



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पॉलिटेक्निक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(73)19/Ahd-South/2018-19
V2(73)20/Ahd-South/2018-19
Stay Appl.No. /2017-18

5216705221

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-017 to 018-2018-19
दिनांक Date : 28-06-2018 जारी करने की तारीख Date of Issue

17/7/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/02/DEM/2018-19 दिनांक: 18.04.2018 & MP/01/DEM/2018-19 दिनांक: 18.04.2018 issued by Assistant Commissioner, Div-V, Central Tax, Ahmedabad-South

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

AIA Engineering Ltd (Unit-13)

AIA Engineering Ltd (Unit-II)

Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 अतल 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।

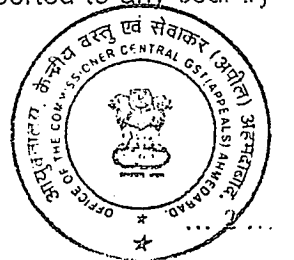
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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.

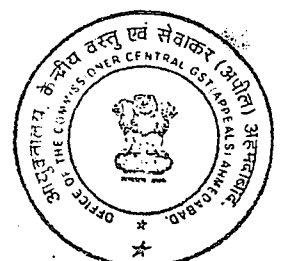
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैनटल हॉस्पिटल कम्पाउण्ड, नेघाणी 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 इन 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 11 D 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

Following two appeals have been filed by the appellants as per col.No.(2) of below mentioned table against the Orders-in-Original (hereinafter referred to as "the impugned orders) mentioned passed by the Assistant Commissioner of Central -III/ Superintendent of Central GST, Division-V, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

S.No	Name of appellant	Order-in-Original	Amount involved
1	AIA Engineering Ltd (Unit-1)	MP/01/Dem/2018-19 dated 18.04.2018	1,53,583/- 76,792/- penalty
2	AIA Engineering Ltd (Unit-13)	MP/02/Dem/2018-19 dated 18.04.2018	1,47,784/- 73,892/- penalty

2. Briefly stated, show cause notices were issued to the appellants for recovery of Cenvat credit wrongly taken on (i) Banking and Other financial Services; (ii) Legal Consultancy Services; and (iii) Renting of immovable properties services. Vide order-in-original dated 24.11.2015/27.11.2015, jurisdictional adjudicating authority has disallowed the credit of input service and ordered for recovery of amount with interest and imposed penalty. Vide Order-in-Appeal No. AHM-EXCUS-APP-026-2016-17 dated 09.11.2016, the appellate authority has upheld the decision in respect of (i) Banking and Other financial Services; (ii) Legal Consultancy Services and remanded the issue in respect of Renting of immovable properties services for reconsidering afresh on the basis of documents furnished by the appellant. Vide the impugned order, the adjudicating authority has again denied the CENVAT credit and ordered for recovery of amount with interest and imposed penalty.

3. Being aggrieved, the appellant has filed the instant appeals on the grounds that:

- The adjudicating authority has rejected the benefit of CENVAT credit by misconstruing the nature and use of such services by the appellant; that the appellant vide letter dated 19.12.2017 had submitted various documents to establish how the service of renting of immovable property was directly connected with the process of manufacture and had a direct nexus with the manufacture of final products.
- M/s AIA Engg. Ltd is a registered ISC and the CENVAT credit of service tax paid on the services of rental of immovable property was distributed by M/s AIA Engg. Ltd proportionately in terms of goods processed at the rented premises; that the appellant has also included the expenses incurred on renting of immovable property as a part of the total cost of production.
- The appellate authority has already been allowed the CENVAT credit on Renting of Immovable property in appellant's case for earlier period; that vide OIA No.AHM-EXCUS-001-APP-082 to 087-2016-17 dated 03.04.2017 the Commissioner (Appeal) has allowed the credit and vide order



No.A/12354-12355/2017 dated 05.09.2017, the CESTAT has allowed the said credit by setting aside Commissioner (Appeal) earlier order dated 15.06.2015.

4. Personal hearing in both the appeals was held on 12.06.2018. Smt. Shilpa P Dave, Advocate appeared for the same and reiterated the grounds of appeal. The Ld. Advocate pointed out that despite of OIA and Tribunal's order, the adjudicating authority has rejected the credit.

