



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पॉलिटेक्निक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/142/Ahd-I/2017-18 | 1686-1630
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-393-2017-18
दिनांक Date : 15-03-2018 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. WS-07/REF-98/AZILEN/2017-18 दिनांक: 12/10/2017 issued
by Assistant Commissioner, Central Tax, Ahmedabad-South

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

(-) 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 :

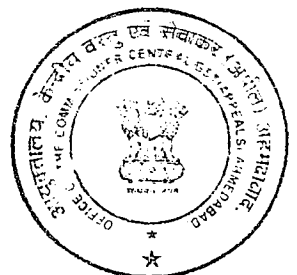
(i) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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।

... 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.

(-) 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.

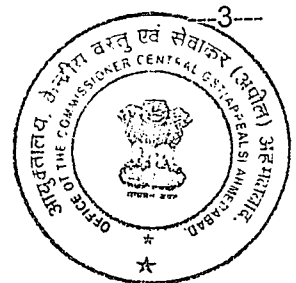
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैन्टल 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.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appel) 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।

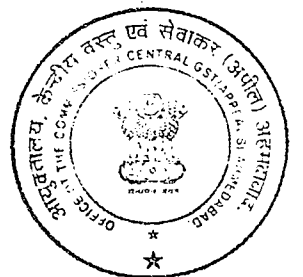
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This order arises out of an appeal filed by M/s. Azilen Technologies Pvt. Ltd., 404-405, Iscon Mall, Satellite Road, Near Jodhpur Char Rasta, Ahmedabad-380015(in short 'appellant') against letter F.no.WS-07/Ref-98/Azilen/2017-18 dated 12.10.2017 (in short 'impugned letter') issued by the Assistant Commissioner, CGST Division-VII(Vastrapur), Ahmedabad South (in short 'adjudicating authority').

2. Briefly stated that the appellant filed refund claim of Rs.1,27,644/- under Rule 5 of the Cenvat Credit Rules, 2004 for the quarter ending Sept-2016 on 04.07.2017 with C.Ex.Division-I(Rakhial), Ahmedabad who in turn returned it on 26.07.2017 stating not pertaining to their jurisdiction. Hence, the appellant again filed said refund claim with the adjudicating authority on 06.10.2017 who in turn returned the claim stating time-barred vide impugned letter.

3. Aggrieved with the impugned letter, the appellant filed the present appeal wherein, *inter alia*, submitted that initially the claim filed was well in time but due to GST implementation and vague idea about correct jurisdiction and merely due to interdepartmental dilemma, said refund claim cannot be considered as time-barred.

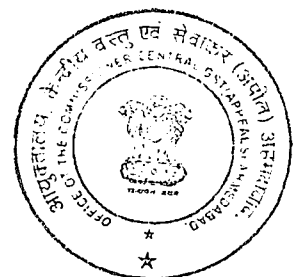
4. Personal hearing in the matter was held on 02.02.2018. Ms. Sonal Jain, CA, appeared on behalf of the appellant and reiterated the ground of appeals and submitted copies of sevottam receipt and department's letter.

5. I have carefully gone through the appeal memorandums, submission made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the subject refund claim is time-barred or otherwise. Accordingly, I proceed to decide the case on merits.

6. First, I find that the subject appeal is hit by limitation of 11 days in terms of provisions contained in Section 35(1) of the Central Excise Act, 1944. The appellant has also filed application for condonation of said delay alongwith appeal memorandum. Accordingly, I condone the said delay of 11 days in terms of powers vested in me vide proviso to Section 35(1)ibid in the interest of justice.

