



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)17/EA2/Ahd-I/2017-18
Stay Appl.No. NA/2016-17

183010
1834

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-394-2017-18
दिनांक 19.03.2018 जारी करने की तारीख Date of Issue

23/3/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, Div-II, Ahmedabad- I द्वारा जारी मूल आदेश सं AC/16/Div-II/2016-17 दिनांक:
17/01/2017 से सृजित

Arising out of Order-in-Original No. AC/16/Div-II/2016-17 दिनांक: 17/01/2017 issued by Assistant
Commissioner, Div-II, Ahmedabad-I.

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

M/s. HDO Technologies 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 :

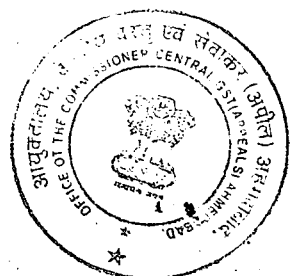
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के
दौरान हुई हो।

(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.

(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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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।

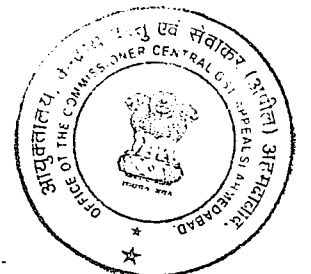
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The Assistant Commissioner, Central Excise Division-II, Ahmedabad-I (hereinafter referred to as "the appellant") authorized by the Commissioner, Ahmedabad-I vide Review Order No.01/2017-18 dated 19.04.2017 issued from F. No.: IV/16-174/OIO/DEM/2016-17-RA, has filed an appeal **UNDER SUB SECTION (2) OF SECTION 35E OF THE CENTRAL EXCISE ACT, 1944** against the Order-in-Original No. AC/16/Div-II/2016-17 dated 17.01.2017 (hereinafter referred to as the "impugned order"), passed by The Assistant Commissioner, Central Excise Division-II, Ahmedabad-I (hereinafter referred to as the 'Adjudicating Authority').

2. Brief facts of the case are that M/s. HDO Technologies Limited, 5/1/2, Phase-I, GIDC, Vatva Ahmedabad, is engaged in manufacture of Industrial Filters/ machinery Pressure Vessels / Heat Exchangers falling under Chapter 84 of Central Excise Tariff Act, 1985 and have Excise Control Code (ECC) Number AABCH7203GEM001 for the same. They are also availing Cenvat Credit facility under the Cenvat Credit Rules, 2004.

3. During the course of Central Excise Audit EA- 2000 of M/s HDOTL for the period January, 2014 to December, 14 conducted during the month of February, 2015, seven objections were raised on various issues which were communicated to management of M/s HDOTL. The amount involved in short payment of Central Excise duty and wrongly taken Cenvat Credit was paid / reversed in their Cenvat and PLA accounts on 23.02.2015. One of the audit objection was **CENVAT credit wrongly taken on documents not in the name of company**. The assessee has taken credit on Bill of entry No. 2117918 dated 13.05.2013, Out Of Charge dated 31.01.2014, which is in the name of M/s Hindustan Dorr Oliver Limited, Mumbai. M/s HDOTL reversed Rs.36,56,662/- at the time of audit. Subsequently retracted their stand on acceptance of audit objection. Therefore A Show Cause Notice was issued and adjudicated by the adjudicating authority vide impugned order. The adjudicating authority has allowed the Cenvat Credit of Rs.36,56,662/- availed and utilized by M/s HDO Technologies Limited against Bill of Entry No. 2117918 dated 13.05.2013 under the provisions of Rule 9 read with Rule 10 of the Cenvat Credit Rules, 2004.

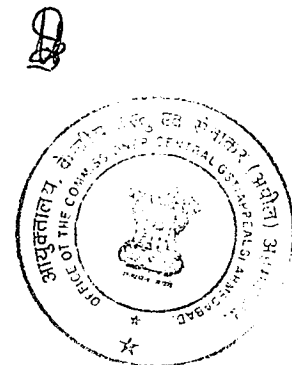
4. Being aggrieved department preferred an appeal against the aforesaid order on the following grounds;

4.1 The impugned Order-in-Original No. AC/16/Div-II/2016-17 dated 17.01.2017 is contrary to law as laid down by Rule 10 of Cenvat Credit Rules, 2004.

