



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(38)161/Ahd-South/2019-20 / 14061 TO 14065
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-103-2019-20
 दिनांक Date : 25-02-2020 जारी करने की तारीख Date of Issue 28/2/2020
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. MP/15/AC/2019-20 दिनांक: 12.11.2019 , issued by Asst. Commissioner, Div-III, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Meghmani Industries 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 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.



(क) 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।

(A) 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.

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

(B) 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।

(c) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 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 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."



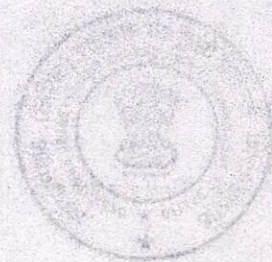
ORDER-IN-APPEAL

This appeal has been filed by M/s Meghmani Industries Limited, GIDC Vatva, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.MP/15/AC/2019-20 dated 12.11.2019 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division-III, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. Facts of the case, in brief, are that the appellant had filed a refund claim for an amount of Rs.27,548/- on 27.08.2019 with the department in respect of CVD and SAD paid by them on imported goods. They had imported certain items under Advance License Scheme for supply of the resultant products to SEZ or for export out of India. They were issued objection letter dated 09.02.2016 from the DGFT asking them to furnish details of export prior to the license. The applicant accordingly worked out imports made prior to the Advance License date and worked out duty payable. Since they were required to pay Customs Duty amounting to Rs.79,666/- on import made prior to license date, they paid the said amount with interest which included payment of CVD and SAD totalling to Rs.27,348/-. As per contention of the appellant, they were eligible for Cenvat credit of the said CVD and SAD amount paid by them and it was not feasible to avail and utilize such Cenvat Credit in GST regime, they filed the refund claim in question under Section 142(3) and 142(6) of CGST Act, 2017. The adjudicating authority, vide impugned, has rejected the said refund claim on the grounds that the refund claim does not fulfill the conditions of Section 142 (3) and 142 (6) supra and there is no provision under Section 11B (2) of Central Excise Act, 1944 to file refund claim in respect of Cenvat credit not availed.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- The said refund claim has arisen due to admissibility of Cenvat credit of CVD & SAD which was paid as part of Customs duty but for implementation of GST with effect from 01.07.2017, they could not avail the Cenvat credit of such payment.
- Section 142 (3) and 142 (6) of the CGST Act, 2017 provides that any refund/rebate arise out of various situation shall be refunded in cash irrespective of anything contrary to it except for the provisions of Section 11B of the Central Excise Act.
- As per Section 174 (2)© of the CGST Act 2017, it is clear that even if the Central Excise Act has been repealed the right of the appellant under the repealed Act shall not be affected, since the Cenvat Credit is admissible under Rule 9 of the Cenvat Credit Rules,2004 and such



credit shall be admissible even after repeal of the Central Excise Act/Rule.

- The Commissioner (Appeals) Raigad has decided identical matter in favour of assessee.
- The adjudicating authority has failed to consider and appreciate all such facts and acted beyond jurisdiction and misstated the facts while deciding the matter.

4. Personal Hearing in the matter was held on 12.02.2020. Shri Kalpesh Solanki, Assistant Manager (Commercial) of the appellant firm appeared and reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of Personal Hearing. It is observed that the issue to be decided in the matter is as to whether the appellant is eligible for refund of CVD and SAD paid for the goods imported prior to the issuance of Advance License in terms of the Customs Act, 1962 under Section 142(3) and (6) of the CGST Act, 2017.

6. It is observed that the appellant had imported various items under Advance Licenses for using in their resultant products for export. It is further observed that they had made duty free imports prior to the date of Advance License issued to them and as per direction of DGFT, they paid Customs Duty, CVD and SAD towards such items imported prior to the said License. It is the contention of the appellant that the amount of Rs.27,348/- paid towards CVD and SAD is eligible to them as Cenvat Credit under the erstwhile Cenvat Credit Rules, but due to introduction of GST w.e.f 01.07.2017, they could not avail the said amount as Cenvat Credit and the only option left out is to file a refund claim under the provisions of Section 142 of CGST Act, 2017.

