoices were not in the name of claimant and non production of bank statements.

4. Personal hearing in all the aforementioned three appeals was held on 31.1.2018 wherein Shri Tushar Shah, CA appeared on behalf of the appellant. He reiterated the grounds of appeal and further stated that there were no findings in the impugned OIO regarding doubtfulness of invoices. He further stated that he had attached the relevant invoices, service tax returns of service provider as well as service provider's challan. He further submitted bank statement of the appellants highlighting the payment to service provider. He also added that he is not pressing other issues.

5. I have gone through the facts of the case, the grounds of appeal and oral submissions raised during the course of personal hearing. The issue to be decided is whether the amount sought as refund by the appellant and which stands rejected by the adjudicating authority – is correctly rejected or otherwise.



6. On going through the impugned OIOs all dated 6.11.2017, I find that the adjudicating authority has partly sanctioned the amount and partly rejected a portion of the refund claim, the details of which is shown in tabular form, for ease of reference:

Sr. No.	OIO No.	Amount sanctioned (Rs.)	Amount rejected (Rs.)
1	CGST/WS07/Ref 67/PV/2017-18 dated 6.11.2017	43,110	68,148
2	CGST/WS07/Ref 68/PV/2017-18 dated 6.11.2017	79,793	84,047
3	CGST/WS07/Ref 69/PV/2017-18 dated 6.11.2017	1,14,448	77,978

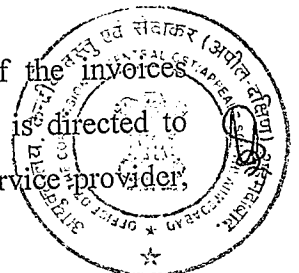
7. As is already mentioned the rejection of refund of CENVAT credit is based on the following reasons:

- [a]not in the name of the appellant;
- [b]authenticity of the invoices were doubtful;
- [c]the appellant had not produced the respective invoice and had only submitted the list;
- [d]the appellant had failed to produced the bank statement.

In respect of [a] above, the appellant has not contested the rejection on this account. In-fact the appellant himself had agreed to the rejection of the refund claim in respect of invoices not in their name vide their letter dated 16.10.2017. Regarding [b] the grouse of the appellant is that the adjudicating authority has not given his findings as to why these invoices are doubtful. In respect of [c] the appellant has not produced the invoices even before me and has not contested the finding of the adjudicating authority. In respect of [d] the appellant has produced bank statement.

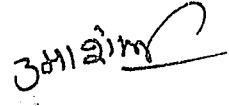
8. To summarize, the appellant is not contesting the rejections on account of [a] and [c] *supra*. However, in respect of [b] and [d], the appellant has produced documents along with returns of the service provider, and the challans depicting payment of tax by the service providers, bank statements, etc. I am aware of the fact that the adjudicating authority in his impugned OIO has in respect of [b] held that in the invoices the service tax number was wrongly mentioned ; that on being pointed out, revised invoices with the correct service tax number was provided, which led to the adjudicating authority doubting the authenticity of the invoices. However, since the service provider has now submitted the returns of the service provider along with the challans depicting payment of service tax, it is felt that for mere wrong mentioning of service tax number by the service provider, the appellant should not be made to suffer when it is the claim of the appellant that the service providers have paid/derposited the service tax with the department. In respect of [d] *supra*, the appellant has provided bank statements depicting payment of amount to the service provider, the non production of which was the primary reason for the refund being rejected.

9. In view of the foregoing, the rejection of refund in respect of the invoices mentioned at [b] and [d] is set aside, being legally not tenable. The appellant is directed to produce all the documents in respect of [b] and [d] *supra* i.e. returns of the service provider,



challans depicting payment of service tax by the service provider, bank statement relating to payment made by the appellant regarding [d], to the adjudicating authority who will decide the issue after satisfying himself of the same. The finding that the invoices being not authenticate is without merit and stands settled in favour of the appellant. The adjudicating authority is also directed to decide the issue within four weeks from the receipt of this order. Needless to state that the adjudicating authority will follow the principles of natural justice while deciding the issue.

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


(उमा शंकर)
आयुक्त (अपील्स)

Date : 27.2.2018

Attested



(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Softnautics Private Limited,
306, Shivalik II,
Above ICICI Bank, 132' ring road,
Satellite,
Ahmedabad 380 015

Copy to:-

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