
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) 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
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9876 + 0988 /

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)167/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0155-2018-19
दिनांक Date : 14-03-2019 जारी करने की तारीख Date of Issue

26/3/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 13/CE-I Ahmd/JC/KP/2018 दिनांक: 18.09.2018 issued by
Joint Commissioner, Div-Ahd South, Central Tax, Ahmedabad-South

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

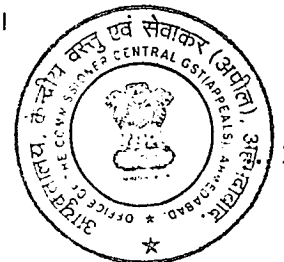
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 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.

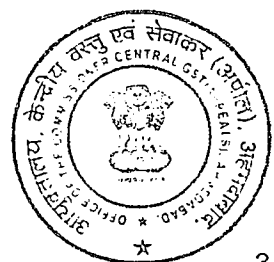
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैटल 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.



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।

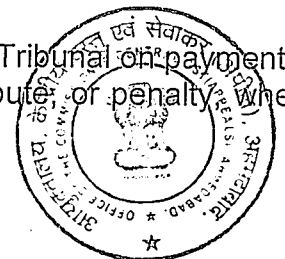
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

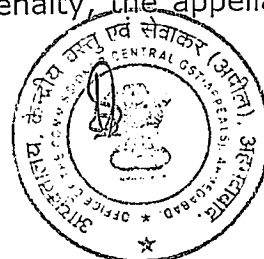


ORDER-IN-APPEAL

M/s Navdurga Roadlines, Shop No.22, Ojas Complex, P.No.69, Sector 9-C, N.H.Road, Gandhidham (Kutch) [for short-" appellant"] has filed this appeal against Order-in-Original No.13/CE-1/Ahmd/JC/KP/2018 dated 18.09.2018 [for short-"impugned order"] passed by the Joint Commissioner of CGST, Ahmedabad South [for short-"adjudicating authority"].

2. Briefly stated, based on an information that M/s Harshlaxmi Chemisolve, Satellite, Ahmedabad [for short-" M/s Harshlaxmi"], a dealer of various types of imported as well as indigenous organic chemicals has indulged in selling of excisable goods without bill to different buyers and for transportation of said goods, they indulged the appellant and M/s Mohit Bulk Carriers/Triveni Roadlines, Gandhidham, the officers of the Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad [for short-DGCEI] has carried out searches at the premises of M/s Harshlaxmi on 10/16.09.2014, M/s Mohit Bulk Carriers and the appellant. Further detailed investigation revealed that M/s Harshlaxmi have sold Goods to manufacturers and traders under Cenvatable Invoices and non-Cenvatable invoices for local purchase as well as for imported goods; that M/s Harshlaxmi has issued various invoices only on paper, but actually the corresponding goods have not been supplied under the invoices issued. M/s Harshlaxmi was issuing various invoices without physically supplying the corresponding goods to M/s Yash Chemex Inc, Vatva, Ahmedabad [for short-M/s Yash] and M/s Yash has fraudulently availed CENVZT credit on the basis of invoices issued by Harshlaxmi. After completion of investigation, a show cause notice dated 24.10.2016 was issued to M/s Yash for recovery of CENVAT credit amounting to Rs.1,02,99,643/- with interest, wrongly availed on the goods totally valued to Rs.8,55,85,101/- which were actually not received by them during the period of December 2011 to July 2014. The said notice also proposes for imposition of penalty on M/s Yash under [i] Rule 15(2) of CENVAT credit Rules, 2004 (CER) read with Section 11 AC of Central Excise Act, 1944 (CEA); under Rule 26 (1) of Central Excise Rules, 2002; and [ii] imposition of penalty on M/s Harshlaxmi under Rule 26(2) of CER and [iii] **imposition of penalty on the appellant under Rule 26(1) of CER**. The adjudicating authority, vide impugned order has confirmed the recovery of Cenvat Credit with interest and imposed penalty of Rs.1,02,99,643/- under Rule 15(2) of CER read with Section 11 AC of CEA and Rs.1,02,99,643- under Rule 26(1) of CER on M/s Yash; Rs.1,02,99,643/- on M/s Harshlaxmi under Rule 26(2) and **Rs.1,02,99,643/- on the appellant under Rule 26(1) of CER**.

3. Feeling aggrieved with the imposition of penalty, the appellant has filed this appeal on the following averment:

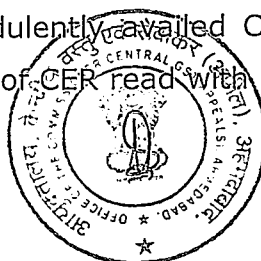


- The entire investigation had been done on the basis of evidences which itself created doubt and the authenticity and was based on assumptions and presumptions, however, the adjudicating authority has failed to appreciate the submissions and imposed penalty.
- Provisions of Rule 26(1) of CER cannot be made applicable to the appellant in case of related to supply of invoices without goods as the appellant will never be aware as to what the dealer is doing in this normal course of business, especially the investigation has miserably failed in alleging the role of the appellant as a part of alleged modus operandi.
- The investigations or the manufacture or the dealer have nowhere stated that the appellant had been a part of the modus operandi and in absence of any allegation, the charges of malafide intention does not get substantiated.
- It is a prevalent practice in transportation business that the goods are delivered to a place where consignee and buyer are two different parties and in such cases the transporter will have to issue two LR's upon insist of consignor; that in both the LR's they have mentioned M/s Harshlaxmi.
- It is settled law that where the duty has been demanded for wrong availment of CENVAT credit on the basis of invoices without receipt of corresponding goods, the penalty cannot be imposed on transporter in such cases. They relied on various case laws.