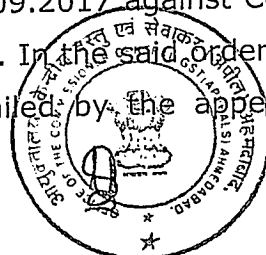
5. I have carefully considered the submissions made by the appellant in the appeal memorandum as well as argument put forth at the time of personal hearing and other records.

6. I observe that the adjudicating authority has denied the claim on the grounds that the appellant has failed to submit relevant documents with respect to the credit taken on Renting of Immovable property and the appellant, being registered as ISD, cannot distribute CENVAT credit in respect of Service Tax paid on the input service to its job workers. I further observe that the issue involved in the matter has already decided by my vide OIA dated 03.04.2017. The relevant portion of the said order as under:

"(iii) Renting of Immovable Property:

13. I observe that in my earlier OIA dated 25.01.2017, it was held that the storage of input and final products is an integral part of manufacturing activity and the services related to such activities fall within the ambit of the definition of input service. However, the issue was remanded to the adjudicating authority as I observed that the appellant has used the rented premises taken by group of AIA Engineering Ltd and used for job works, storage of inputs as well as finished goods etc. and no evidence was furnished by them with regard to utilization of the said premises and taken the credit according to ISD. In this regards, the appellants have furnished copy of lease agreement entered with the service providers which shows that the service providers were charging rent towards sheds which were being utilized by the appellant group of company Further, they have furnished a copy of challan with details for distribution of credit received on input services under Rule 4A(2) of Service Credit Rules, 1994. Since, the storage of input and final products is an integral part of manufacturing activity and the services related to such activities fall within the ambit of the definition of input service and the appellants have furnished evidence that they are taking the credit according ISD, I do not find any merit for denying the credit availed in this regard. Accordingly, I allow the same."

7. The above order is still operative. Further, I observe that the Hon'ble CESTAT, Ahmedabad has passed an order dated 05.09.2017 against Commissioner (Appeals) order dated 15.06.2015 in appellant's case. In the said order, the service in question i.e Renting of Immovable Property availed by the appellant for the



period of December 2010 to September 2013 has been held to be "input service" as defined under Rule 2(i) of Cenvat Credit Rules.

7. In the instant cases also, the appellant has furnished documents viz. copy of lease agreement entered with the service providers and copy of challan with details for distribution of credit received on input services under Rule 4A(2) of Service Credit Rules, 1994. The appellant has contended that all these documents were also submitted before the adjudicating authority, however, he has not considered the same. They also contended that though the issue has already been decided by the appellate authority and Hon'ble Tribunal in their favour, the adjudicating authority has not considered the same while passing the order. It is pertinent to point out here that non-consideration of order passed by the higher authorities is a serious error on the part of the adjudicating authority. In the instant case, he has neither considered the submission made by the appellant nor followed the order passed by his higher authorities. He committed a serious error in ignoring the bind judgment of superior authority that too in case of same assessee. By doing so, he acted in an irresponsible manner and he has shown utter disregard to judicial discipline by not following the order of the higher appellate authorities which are binding on him. I strongly deplore the attitude/ action of the adjudicating authority.

8. In view of above my earlier order and the Hon'ble Tribunal's order *supra*, I allow the appeals mentioned at para 1 above and set aside the impugned order. The appeals stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: /06/2018

Attested

Mohan V.V.
(Mohan V.V.)
Superintendent (Appeal)

To

M/s AIA Engineering Ltd (Unit-1)
Plot No.234-237, GVVM, Odhav,
Ahmedabad-10.

M/s AIA Engineering Ltd (Unit-13)
Plot No.14, Girnar Scooter Compound,
GVVM, Odhav, Ahmedabad-10.

Copy to:

1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central GST, Ahmedabad South
3. The Additional Commissioner,(Systems) Central GST Ahmedabad South
4. The Asstt. Commissioner, Central GST, Division -V, Ahmedabad South
5. Guard file
6. P A file.