7. Prima facie, I find that the appellant had filed the refund claim with the C.Ex.Commissionerate, Ahmedabad-I and the appellant has produced copy of SEVOTTAM Receipt No. CEXDIV-I-AHD/000167/2017-18 dated 04.07.2017 which was received by the Asstt. Commr. C.Ex. Div.I, Ahmedabad-I on





17.07.2017. I find that this authority returned the subject claim to the appellant vide letter dated 26.07.2017 on the basis of address shown in the letter which was not falling within its jurisdiction. I also find that said Asstt. Commr also directed the appellant to file refund claim with concerned jurisdiction of GST & Excise where their GST registration is active. Accordingly, the appellant filed said claim with the adjudicating authority on 06.10.2017 who in turn returned the claim being time-barred vide impugned letter. In this regard, I find that the Chief Commissioner, C.Ex. & ST, Ahmedabad Zone had already issued Trade Notice No.001/2017 dated 16.06.2017 specifying jurisdiction of the reorganized Commissionerate, Divisions and Ranges in the Ahmedabad Zone. The said Asstt. Commr. C.Ex.Div. I, Ahmedabad-I could have transferred the subject claim to the proper jurisdictional CGST division and informed the appellant accordingly instead of returning the claim. I find that it is a settled law that if the matter is pursued before the wrong authority, the period spent in pursuing the issue before the wrong authority has to be excluded for limitation. This view is also supported by the Hon'ble CESTAT, Ahmedabad in case of CCE, Ahmedabad Vs. AIA Engineering Ltd. reported in 2009(248)ELT-826(Tri. Ahmd.) wherein it is held as under:

"Refund - Limitation - Refund claim filed within 60 days of relevant quarter under Notification No. 41/2007-C.E. (N.T.) before Deputy Commissioner of Service Tax instead of filing before Deputy Commissioner of Central Excise - Commissioner (Appeals) observed that original refund claim filed within time and returned by authorities with directions to file it before appropriate authority, the same cannot be said to have been filed beyond limitation period - No infirmity in observation of Commissioner (Appeals) - Subsequent refiling of refund claim beyond limitation period should not be held against assessee - No merit in Revenue's appeal which is dismissed - Section 11B of Central Excise Act, 1944. [paras 2, 3]"

Similarly, in case of CCE, Noida Vs. Kohinoor Enterprises[2011(266)ELT-397(Tri.Del.)], the Hon'ble Tribunal has held as under:

"Refund claim - Limitation - Original refund claim filed on 31-12-2004 and subsequently resubmitted on 28-2-2005 - Revenue contends that claim filed with Superintendent and was received by Deputy Commissioner on 30-9-2005 - Revenue accepts that claim filed in Divisional office on 30-1-2004 but holds the same bears initial of some person without any mention of name or designation of that person nor bears the stamp of Division office and hence that it cannot be held that it bears acknowledgment of the Division - Contention has no merit - Deputy Commissioner's letter dated 13-1-2005 directing the assessee to resubmit the claim along with relevant documents not doubted by Revenue - Genuineness of claim cannot be doubted - No merit in Revenue's appeal which is rejected - Section 11B of Central Excise Act, 1944. [paras 8, 9]"



Similar view is taken in case of revision application filed by IOC Ltd.[2007(220)ELT-309(GOI)]wherein it is held as under:

“Rebate - Limitation - Relevant date - Time limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted - Section 11B of Central Excise Act, 1944 - Rule 18 of Central Excise Rules, 2002. [paras 8.3, 8.4]”

Accordingly, I set-aside the impugned letter and allow the appeal holding that 04.07.2017 is the date of filing subject refund claim and the adjudicating authority shall entertain the claim and allow the refund, if otherwise in order, after following the principle of natural justice within 30 days of communication of this order. The appellant is also directed to co-operate the adjudicating authority.

8. 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
(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)
Dt. 15.03.2018

Attested:

B.A. Patel
22/03/18
(B.A. Patel)
Supdt.(Appeals)
Central Tax, Ahmedabad.

BY SPEED POST TO:

M/s. Azilen Technologies Pvt. Ltd.,
404-405, Iscon Mall, Satellite Road,
Near Jodhpur Char Rasta,
Ahmedabad-380015.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Principal Commissioner, CGST, Ahmedabad South (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division-VII(Satellite), Ahmedabad South.
- (4) The Asstt. Commissioner(System), CGST, HQ, Ahmedabad South.
(for uploading OIA on website)
- ✓(5) Guard file
- (6) P.A. file.

