

केंद्रीय कर आय्क्त (अपील)

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

केंद्रीय कर भवन.

7th Floor, GST Building, Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास. आम्बावाडी, अहमदाबाद-380015

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10199 to 10203 फाइल संख्या : File No : V2(ST)181/Ahd-South/2018-19

अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0177-2018-19 ख दिनाँक Date : 29-03-2019 जारी करने की तारीख Date of Issue 01-55-2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित Passed by Shri. Uma Shanker, Pr.Commissioner (Appeals)

Arising out of Order-in-Original No. CGST/DN-VI/03/DEM/SKC/IIM/18-19 दिनाँक: 19.12.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

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

Indian Institute of Management 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:

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

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 :

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।

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.

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.

यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो। (ग)



(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 मामलें 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 डयूटी केडिट 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 प्रपन्न संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित विनाक 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 रूपये या उससे कम हो तो रूपये 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ—20, न्यू मैन्टल हारिपटल 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, 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. Registar 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 ओदश 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 हैं।

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 not withstanding the fact that the one appeal to the Appellant 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 रू.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 in 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 अपीलों 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.

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 Indian Institute of Management, Vastrapur, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.CGST/DN-VI/03/DEM/SKC/IIM/18-19 dated 19.12.2018 (henceforth, "impugned order") passed by the Assistant Commissioner CGST, Division-VI, Ahmedabad-South (henceforth, "adjudicating authority").

- 2. The facts of the case, in brief, are that based on audit, the appellant, a service tax registrant was issued a periodical show cause notice dated 01.05.2017 for reversal of CENVAT credit availed during 2014-2015 under input services head related to health insurance, general insurance, maintenance and repair of vehicles boarding/stay charges, visa fee to individuals which was decided under impugned order confirming said demand along with interest and penalty.
- 3. Being aggrieved with the impugned order the appellant preferred this appeal contesting inter alia that the services on which credit has been availed are has nexus/used for output service. Health service has been taken to cover future risk of employee, general insurance has been availed to insure property of the appellant, maintenance & repair of vehicle are in respect of vehicles owned by the appellant and boarding & stay charges are for the stay of students & professors outside the IIM-A during education programmes. It is also contested that when they have opted for Rule 6(3) of Cenvat Credit Rules,2004 and proportionately reversed the cenvat credit, the reversal of Cenvat credit separately is not sustainable.
- 3. In the personal hearing held on 25.07.2018, Shri Vipulbhai Khandhar, CA reiterated the grounds of appeal and submitted copies of Order-In Appeal No OIA No. AHM-SVTAX-000-APP-078-16-17 dated 17.08.2016 and AHM-EXCUS-001-085-17-18 dated 25.09.2017.
- 4. I have carefully gone through the appeal papers and other documents submitted by the appellant. The issue needs to be determined is whether the appellant are entitled or not to avail CENVAT credit in respect of head related to health insurance, general insurance, maintenance and repair of vehicles boarding stay charges, visa fee to individuals.

- The appellant has contested that said services on which credit has 5. been availed has nexus and used for providing output service. Another plea of the appellant is that when they have opted for Rule 6(3) of Cenvat Credit Rules, 2004 and proportionately reversed the cenvat credit, the reversal of cenvat credit separately is not sustainable. I find that appeal on the such issue of compliance of the procedure under Rule 6(3A) Cenvat Credit Rules, 2004 has already been decided by me earlier under OIA No.AHM-SVTAX-000-APP-086-16-17 dated 26.08.2016, AHM-SVTAX-000-APP-078-16-17 dated 17.08.2016 and AHM-EXCUS-001-085-17-18 dated 10.10.2017, remanding the issue back to the adjudicating authority for verification of compliance of 6(3) of Cenvat Credit Rules, 2004. The present case also involves the same issue related to option for Rule 6(3) of Cenvat Credit Rules, 2004 and proportionate reversed the Cenvat credit by the appellant. Therefore, the appellants claim of compliance of procedure under Rule 6(3A) Cenvat Credit Rules, 2004 needs to be examined and re-looked. Therefore, in the interest of justice it would be just and proper to remit the matter to adjudicating authority to decide a fresh so as to verify whether the amount as claimed by the appellant has been reversed as per the procedure prescribed under 6(3A) Cenvat Credit Rules, 2004.
- 6. In view of the above, the case is remanded back for verifying the facts whether the appellant has reversed the appropriate amount of cenvat credit as per 6(3A) Cenvat Credit Rules, 2004 or not and to order a fresh observing principle of natural justice. These finding of mine are supported by thedecision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax Appeal No.276/2014 in case of Commissioner, Service Tax, Ahmedabad v/s Associate Hotels Ltd and also by decision of the Hon'ble CESTAT,WZB, Mumbai in case of Commissioner of Central Excise ,Pune-I v/s Sai Advantium Ltd reported in 2012 (27) STR 46(Tri-Mumbai).
- 7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
 The appeal filed by the appellant stands disposed of in above terms.

3ठा। श्रे॰ (उमा शंकर) प्रधान आयुक्त (अपील्स) Date:

Attested

(D.A.Parrhas Superintendent Ceptral Tax (Appeals) Ahmedabad

By R.P.A.D.

To,

Indian Institute of Management, Vikram Sarabhai Marg, Near-Andhjan Mandal, Vastrapur,Ahmedabad-380015.

Copy to:

- 1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
- 2. The Commissioner of Central Tax, Ahmedabad South.
- 3. The Additional Commissioner, Central Tax (System), Ahmedabad-South
- 4. The Asstt./Deputy Commissioner, Central Tax, Division-V, Ahmedabad-South.
- 5. Guard File
- 6. P.A.

