



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- टेलीफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(29)140/Ahd-South/2019-20/14460 7014464
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-119-2019-20
दिनांक Date : 18-03-2020 जारी करने की तारीख Date of Issue 04/06/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. V-84/19-05/REF/2019-20 दिनांक: 21.08.2019 , issued by
Deputy Commissioner, Div-V, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Synpol Products 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 :

- (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 .

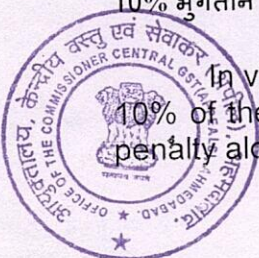
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Synpol Products Pvt Ltd, 77, GVMSA, Vasahat Ltd, Odhav, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.V.84/19-05/Ref/2019-20 dated 21.08.2019 [hereinafter referred to as "impugned order"] passed by Deputy Commissioner of CGST, Division-V, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. Facts of the case, in brief, are that during audit of the records of the appellant by the departmental officers, it was noticed that they had availed Cenvat Credit amounting to Rs.28,249/- on Iron Beams/Channels/Flats which were used as supporting structures of Capital Goods. Since the said goods were not falling within the purview of the definition of Capital Goods under relevant Rule 2(i) of the Cenvat Credit Rules, 2004, the said credit was denied vide Audit Report No.1542/Central Excise/2018-19 dated 30.04.2019. As per the said Audit Report, based on the audit objection, the appellant has paid the amount of Rs.28,249/- along with Interest of Rs.7,683/- and Penalty of Rs.4237/-(Total of Rs.40,169/-) on 22.05.2019. Later on, the appellant contested the grounds of rejection of admissibility of Cenvat Credit on the goods in question, by quoting decision of Hon'ble High Court/Tribunal and filed a refund claim of Rs.40,169/- paid against the Audit Report supra. A Show Cause Notice dated 28.06.2019 was issued to the appellant for denying the refund claim by holding the observation raised by the department audit officers as correct. Later on, the adjudicating authority has also rejected the refund claim filed by the appellant.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that;

- The amount deposited by the appellant cannot be withheld by the department as the same is without authority of law; that the action of rejecting refund claim by the adjudicating authority tantamount to prematurely confirming the dues without following the process of law.
- The amount recovered by the department is without following the procedure as laid down in Section 11A of the Central Excise Act, 1944 or Section 73 of the Finance Act, 1994. Therefore, the department has illegally retained the amount on the unilateral decision that the amount was due from the appellant. They relied on case laws in support of these arguments.
- Cenvat Credit is legally admissible to them; the credit taken on the disputed goods were used in the factory for support/repair and maintenance of Capital Goods. They relied on various citations of case laws viz. 2010 (255) ELT 481-SC; 2012 (285) ELT 341-Mad; 2012 (280) ELT 176 -Kar; and 2013(292) ELT 578-Tri. Ahm. They further relied on CESTAT's Ahmedabad's decision in the case of M/s Flometallic India Ltd -2018-TIOL-2418-CESTAT.



4. Personal Hearing in the matter was held on 25.02.2020. Smt. Shilpa P Dave, Advocate, appeared for the hearing and reiterated the submissions made in Appeal Memorandum. She also submitted copies of judgement relied upon in Appeal and argued during hearing.

5. I have carefully gone through the facts of the case and submissions made by the appellant in Appeal Memorandum as well as the submissions made by the Ld. Advocate during Personal Hearing. It is observed that the limited point to be decided in the instant case is relating to admissibility of Cenvat Credit on Iron Beams/Channels/Flats as Capital Goods.

6. I find that in the instant case, the refund claim in question has arisen due to payment made by the appellant, based on Audit Observation by the department relating to wrong availment of Cenvat Credit on Iron Beams/Channels/Flats as Capital Goods. I observe that the department has finalized the issue in question on payment of credit wrongly availed along with interest and applicable penalty. However, the appellant has raised the issue again by way of filing of refund claim on the amount paid by them in the context by citing various decision of Court/Tribunal and also contended that the recovery was made without following due process of law. Therefore, the matter involves two grounds i.e. [i] as to whether the payment of Cenvat credit along with interest and penalty made by the appellant is in order and as per the law or other wise and [ii] whether the adjudicating authority has correctly rejected the refund claim in question.

