



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)192/Ahd-South/2018-19 / 10893 to 10897

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-023-2019-20
दिनांक Date : 28-05-2019 जारी करने की तारीख Date of Issue _____ 03/06/2019

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

ग Arising out of Order-in-Original No. CGST/DN-VI/12/DEM/SKC/Shreenath/18-19 दिनांक:
28.12.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shreenath Smart Technologies 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.

(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 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 मैनटल हॉस्पिटल 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. 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 अनुसूचि-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।

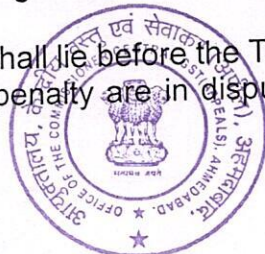
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Shreenath Smart Technologies Private Limited, P-1-41 Varun Apartment, Opp. Gulbai Tekra Water Tank, Gulbai Tekra, Ahmedabad – 380 006 [for short –‘appellant’] against OIO No. CGST/DN VI/12/Dem/SKC/Shreenath/18-19 dated 28.12.2018, passed by the Assistant Commissioner, Division VI, Ahmedabad South Commissionerate [for short – ‘adjudicating authority’].

2. Briefly, the facts of the case are that the appellant is engaged in the manufacture of *smart cards*. During the course of audit of the appellant, it was observed that they had wrongly availed CENVAT credit of Rs. 1,37,660/- during the FY 2012-13, in respect of service tax paid by commission agents on receipt of commission amount, from the appellant. The audit objected that the appellant is not entitled for the credit on sale commission in terms of the judgement of the Hon’ble High Court of Gujarat in the case of Cadila Healthcare Limited; that the services are not related to promotion of sales and do not fall within the ambit of *input services* as defined under Rule 2(l) of the CENVAT Credit Rules, 2004. A show cause notice date 11.7.2017, was therefore issued to the appellant *inter alia* alleging that they had wrongly availed the CENVAT credit in respect of commission on sales paid to their local agent and that the services rendered by local agents were actually post manufacturing activity; that they are not used in or in relation whether directly or indirectly, in the manufacture and clearance of final products upto the place of removal. The notice therefore, proposed recovery of CENVAT Credit of Rs. 1,37,600/- along with interest and further proposed penalty on the appellant.
3. This notice was adjudicated vide the impugned OIO dated 28.12.2018 wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty on the appellant.
4. Feeling aggrieved, the appellant has filed this appeal raising the following grounds:
 - that the alleged amount mentioned in the show cause notice pertains to *liaison services* provided by M/s. Jajoo Iron Re-rollers P Ltd; that they had been appointed for carrying out liaisoning with the buyer of the appellant’s products; the liaison fees were paid to the service provider;
 - the adjudicating authority has turned down the reasons and base of allegations in the show cause notice and held that services are liaison work & hence, the notice fails and should be disposed accordingly;
 - that the adjudicating authority has held that the present activity is neither commission nor sales promotion leaving no room for any denial on the alleged ground;
 - that the charges made in the notice are incorrect and confirming the demand on the reasons not part of the notice;
 - that the order is silent and has failed to state under which circumstances CENVAT is not available; the reason assigned that the credit of one time services not available is not supported by any statute or CCR ’04; that the manufacturer has received & used the services is important and not the periodicity;
 - that it is not a mandatory condition that the adjudicating authority has to impose penalty in a case as an authority certainly possesses discretion to impose lesser penalty or a token penalty; that they would like to rely on the case of Hindustan Steel Limited [1978 ELT J 159].
5. Personal hearing in the matter was held on 22.5.2019 wherein Shri Nagesh Belsare, CA appeared on behalf of the appellant and reiterated the grounds of appeal. He also showed the bills placed at pages 56 and 57 of the appeal papers in respect of which they had availed the CENVAT credit.



6. I have gone through the facts of the case the grounds of appeal and the oral submissions made during the course of personal hearing. I find that the question to be decided in the appeal is whether the appellant had correctly availed the CENVAT credit or otherwise.

7. The appellant's representative, as I have already mentioned *supra*, showed me the bills placed at pages 56 and 57 of the appeal papers, on which the disputed CENVAT credit was availed. On going through the bills, I find that in the invoice placed at page 57 of the appeal paper, "transport commissioner" is mentioned, leading to an inference, that it is related to transport and hence a post sale activity.

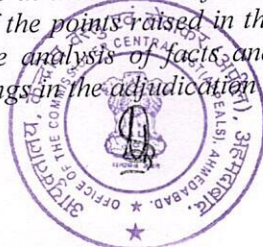
8. The difficulty is – basic facts are being **disputed**. The appellant before me, has on page 4 of the appeal papers, clearly stated that they have taken services of M/s. Jajoo Iron Re-rollers P Ltd, whom they had appointed for **carrying out liasoning work** with the buyer of their product. The adjudicating authority on the other hand in para 15 of the impugned OIO states that the service provider in the present case is not a commission agent but a manufacturer or dealer of re-rolling products; that the nature of service is liasoning work but it is not clarified as to which liaison they have made on behalf of the appellant; that the present case is not pertaining to the commission paid for promotion of sales of the product manufactured by the appellant. Now adding to this, is the fact, that the appellant in his submission before the adjudicating authority, [a copy of which he has placed with the appeal papers], has on page 2 very clearly stated that they have availed **the services of commission agent for procuring sales orders** for them; that for the said services the agent was charging them commission and service tax thereon at the applicable rate is paid by the appellant.

9. The appellant without clarifying as to what exactly the service was on which they had availed the credit has taken a technical route by stating that since the adjudicating authority has already held that this is not pertaining to commission paid for promotion of sales of the product, the findings are beyond the allegations made in the show cause notice and hence it should be set aside. The appellant, having availed the CENVAT credit, in terms of Rule 9(5) of the CENVAT Credit Rules, 2004, is under a legal obligation to discharge the burden of proof cast on him. I find that the appellant by changing stand, not disclosing in clear terms nature of service rendered by M/s. Jajoo Iron Re-rollers P Ltd, has failed to discharge the burden of proof.

10. The appellant has further contested that the impugned OIO is silent and has not stated under which circumstances CENVAT is not available. The appellant has further stated that no reason/nor rule is assigned for the findings that the credit of one time services is not available. On going through para 14 of the impugned OIO, I find that there is merit in what the appellant states. CBEC, vide its circular no. 1053/2/2017-CX dated 10-3-2017, has issued a master circular on show cause notice, adjudication and recovery, which states as follows [relevant extracts]:

14.5 Adjudication order: *The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.*

14.6 Analysis of issues: *The Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order.*



11. I find that the impugned OIO is not a speaking order in so far as it does not give proper findings as to why the CENVAT credit is not admissible to the appellant. On the other hand, the appellant, is also not disclosing as to on what was the exact service on which they have availed CENVAT, thereby failing to discharge the burden of proof cast on him. Lack of clarity, acts as an impediment, in giving findings in the matter. Therefore, in the interest of justice, I find it appropriate to remand the matter back to the adjudicating authority to give proper findings in the case as to why the CENVAT credit is not admissible. The appellant is also directed to disclose as to what was the service which was rendered by the service provider on which they have availed this disputed CENVAT credit.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 28.5.2019

Attested

Vinod

(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Shreenath Smart Technologies Private Limited,
P-1-41 Varun Appartment,
Opp. Gulbai Tekra Water Tank,
Gulbai Tekra,
Ahmedabad – 380 006

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax Division- VI, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
- ✓ 5. Guard File.
6. P.A.

