
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय कर भवन,	7 th Floor, GST Building,	
सातवीं मंजिल, पॉलिटेक्निक के पास,	Near Polytechnic,	
आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015	
☎ : 079-26305065		टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(ST)124/Ahd-South/2018-19 / 9073
Stay Appl.No. /2018-19
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0136-2018-19
दिनांक Date : 19-12-2018 जारी करने की तारीख Date of Issue 17/01/2019
- श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. SD-06/15/AC/Zest Aviation/16-17 दिनांक: 23.02.2017 issued
by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Zest Aviation 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 :

(i) 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, रांसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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 cases, 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 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 दिनोंक 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.

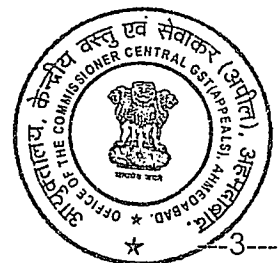
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

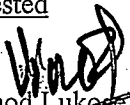
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(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 मैनटल हॉस्पिटल 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.



Attested

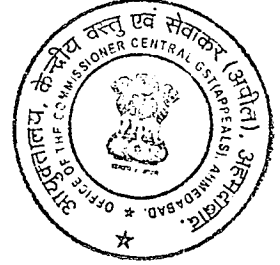

(Vinod Lukose)
Superintendent,
Central Tax(Appeals),
Ahmedabad.

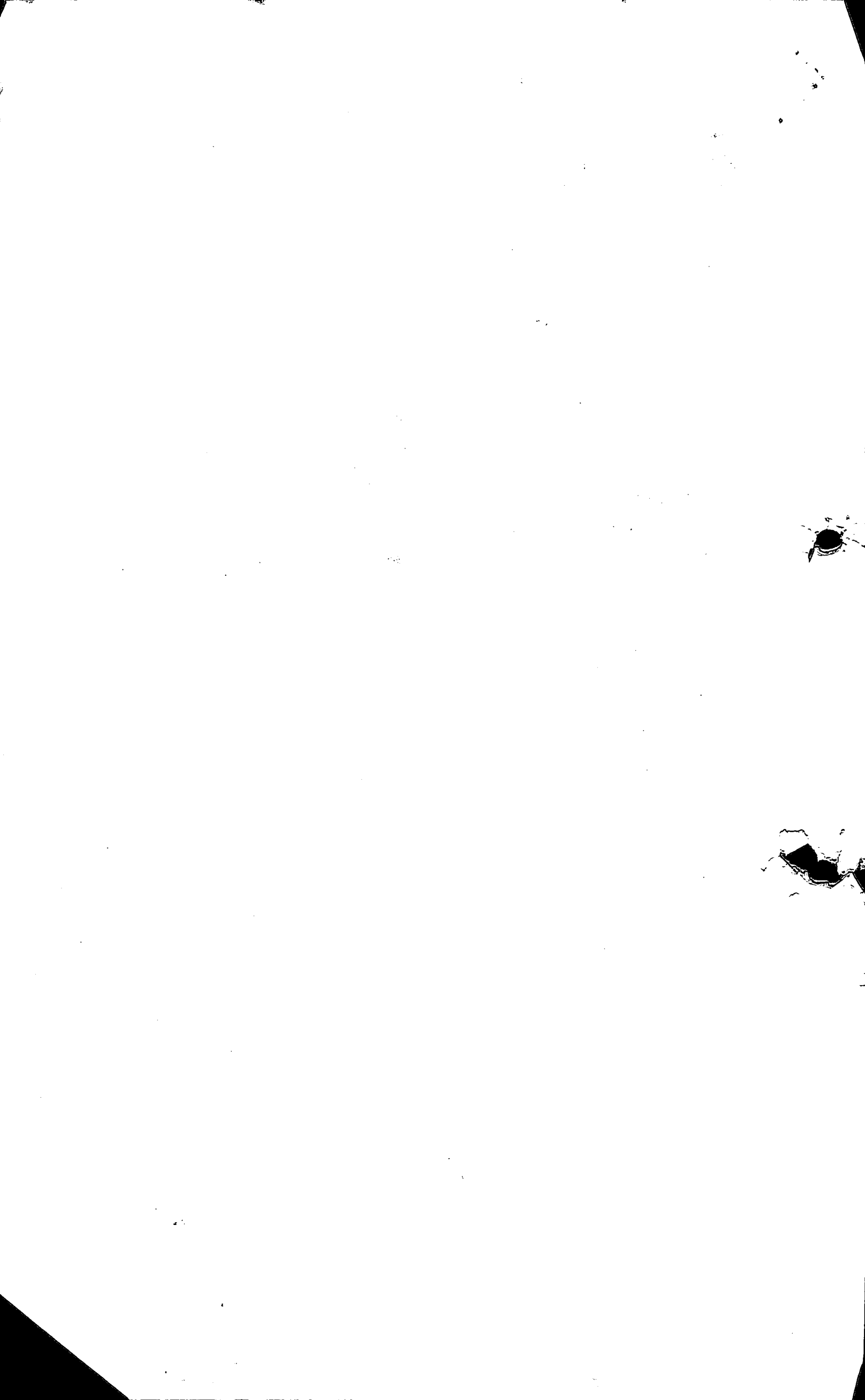
By RPAD.