7. Section 11 A (1) (b) of the Central Excise Act, 1944 stipulates that the person chargeable with duty may, before service of notice under clause (a), pay on the basis of (i) his own ascertainment of such duty; or (ii) the duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made there under. In the instant case, the appellant has made the payment of credit on the basis of ascertainment by the department during course of audit of appellant records. Under the circumstances, the contention of the appellant that the amount recovered by the department is without following the procedure as laid down in Section 11A of the Central Excise Act, 1944 and cannot be withheld is not legally sustainable and is liable for rejection. Therefore, the payment made by the appellant against the Audit Observation supra is in order so as to close their duty liability towards wrong availment of Cenvat Credit on the goods in question.

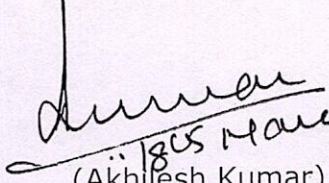


7. Further, as regards the admissibility of refund of amount paid by the appellant towards Audit Observation, I find that the adjudicating authority has rejected the said claim on the basis of explanation -2 of Rule 2 of Cenvat Credit Rules, 2004. He observed that as per definition of 'Capital Goods' and 'Inputs' as defined under Rule 2(a) and 2(k) of the said Rule, the goods viz. Iron Beams/Channels/Flats is neither a Capital Goods nor Inputs and further excludes any goods used for laying of foundation or making of structures for support of capital goods. I find that the appellant has re-opened the issue by filing refund of amount of Cenvat Credit paid, on the basis of various decisions which allows credit on such goods as capital goods. The decisions are distinguishable, looking in to the facts of the instant case; that in all such decisions, credit has been allowed by stating that the goods by the assessee were required in the process of manufacturing activity or essential part of capital goods which were used in process of manufacturing activity. In the instant case, the department has observed that the goods viz. Iron Beams/Channels/Flats were used as structures of capital goods and accepted by the appellant at the material time. For disputing the said fact, the appellant has not produced/furnished any material evidences to establish that the said goods were used as part of capital goods or repair and maintenance of capital goods. Under the circumstances, the department has rightly raised the observation regarding wrongly availment of Cenvat Credit. Since the definition under Cenvat Credit Rules, 2004 itself disallow the credit on such items which was used as structures for support of capital goods, I find that the adjudicating authority has correctly upheld the department's observation.


8. Further, on the principle of judicial discipline also, it has been held by the higher judicial authorities that the goods used for the supporting of structures are not entitled to take Cenvat Credit. I rely the decision of jurisdictional Hon'ble Tribunal in the case of M/s Ravasco Transmission & Packing Pvt Ltd [2013 (292) E.L.T. 441 (Tri. - Ahmd)], wherein the Hon'ble Tribunal, Ahmedabad has allowed the credit only in a situation that the goods in question were not supporting structure. Further, the Hon'ble High Court of Bombay in the case of M/s CEAT Ltd [2019 (367) ELT 245] has remanded back a similar issue to the Hon'ble Tribunal to ascertain the fact that the angles, beams channels used by the assessee were not for making support to structures for capital goods. Therefore, the credit were allowed only in the case of goods which were used in the process of manufacturing activity and denied in case such goods were used as supporting structures of capital goods. Since in the instant case, the appellant has not put forth any supportive evidence that the goods were not used for making support to structure, I do not find any merit in their argument to allow the credit. Accordingly, I find that the adjudicating authority has rightly denied the credit in question.



9. In view of above, I find that the adjudicating authority has rightly rejected the refund claim in question. Therefore, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.


18/03/2020
(Akhilesh Kumar)
Commissioner (Appeals)
/03/2020

Attested


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



To,
M/s Synpol Products Pvt Ltd,
77, GVMSA, Vasahat Ltd, Adhv,
Ahmedabad

Copy To:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad-South.
3. The Deputy/Assistant Commissioner, CGST, Division-V, Ahmedabad-South.
4. The Assistant Commissioner, System-Ahmedabad South
5. Guard File.
6. P.A.