7. I find that the provisions of Section 142(3) and 142(6) (a) of the CGST Act, 2017 deals with the refund relating to Cenvat Credit, duty, interest under the existing law. They are reproduced below:

➤ Section 142(3) of the CGST Act, 2017:

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) :

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse :



Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

➤ Section 142(6) (a) of the CGST Act, 2017:

(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

9. In the instant case, I find that the appellant has filed the refund claim in respect of CVD & SAD paid against import of items under the Advance License Scheme, as they could not avail the Cenvat credit of such payment. Section 142 (3) *ibid* states that in case of refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law paid under the existing law, filed before, on or after 01.07.2017, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the CEA. I find that the amount of Rs. 27,348/- paid towards CVD & SAD, while import of materials, is not a duty prescribed under existing law i.e. under Central Excise Act. Hence, provisions of Section 142 *ibid* is not applicable in the instant case and accordingly, refund in terms of Section 142 *ibid* does not arise in the case. The appellant has further contended that they were eligible to take Cenvat Credit of the said amount, if they paid the said amount before implementation of GST with effect from 01.07.2017 and in the present situation, they could not take any credit of such duty, therefore, the only option left out is to file refund of the amount. I find that this argument does not have any legal backup. For getting refund of Cenvat Credit under existing law i.e under the Cenvat Credit Rules, 2004, one has to avail the Cenvat Credit first under the said Rule. The provisions under Cenvat Credit Rules do not allow refund of Cenvat Credit in cash, unless it is availed. Therefore, there is no merit in the said contention of the appellant.

10. The appellant has further referred to Section 142(6) (a) of CGST Act, 2017. The said Section referred refund claim arising out of proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after GST regime. The instant refund claim is not arising out of any appeal proceeding, review or reference to a claim for Cenvat Credit. Therefore, the argument placed by the appellant in terms of Section *ibid* has no relevance in the matter.



11. Further, I find that the adjudicating authority has also considered provisions of Section 11 B (2) of the CEA for rejecting the refund claim in question. I also find that Section 11 B(2) of the CEA only stipulates for claiming refund of Central Excise duty, interest, rebate of duty of excise, credit of duty paid and not Customs Duty paid on import of materials.

12. The appellant has relied on Order-in-Appeal No.MKK/397-398/RGD APP/2018-19 dated 21.12.2018 passed by the Commissioner (Appeals), Raigad. I find that the facts of the instant case are different from the facts dealt by the Commissioner (A), Raigad in as much as the assessee had not fulfilled export obligation and in the instant case the applicant has made payment of duty in respect of imports prior to Advance License as per the directions of DGFT. Hence, the case is distinguished.

13. I find that recently, the Hon'ble CESTAT, Chennai has decided an identical issue in the case of M/s Servo Packaging Ltd [2020-VIL-72-CESTAT-CH-CE], denying refund of CVD and SAD paid on unfulfilled export obligation against Advance Authorization. The Relevant para of the said decision is as under:

"10. Thus, the availability of CENVAT paid on inputs despite failure to meet with the export obligation may not hold good here since, firstly, it was a conditional import and secondly, such import was to be exclusively used as per FTP. Moreover, such imported inputs cannot be used anywhere else but for export and hence, claiming input credit upon failure would defeat the very purpose/mandate of the Advance Licence. Hence, claim as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reasons, also since the rules/procedures/conditions governing normal import VILGST Passion to Deliver VATinfoline Multimedia www.vilgst.com Page - 5 - of 5 compared to the one under Advance Authorization may vary because of the nature of import.

11. The import which would have normally suffered duty having escaped due to one which ultimately stood unsatisfied, naturally loses the privileges and the only way is to tax the import. The governing Notification No. 18/2015 (supra), paragraph 2.35 of the FTP which requires execution of bond, etc., in case of non-fulfilment of export obligation and paragraph 4.50 of the HBP read together would mean that the legislature has visualized the case of nonfulfilment of export obligation, which drives an assessee to paragraph 4.50 of the HBP whereby the payment of duty has been prescribed in case of bona fide default in export obligation, which also takes care of voluntary payment of duty with interest as well. Admittedly, the inputs imported have gone into the manufacture of goods meant for export, but the export did not take place. At best, the appellant could have availed the CENVAT Credit, but that would not ipso facto give them any right to claim refund of such credit in cash with the onset of G.S.T. because CENVAT is an option available to an assessee to be exercised and the same cannot be enforced by the CESTAT at this stage."



13. Looking into the facts and circumstances of the instant case and by following the decision referred to above, I find that the adjudicating authority has correctly rejected the refund claim and I do not find any merit to interfere the impugned order passed by the adjudicating authority. Therefore, I reject the appeal filed by the appellant and uphold the impugned order.

13. The appeal stands disposed of in above terms.

Akhilesh Kumar
 25 February, 2020
 (Akhilesh Kumar)
 Commissioner (Appeals)
 /02/2020

Attested

Mohan V.V
 (Mohan V.V)
 Superintendent (Appeal),
 Central Tax, Ahmedabad.



BY R.P.A.D

To,
 M/s Meghmani Industries Limited,
 GIDC Vatva, Ahmedabad

Copy to:-

1. The Principal Chief Commissioner, Central GST Zone, Ahmedabad.
2. The Principal Commissioner, Central GST, Ahmedabad South.
3. The Assistant Commissioner, CGST, Division-III, Ahmedabad South.
4. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad South
5. ✓ Guard file.
6. P.A file.