



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन,  
सातवीं मंजिल, पोलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, Central Excise Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(72)102/Ahd-I/2016-17  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-043-2017-18  
दिनांक 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-III, केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं MP/12/AC/2016-17 दिनांक: 30/09/2016 से सृजित

Arising out of Order-in-Original No. MP/12/AC/2016-17 दिनांक: 30/09/2016 issued by Assistant Commissioner, Div-III, Ahmedabad-I

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

**M/s M.G. Engineers  
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 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 Govt. 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 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।

(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 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 ईए-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 पढ़ी 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 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. M.G.Engineers, 14, Hari Om Estate. Plot No. 2206. Phase-IV, GIDC, Vatwa, Ahmedabad 382 445 [for short - 'appellant'] has filed this appeal against OIO No. MP/12/AC/2016-17 dated 30.9.2016, passed by the Assistant Commissioner, Central Excise, Division III, Ahmedabad-I Commissionerate[for short - 'adjudicating authority'].

2. Briefly stated, based on an audit objection, a show cause notice dated 8.1.2016, was issued to the appellant, alleging *inter alia*, that they had wrongly availed the CENVAT credit of Rs. 76,649/- during the period from 16.1.2012 to 31.7.2014, on the inputs received from two registered dealers, since it was observed by audit that the invoices did not contain primary details [invoice /bill of entry] of the importer/manufacturer. The notice was adjudicated vide the impugned OIO dated 30.9.2016 wherein the adjudicating authority, disallowed the CENVAT credit, ordered recovery of interest and further imposed penalty on the appellant.

3. Feeling aggrieved, the appellant has filed this appeal wherein he has raised the following averments:

- [a]that the impugned order is a non speaking order since the decisions relied upon were not taken into consideration by the adjudicating authority;
- [b]that the notice is not sustainable since extended period has been wrongly invoked;
- [c] that the notice was issued after a abnormally large period of more than 2 years after the audit was conducted;
- [d] that no penalty or interest is recoverable;
- [e]that it is mentioned by the department itself in the notice that both the dealers are registered;
- [f]that since the inputs were consumed in the manufacturing of excisable goods, the appellant is legally eligible to avail the benefit of the CENVAT credit;
- [g] that as far as invoices issued by M/s. Lubi Electronics are concerned, these were included in the quarterly report submitted to the department;
- [h] that as far as invoices issued by M/s. Ripal Trading Company is concerned, a certificate issued by the dealer confirming the genuineness of invoices is enclosed with the appeal papers;
- [i] that both the registered dealers have maintained proper records and filed dealer returns as per the law and thus the appellant should be allowed the avail the CENVAT credit.

4. Personal hearing in the matter was held on 20.7.2017, wherein Shri J.N.Bhagat, Advocate and Shri Krunal Vyas CA, appeared for the appellant. The advocate provided copies of documents to show that the suppliers are registered with the Central Excise authorities.

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. The question to be decided in the present appeal is whether the appellant is eligible for CENVAT credit in respect of inputs supplied by the two dealers M/s. Lubi Electronics and M/s. Ripal Trading Company.

6. I find that the appellant has filed a condonation of delay. The delay is of 29 days. Since sufficient cause has been shown for the delay in filing the appeal, I condone the delay caused, in filing the appeal.

7. The charge against the appellant is

[a] as mentioned in the FAR No. 340/2013-14/14.3.2013 : "It is noticed that in the said invoices, information about primary details (invoice/bill of entry) of the importer/manufacture as the case may be have not shown by the dealer".

[b] as per the SCN dated 8.1.2016, [para 6]... "Whereas it appears that on verification of the said invoices, the details of the manufacturers or supplier of the goods with regard to registration numbers were not mentioned on the same";

[c] as per the impugned OIO dated 30.9.2016, para 20 "I find that the issue involved in this case is improper availment of CENVAT credit on the documents, i.e. invoices issued by the dealers in which primary details (invoices/bill of entry) of the importer/manufacture were not mentioned, as prescribed."

As is evident, there is no clarity, as to which *primary details* was not mentioned in the invoices. It is not clear as to whether the invoices of the dealer, were not mentioning the registration number of the dealer or of the dealer's supplier. I find that the facts, in the case are not clear at all. The appellant has provided the registration number of both the dealers, with the appeal papers, as downloaded from the ACES, under the understanding that probably the registration number of the dealers were not mentioned. The appellant has also enclosed the returns of one of the dealer filed with the department and a certificate from the other dealer to substantiate his case that both the dealers are registered with the department. In-fact the show cause notice in para 2 clearly mentions that both the dealers are registered dealers. However, it is not clear as to what primary details were not mentioned in the invoices of the two dealers.

8. Rule 9 of the CENVAT Credit Rules, 2004, lists the documents on which credit can be availed. The relevant extracts of the said rule, is reproduced below, for ease of reference:

**Rule 9. Documents and accounts.-**

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

- (a) an invoice issued by-
  - (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(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;*

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

*(8) A first stage dealer or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board.*

*Provided that the first stage dealer or second stage dealer as the case may be shall submit the said return electronically.*

9. I find that Rule 9(2), supra mentions that 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. Rule 11(2) of the Central Excise Rules, 2002, states that the invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon. However, subject to certain conditions, the proviso to Rule 9(2) of the CENVAT Credit Rules, 2004, supra, gives an exception wherein on the mentioning of certain information, the Deputy Commissioner or Assistant Commissioner, as the case may be, if he is satisfied that the goods covered by the said document have been received and accounted for in the books of the account of the receiver, may, allow the CENVAT credit. The particulars as per the proviso, which should invariably be mentioned on the invoice are:

- (a) the details of duty or service tax payable,
- (b) description of the goods or taxable service,
- (c) assessable value,
- (d) 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,

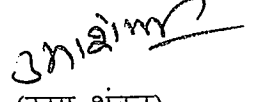
There is no dispute about (a), (b), (c). What is disputed [and which is not coming out very clearly either in the audit objection, notice or the impugned Order] is probably about the non mentioning of the registration number. As I have already pointed out, it is not clear as to whose registration number is not mentioned in the invoices – the dealers or the supplier of the dealers. Since the appellant has provided copy of the registration number of the two dealers, as has been downloaded from ACES, ideally I find that CENVAT credit should be allowed, [if the dispute is regarding non mentioning of the registration number of the two dealers], since the department is neither disputing [i]the receipt of goods by the appellants, [ii]utilization of the goods in the manufacture of dutiable goods or [iii]the duty paid nature of the goods/inputs.

10. However, since the primary fact in the dispute is not clear, as to which *primary details* was not mentioned in the invoices it would be in the interest of justice if the matter is remanded back to the adjudicating authority to explicitly mention as to which primary detail was missing in the invoice. Needless to state, the adjudicating authority will offer the appellant a chance to represent his case and then pass a speaking order, keeping the above facts, and law, in mind.

11. In view of the foregoing, the matter is remanded back to the original adjudicating authority, as detailed supra.

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

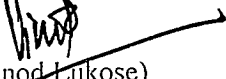
12.. The appeal filed by the appellants stands disposed of in above terms.

  
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date ~~27~~ 07.2017

Attested

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

By RPAD.

To,

M/s. M.G.Engineers,  
14, Hari Om Estate, Plot No. 2206,  
Phase-IV, GIDC, Vatwa,  
Ahmedabad 382 445

Copy to:-

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