That relevant provisions of Rule 10 of Cenvat Credit Rules, 2004 are read as follows:-

"Rule 10. Transfer of CENVAT credit.- (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2)



(3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise."

4.2 That provisions of Rule 10 of CCR, 2004 covering such situations for transfer of Cenvat Credit when there is a shift of his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer **but doesn't cover the event of demerger.** The present scenario in the event of Demerger which is not covered under the provisions of Rule 10 of Cenvat Credit Rule, 2004 and thereby no recourse can be taken to transfer the Cenvat Credit in event of demerger under this Rule 10 of Cenvat Credit Rule, 2004.

4.3 That the approach of the Adjudicating authority is erroneous which has resulted into incorrect and uncalled for conclusions, reasoning and findings, apart from drawing unwarranted inferences, factually/legally.

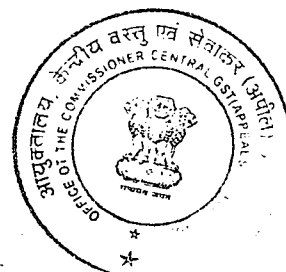
4.4 That the impugned Order-in-Original No. AC/16/Div-II/2016-17 dated 17.01.2017 passed by the Assistant Commissioner, Division-II, Central Excise, Ahmedabad-I is neither legal nor proper as it is based on an erroneous approach and misinterpretation of the relevant statutory provisions, Rule 10 of Central Excise Rule 2004 and consequently requires to be quashed and set aside in the interest of justice.

5. Personal hearing was conducted on 31/01/2018, wherein Shri Parthiv Salot, C.A. and Shri Arvind Gupta appeared on behalf of the respondents and requested for adjournment for one week. Next Personal Hearing was held on 22.2.2018 wherein Shri Arvind Gupta appeared on behalf of the respondent, he reiterated the points raised in written submission submitted today. He submits that unless the letter dated 28.09.2012 should be revoked the credit allowed therein should be allowed. Since no appeal has been filed against that letter dtd. 28.09.2012, the availability of credit cannot be challenged.

6. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and the Cross-Objection and Written Submission filed by the said respondent. I take up the appeal for the final decision. The question to be decided by me is; whether the **CENVAT credit wrongly taken on documents not in the name of company, are allowed or otherwise.**

6.1 First of all it is pertinent to discuss the provision for taking Cenvat Credit as per Rule 9 (2) of CCR, 2004 which are as under;

*"(2) No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document: **Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax Registration number of the person issuing the invoice, as the case may be, name and*



address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit;"

6.2 In view of above provisions it is summarized that the allegation in SCN was related to **credit wrongly taken on documents not in the name of company, as per Rule 9(2) of CCR,2004**. The credit was allowed on the surmise of Rule 9 read with Rule 10 of CCR, 2004. It is crystal clear that the credit was allowed on mis-interpretation as letter allowing credit under Rule 10 dated 28.09.2012 was prior to the subject Bill of Entry, which alleged that the same is not in the name of respondent. Bill of Entry dated 13.05.2013 can at any stretch be part of letter allowing credit under Rule 10 dated 28.09.2012. In view of above facts it is decided that the OIO is not just and proper, and hence required to be set aside.

7. In view of the above discussion, the impugned order is liable to be set aside. I set aside the impugned Order-In-Original and remand the matter back for fresh adjudication. The appeal filed by the appellant is allowed.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the appellant stands disposed of in the above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:- 19.3.2018

ATTESTED

K.H. Singhal
(K.H.Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

BY R.P.A.D.

M/s. HDO Technologies Limited,
5/1/2, Phase-I, GIDC, Vatva
Ahmedabad.

Copy To:-

1. The Chief Commissioner, Central Tax, GST Ahmedabad zone, Ahmedabad.
2. The Principle Commissioner, Central Tax, GST Ahmedabad-South.
3. The Assistant Commissioner, Central Tax, GST Division-II, Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad South.
5. Guard File.
6. P.A. File.