4. Personal hearing in the matter was held on 07.03.2018. Shri Anil Gidwani, Tax Consultant appeared for the same and reiterated the grounds of appeal. He further submitted that in the main appeal filed by M/s Yash, penalty on dealer was reduced; that in other case, the Commissioner (Appeals) Vadodara has dropped penalty on transporter.

5. I have carefully gone the facts of the case and submissions made by the appellant in the appeal memorandum as well as during the course of personal hearing. The issue to be decided in the matter is as to whether the appellant is liable to imposition of penalty under Rule 26(1) of CER being a transporter of the goods which alleged never transported to M/s Yash as made out in the impugned order.

6. I find that the issue involved in the impugned order with relating to fraudulently availment of Cenvat credit amounting to Rs.1,02,99,643/- by M/s Yash and imposition of penalty on them under Rule 15(2)) of CER read with Section 11AC of CEA, imposition of penalty under Rule 26(1) CER and imposition of penalty under Rule 26 (2) of CER on M/s Harshlaxmi has already been decided by me vide OIA No. AHM-EXCUS-001-APP-137-138/18-19 dated 21.12.2018I. Vide the said OIA, I confirmed all the allegations of fraudulently availed Cenvat credit by M/s Yash, imposition of penalty under Rule 15(2) of CER read with Section 11AC of CEA

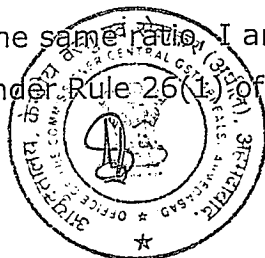


and imposition of penalty of Rs.7,50,000/- instead of Rs.1,02,99,643/- on M/s Harshlaxmi under Rule 26(2) of CER.

7. The appellant has mainly argued upon the fact that once the case of the department was relating to the fraudulent availment of the Cenvat credit by M/s Yash based on the allegedly fake invoices issued by the dealer with physically receiving the impugned goods described in those invoices, then how come the role of the appellant is coming into the picture. The said argument does not have any merit, looking into the apt of the case. The investigation by the DGCEI clearly revealed that the appellant has acted in connivance and as per the direction of M/s Harshlaxmi; that they have issue two LRs for the same consignment knowingly under direction and supervision of M/s Harshlaxmi only. Further, Sshri Hitesh Thakkar, Prop. Of the appellant has confirmed truthfulness of records recovered from their premises and admitted to the facts that they issued two parallel LRs of the same serial number, one for movement of goods physically transported to Delhi, Kundali, Panipat etc and the other as a per transaction TO Ahmedabad etc. Thus, the appellant was well aware of the modus operandi. Therefore, the argument that it is a prevalent practice in transportation business that the goods are delivered to a place where consignee and buyer are two different parties and in such cases the transporter will have to issue two LRs upon insist of consignor is not convincing, not acceptable and does not have any merits.

9. I find that the act of the appellant in connivance and as per direction of M/s Harshlaxmi so as to enable M/s Yash to avail Cenvat credit wrongly, imposition of penalty also does not suffer from any illegality, particularly, in view of the systematic manner in which the fraud was committed. Further, I find that the personal penalty on transporter has been upheld by the Hon'ble High Court of P & H in case of CCE, Ludhiana V/s Deepak Roadways [2010 (254) ELT 26]. The Hon'ble Court has held that "*Transporter helped dealers to raise bogus/fake modvatable documents in order to fraudulently help the buyers to avail credit - Goods not transported but fake G.R.s issued - Tribunal set aside penalty imposed under Rule 209A of erstwhile Central Excise Rules, 1944 as transporter neither acquired possession nor dealt with excisable goods in any manner with knowledge that goods liable for confiscation - Tribunal's finding erroneous*".

10. I find that the adjudicating authority has imposed penalty of Rs.1,02,99,643/- on the appellant i.e equal to the Cenvat credit wrongly availed by M/s Yash which is on very higher side. Being a transporter of goods, the penalty imposed on the appellant appears to be very high and harsh. Further, I find that vide OIA dated 31.12.2018 supra, while deciding the instant issue in respect of M/s Yash and M/s Harshlaxmi, penalty was reduced to Rs.7,50,000/- on M/s Harshlaxmi from Rs.1,02,99,643/-. Therefore, applying the same ratio, I am inclined to reduce the penalty on appellant to Rs. 7,50,000/- under Rule 26(1) of CER.



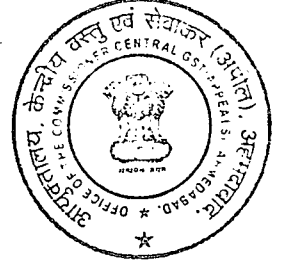
11. In view of above, I partially allow the appeal by reducing the penalty imposed. The appeal stands disposed of accordingly.

Umaprakash

(उमा शंकर)
आयुक्त (अपील्स)
Date : .03.2019

Attested

Mohanan V.V.
(Mohanan V.V.)
Superintendent (Appeals)
CGST, Ahmedabad



By R.P.A.D

To

M/s Navdurga Roadlines,
Shop No.22, Ojas Complex, P.No.69, Sector 9-C,
N.H.Road, Gandhidham (Kutch)

Copy to:-

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Principal Commissioner, CGST, Ahmedabad South
3. The Joint Commissioner, CGST, Ahmedabad South.
4. The Dy/Asstt. Commissioner, CGST, Ddivn III/VII, Ahmedabad South
5. The Assistant Commissioner, System-Ahmedabad North.
6. Guard File.
7. P.A. File.

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