To,
M/s. Zest Aviation Private Limited, 16, Pariseema,
C G Road, Navrangpura,
Ahmedabad, Gujarat- 380 006

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 VI, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
- ✓ 5. Guard File.
6. P.A.





- that it has already been held by the Tribunal that what is excluded from the definition of input is motor spirits commonly known as petrol and not all motor spirits, further holding that SBPS (Special Boiling Point Spirit) not being commonly known as petrol, CENVAT credit is not to be denied;
- That motor spirit (commonly known as petrol) and ATF are having mention as different and distinct product in the CGST Act, 2017;
- that the supplementary note in chapter 27 of CETA defines motor spirit and aviation turbine fuel separately which is also a proof that these are two distinct inputs and that the restriction is only on motor spirit and not on ATF

5. I have gone through the facts of the case, the appellant's grounds of appeal, their additional submissions and the grounds raised during the course of personal hearing. The question to be decided is whether the appellant is eligible to avail CENVAT credit on Aviation Turbine Fuel, which the department alleges is a part of the exclusion under Rule 2(k) of the CENVAT Credit Rules, 2004, as mentioned below:

- (k) "input" means -
- (i) all goods used in the factory by the manufacturer of the final product; or
 - (ii); or
 - (iii); or
 - (iv);
 - (v)
- but excludes -
- (A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

6. I find that the adjudicating authority has confirmed the demand on the following grounds:

- that the notice proposed ATF to be a type of motor spirit and since CENVAT credit in respect of motor spirit is not available, credit in respect of ATF is also not applicable;
- that the exclusion covers all forms/varieties/categories of motor spirit whether in the form of petrol, ATF or otherwise; that petrol is only cited as an example;
- that ATF is nothing but another form of petrol.

7. The appellant has relied on the judgement of the CESTAT, Northern Bench, New Delhi in the case of Tuftween Petrochemicals vs Commissioner of Central Excise, Meerut reported in 2005(185) E.L.T. 203 (Tri-Del) the relevant portion of which is reproduced below:

"6. A perusal of various sub-headings under main Heading 27.10 will reveal that there are various types of motor spirit such as SBPS with normal boiling point range 55-115°C or with nominal boiling range 63-70°C and other SBPS. Motor spirit also include Naptha, Natural Gasoline Liquid and other motor spirits. What has been excluded from the purview of input in Rule 2(g) of the Cenvat Credit Rules is motor spirit commonly known as petrol. This definition of input does not exclude all motor spirit, it exclude only motor spirit commonly known as petrol. No material/evidence in the form of test report, etc. has been brought on record by Revenue to show that the inputs namely Cixon and SBPS procured by the assessee are commonly known as petrol in the market. No presumption can be drawn from the Orders issued under the Essential Commodities Act that motor spirit and petrol are synonymous. Section 6 of the Petroleum Act which has been referred to by the Commissioner (Appeals) is regarding petroleum. There is substantial force in the contention of the learned Advocate that Naptha which is also motor spirit under the Central Excise Tariff cannot be regarded, as petrol. We, therefore, hold that Revenue has not succeeded in establishing that the inputs procured by the Assessee are 'motor spirit commonly known as petrol. These are motor spirit but there is nothing to show that these are commonly known as petrol. We, therefore, hold that the inputs are not excluded from the definition of inputs as given in Rule 2(g) of the Cenvat Credit Rules and



the assessee is eligible to avail the Cenvat Credit. As we are allowing the appeal filed by the assessee the question of imposing any penalty does not survive. Accordingly, the appeal filed by the Revenue is rejected.” *Emphasis supplied*

8. The appellant has further relied on the fact that light diesel oil, high speed diesel oil, motor spirit commonly known as petrol and Aviation Turbine Fuel (ATF) are clearly distinctly mentioned in the Central Excise Tariff Act (CETA), 1985. The relevant portion of the chapter 27 of the CETA, 1985 with the relevant chapter headings is reproduced below for ease of reference:

“2710 12 --	Light oils and preparations:	
---	Motor spirit:	
2710 12 11 ----	Special boiling point spirits (other than benzene, toluol) with nominal boiling point range 55 – 115 °C	kg. 14% + Rs. 15.00 per litre
2710 12 12 ----	Special boiling point spirits (other than benzene, benzol, toluene and toluol) with nominal boiling point range 63 – 70 °C	kg. 14% + Rs. 15.00 per litre
2710 12 13 ----	Other Special boiling point spirits (other than benzene, toluene and toluol)	kg. 14% + Rs. 15.00 per litre
2710 12 19 ----	Other	kg. 14% + Rs. 15.00 per litre
2710 19 10 ---	Superior kerosene oil (SKO)	kg. 14%
2710 19 20 ---	Aviation turbine fuel (ATF)	kg. 14%
2710 19 30 ---	High speed diesel (HSD)	kg. 14% + Rs. 15.00 per litre
2710 19 40 ---	Light diesel oil (LDO)	kg. 14% + Rs. 5.00 per litre”

9. Further I find that there was no stress made by the adjudicating authority to equate the ATF with the motor spirit commonly known as petrol. In view of the judgement quoted supra which clearly infers that even all motor spirits are not to be excluded from the definition of input as given in the Rule 2(k) of the Cenvat Credit Rules, 2004 and the fact that light diesel oil, high speed diesel oil, motor spirit commonly known as petrol and Aviation Turbine Fuel (ATF) are clearly distinctly mentioned in the Central Excise Tariff Act (CETA), 1985, I am of the opinion that the demand confirmed by the adjudicating authority is not sustainable.

10. In view of the foregoing, the appeal is allowed with consequential relief.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : 19.12.2018



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 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. Zest Aviation Private Limited, 16, Pariseema, C G Road, Navrangpura, Ahmedabad, Gujarat- 380 006, [for short – ‘appellant’] against OIO No. SD-06/15/AC/Zest Aviation/16-17 dated 23.2.2017 passed by the Assistant Commissioner, Division VI of the erstwhile Service Tax Commissionerate, Ahmedabad [for short – ‘adjudicating authority’].

2. Briefly, the facts are that internal audit while going through the records observed that the appellant owned two aircrafts and was engaged in the activity of supply of tangible goods, had wrongly availed CENVAT credit, paid on Air Turbine Fuel [ATF]. Therefore, a show cause notice dated 21.4.2016 was issued to the appellant *inter alia*, alleging that they had wrongly availed CENVAT credit of Rs. 23,11,212/- during the FY 2013-14, 2014-15 & 2015-16 (upto February 2016), along with interest. The notice further proposed penalties under Rule 15(1) of the CENVAT Credit Rules, 2004 read with Section 76 of the Finance Act, 1994 and under Rule 15(3) of the CENVAT Credit Rules, 2004, read with Section 78 of the Finance Act, 1994.

3. This notice was adjudicated vide the impugned OIO dated 23.2.2017 wherein the adjudicating authority confirmed the demand along with interest and also imposed penalty on the appellant. The appellant feeling aggrieved, has raised the following averments in his grounds:

- the statement of facts, documents, legal text, decided cases, certificates from suppliers tariff description, legal opinion and all other related facts show that ATF is not a motor spirit and is not petrol by any stretch of imagination;
- that they would like to rely on the case of Tuftween Petrochemicals [2005(185) ELT 203], Balkrishna Industries [2012(285) ELT 430] ;
- that no interest is payable since the demand itself is not legally sustainable;
- that the penalties imposed need to be set aside;
- that there is no iota of evidence of fraud, collusion or any willful misstatement or suppression of facts;
- that only petrol is excluded from the scope of input and all other motor spirits are not excluded;
- that they would like to rely on the case of Gujarat Guardian limited [2016(46) STR 737], Alfred Herbert Limited [2009(245) ELT 407], Murugappa Morgan Thermal Ceramics [2016(45) STR 74], Trichem Enterprises Private limited [2016(46) STR 592];
- that extended period is not invocable.

4. Personal hearing in the matter was held on 20.11.2018 wherein Dr. Nilesh V Suchak, CA and Shri Viral Mody, CA, both appeared on behalf of the appellant and reiterated the grounds of appeal. They contended that the earlier period was audited and the objection regarding wrong availment of CENVAT credit on ATF was never taken. He submitted that the classification of ATF is different from motor spirit with different HSN codes and further pleaded limitation. They also submitted additional written submissions wherein they raised the following averments:

