

#### सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015 7<sup>th</sup> Floor, Central Excise Building, Near Polytechnic,

Ambavadi, Ahmedabad-380015

टेलेफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

फाइल संख्या : File No : V2(84)109/Ahd-I/2016-17 Stay Appl.No. NA/2016-17

079-26305065

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-042-2017-18 दिनाँक 27.07.2017 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner ,Div-II, केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं AC/15/Div-II/2016-17 दिनाँक: 22/12/2016 से सृजित

Arising out of Order-in-Original No. AC/15/Div-II/2016-17 दिन"क: 22/12/2016 issued by Assistant Commissioner ,Div-II, Ahmedabad-I

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

# M/s Ferromatik Milacron India Ltd. Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथित नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a 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 Gov1. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 मामलें 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 डयूटी केंडिट 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) निय्मावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपन्न संख्या इए–8 में वो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। टसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान को 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 O!O 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 संलम्न रकम एक लाख रूपये या उससे कम हो तो रूपये 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 अपीलः— Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी / 35–इ के अंतर्गतः– Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-
- (क) वर्गीकरण मूल्यांकन से संबंधित सभो मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेषु पीठिका वेस्ट ब्लॉंक 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 ir 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि—1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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-litem 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 in 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 अपीलो 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 सेबा 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' दाखिज 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. Ferromatik Milacron India Limited, Plot No. 92, Phase-I, GIDC, Vatwa, Ahmedabad [for short - 'appellant'] has filed this appeal against OIO No. AC/15/Div II/2016-17 dated 22.12.2016, passed by the Assistant Commissioner, Central Excise, Division II. Ahmedabad-I Commissionerate[for short - 'adjudicating authority'].

- 2. A show cause notice dated 20.8.2010, [corrigendum dated 30.8.2010], was issued to the appellant, *inter alia*, proposing to disallow CENVAT credit of Rs. 2,33,537 availed in respect of *canteen service*, *air ticket*, *CHA and port service*. This notice was adjudicated vide OIO No. 22/AC/Dem/2010 dated 27.10.2010, wherein the charges of the notice were confirmed. On an appeal being filed before the Commissioner(A) against the said OIO, the then Commissioner(Appeals), vide his OIA No. 13/2011(AHD-I)CE/MM/Commr(A)/Ahd dated 4.3.2011, upheld the OIA except for the CENVAT credit in respect of canteen services. He held that the appellant had correctly availed the CENVAT credit in respect of canteen services. Department feeling aggrieved, f.led an appeal before the Hon'ble Tribunal, who vide its order no. A/1521/WZB/AHD/2012 dated 16.10.2012. remanded the matter back to the original adjudicating authority with a specific direction. Consequently, the aforementioned impugned order dated 22.12.2016, has been issued by the adjudicating authority, wherein he disallowed the CENVAT credit of Rs. 28,731/-. He further ordered recovery of interest and also imposed equivalent penalty under Rule 15(1) of the CENVAT Credit Rules, 2004.
- 3. Feeling aggrieved, the appellant has filed this appeal wherein he has primarily averred that adjudicating authority erred in imposing the penalty; that the impugned order is in violation of the Hon'ble Tribunal's judgement dated 16.10.2012. The appellant further prayed that the penalty be set aside as per the direction of the Hon'ble Tribunal.
- 4. Personal hearing in the matter was held on 20.7.2017, wherein Shri Rajesh Soni. AGM, EXIM of the appellant, appeared before me and reiterated the grounds of appeal. He stated that no penalty can be imposed in terms of para 5 of the Tribunal's order.
- 5. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing.
- 6. The only averment as is already stated above is that penalty was wrongly imposed since the Hon'ble Tribunal in its order dated 16.10.2012, had specifically ruled against imposition of penalty. The relevant portion of the order is reproduced below for ease of reference:

<sup>&</sup>quot;5. In view of the above, reliance of the Department for filing appeal on the judgment of the Honble Apex Court in the case of Maruti Suzuki Ltd (supra) or other decisions of Tribunal are mis-placed. Respectfully following the decision of Honble High Court of Mumbai, I have to take a view that CENVAT Credit is admissible. However, at this juncture, it has to be noted that CENVAT Credit would be admissible to the full extent only if the full expenditure of canteen services is borne by the assessee. If any amount has been recovered for providing the food/canteen facilities from the employees, CENVAT Credit of Service Tax paid proportionate to the amount will



have to be deducted for availment of credit. From the records it is not clear that the assessee was recovering any money for providing any service. For the limited purpose of verification as to whether the canteen services were provided free of cost or any amount was recovered and if amount was so recevered, to decide the quantum of credit to be reversed afresh, the matter is remanded to the original adjudicating anthority. In view of the fact that there were contradictory opinions/views and the matter has been referred to Larger Bench, imposition of penalty cannot be sustained in this case. Similarly, if the demand has been confirmed invoking extended period, that also will not be sustainable.'

[emphasis added]

- I agree with the contention of the appellant and following the orders of the Hon'ble 7. Tribunal, I set aside the penalty imposed on the appellant vide the impugned OIO dated 22.12.2016.
- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

केन्द्रीय कर आय्क्त (अपील्स)

Date :27.07.2017

Attested

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

#### By RPAD.

M/s. Ferromatik Milacron India Limited, Plot No. 92, Phase-I, GIDC, Vatwa, Ahmedabad

- 1. The Chief Commissioner, Central Tax, Ahmedahad Zone.
- 2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
- The Deputy/Assistant Commissioner, Central Tax, Division II, Ahmedabad South.
   The Additional Commissioner, System, Central Tax. Ahmedabad South Commissionerate.
- 5. Guard File.
- 6. P.A.

