
	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक 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(84)/138/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

246770
2492

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-451-2017-18
दिनांक Date : 22-03-2018 जारी करने की तारीख Date of Issue

17/4/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 33/CE-I/Ahmd/ADC/MK/2017 दिनांक: 31/10/2017 issued by
Addl Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Cadmach Machinery Co. 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 :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुप-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 :

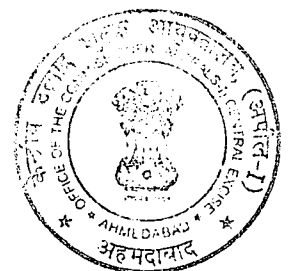
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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।

... 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.

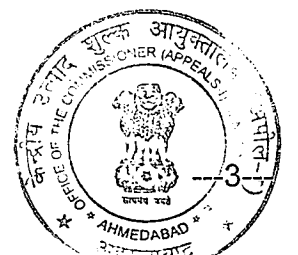
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Məghani 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(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 अनुसूचि-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।

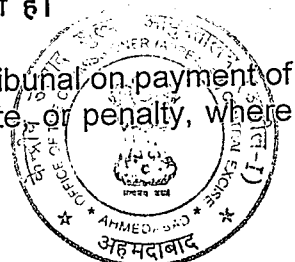
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



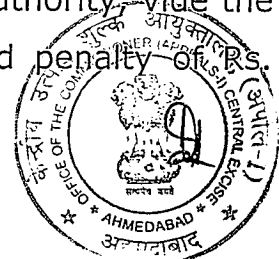
ORDER IN APPEAL

This appeal has been filed by M/s Cadmach Machinery Co, Pvt. Ltd., Plot No. 3604-3605, Phase-IV, GIDC, Vatva, Ahmedabad (herein after referred to as the appellants) against the OIO No. 33/CE-I/Ahmd/ADC/MK/2017 dtd. 31.10.2017 (herein after referred to as the impugned order) passed by the Additional Commissioner, Central Excise, Ahmedabad-I (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that during the Audit by the officers of Audit wing of Central Excise, Ahmedabad-I, it was observed that the appellants had availed input services under the category of Market Research carried out for the European region. It was also revealed that the export was of Rs. 44.29 lakh which was through merchant exporter only. The merchant exporter is a relative party and in view of this, it appeared that the appellants had not utilized the said service in or in relation to manufacturing/export of the final goods or any other goods to earn foreign exchange. It further appeared that the service was directly benefitting the merchant exporter and not the appellants. Accordingly a show cause notice dtd. 08.04.2015 was served upon the appellants demanding wrongly availed cenvat credit of Rs. 25,87,798/- along with interest and proposal of imposition of penalty. The adjudicating authority has noted in the impugned order that vide OIO No. 21/CX-I/Ahmd/JC/GPM/2015 dtd. 18.08.2015, the demand was originally confirmed with imposition of penalty. On being appealed against, the Commissioner (Appeals), vide OIA No. AHM-EXcus-000-018-2016-17 dtd. 24.08.2016, remanded the case to the adjudicating authority with observations and direction reproduced herein below;

*"14. In view of the foregoing, **the denial** of input service credit in respect of market Research services to the appellant **is not legally tenable**. I however find that the original order has nowhere confirmed that the service in fact was provided by M/s Alex Friedman. This needs to be verified through reasonable evidence. This is more so since the Department has **already questioned the veracity of the agreement**. In the absence of signature of M/s Friedman on the contract, as mentioned supra. Needless to state, the onus is on the claimant to provide documents to the satisfaction of the Department that the services were in fact provided."* (emphasis supplied)

Therefore on remand proceedings, the adjudicating authority, vide the impugned order, confirmed the demand and also imposed penalty of Rs. 12,93,899/-.



3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the service has been availed for the development of the new market and knowing the quality requisition in the market and demand for the product;
- b) That the demand has been confirmed on the ground that the appellants have not received the direct order from the export market and it is not justified. They have received export order from the merchant exporter which is a part of the export order;
- c) That the reasoning that the service provided and availed for the manufacturing has no direct nexus is not sustainable and they seek support from the Circular No. 120/01/2010-S.T. dtd. 19.01.2010 and case laws of Valco Industries Ltd. Vs. CCE, Chandigarh – 2012 (286) ELT-54 (Tri. Del.), Toyota Kirloskar Motor Pvt. Ltd. Vs. CCE, LTU, Bangalore – 2011 (24) STR-645 (Kar.);
- d) That they want to draw attention towards the definition of input service up to 31.03.2011 according to which sales promotion and market research were also considered as input service;
- e) That it is not right that the service of market research is availed after the removal of goods from the factory premises. In fact services of market research are received prior to the clearance of goods and based upon the orders procured by the appellants;
- f) That the Circular No. 943/04/2011-C.X. dtd. 29.04.2011 clarifies that the credit of service tax paid on the sales promotion activities and on services of sales of dutiable goods on commission basis would be admissible; they also rely on the case laws of CCE, Ludhiana vs. Ambika Overseas – 2012 (25) STR-348 (P&H), Bajaj Hindustan vs. CCE, Lucknow - 2013 (30) STR-675 (Tri.Del.), CCE & ST (LUT), Chennai vs. Turbo Energy Ltd - 2013 (31) STR-575 (Tri.Chen.), CCE, Vapi vs. Nilkamal Crates & Bins - 2010 (19) STR-431 (Tri.Ahmd.) etc.;
- g) That the cenvat credit has been rejected for some problems with the documents pertaining to the case whereas it is only a procedural lacuna and denial on this basis is not justifiable;
- h) That the entire demand is time barred as there is no suppression of facts willful misstatement on their part and no penalty is imposable.

4. The personal hearing in the case was held on 22.01.2018 in which Shri Vipul Khandhar, Chartered Accountant appeared on behalf of the appellants. He reiterated the grounds of appeal and submitted that the Commissioner



(Appeals)'s order has not been followed. He further made additional written submissions which are on the lines of their grounds of appeal.

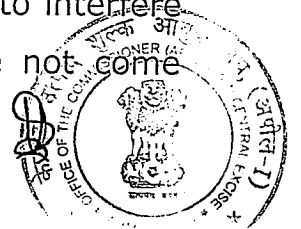
5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issue to be decided in the instant case is whether the demand has been rightly confirmed by the adjudicating authority on the ground mentioned in the impugned order and whether the directions given in the OIA of the Commissioner (Appeals) have been correctly followed or not.

7. For the sake of convenience, I look back at the relevant part of the OIA dtd. 24.08.2016 which is as under:

*"14. In view of the foregoing, **the denial** of input service credit in respect of market Research services to the appellant **is not legally tenable**. I however find that the original order has nowhere confirmed that the service in fact was provided by M/s Alex Friedman. This needs to be verified through reasonable evidence. This is more so since the Department has **already questioned the veracity of the agreement**. In the absence of signature of M/s Friedman on the contract, as mentioned supra. Needless to state, the onus is on the claimant to provide documents to the satisfaction of the Department that the services were in fact provided."* (emphasis supplied)

It is very clear that the cenvat credit availed by the appellants had already been held admissible as per the findings given in para 14 of the OIA and the relevant part has been emphasised. So there was no need to readjudicate the issue of admissibility or otherwise of the cenvat credit in question. In view of this position, since that issue has already been decided, there is no need to consider the arguments and contentions put forth by the appellants. Now the only issue to be examined by the adjudicating authority was the verification of the documents submitted by the appellants as in para 14 of the OIA, it has been clearly held that the department has questioned the veracity of the agreement. Now from the impugned order, I find that the adjudicating authority has given detailed findings and have concluded that the documents are not acceptable. In fact the whole case arose on the acceptability of documents submitted by the appellants. Since the adjudicating authority has examined the veracity of the documents and have concluded that they are not proper documents, I find no reason to interfere with the impugned order. I also find that the appellants have not come



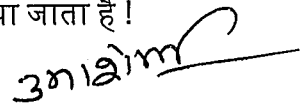
forward to counter the examination and conclusion of the adjudicating authority and have not submitted any cogent arguments or documents in support of their claim. In the grounds of appeal, the appellants have merely given one line contention that it is merely a procedural lacuna. They have overlooked that fact that the whole case evolved from the documents. In view of this I hold that CENVAT credit in this case cannot be allowed. I therefore uphold the impugned OIO

8. The defence put forth by the appellants regarding time limits and imposition of penalty is not convincing in view of the fact that they have not been able to prove authenticity of the important documents on the basis of which they had availed cenvat credit. I therefore agree with the findings of the adjudicating authority.

9. In view of the foregoing, the appeal is rejected and the impugned OIO dated 31.10.2017 is upheld.

10. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है!




(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक: 22-3-2018

सत्यापित


(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s Cadmach Machinery Co, Pvt. Ltd.,
Plot No. 3604-3605,
Phase-IV, GIDC
Vatva,
Ahmedabad

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Astt. Commissioner, CGST, Div.-III, Ahmedabad (South),
- (4) The Dy./Astt. Commissioner (Systems), CGST, Ahmedabad (South),
- (5) Guard File,
- (6) P.A. File.

