आयुक्त का कार्यालय) ,अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

. ☎ 26305065-079 : टेलेफैक्स26305136 - 079 :

सत्यमेव जयते

NATION TAX MARKET

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)197/Ahd-South/2018-19 /12631-35

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-049-2019-20**
दिनाँक Date : **11-10-2019** जारी करने की तारीख Date of Issue 16.10.2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri.**Gopi Nath**, Commissioner (Appeals)

ग Arising out of Order-in-Original No**. CGST-VI/Ref-131/SKC/Azafran/18-19** दिनाँक**: 31.12.2018** issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

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

Azafran Innovacion 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 पूवोक्त 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.

आयुक्त, केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद
OFFICE OF THE COMMISSIONER, CENTRAL GST (APPEALS), AHMEDABAD

(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 मामलें 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 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।

(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 दिनाँक 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. 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 अपीलो 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 Azafran Innovattion, Bhadra Raj Chambers, Swastik Cross Roads, Navrangpura, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.131/SKC/Azafran/2018-19 dated 31.12.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner of CGST & CEX, Division-VI, Ahmedabad North [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant filed a refund claim of Rs.8,56,652/- on 27.09.2018 under the provisions of Section 142(3) of Central Goods and Service Tax Act, 2017 [CGST Act] in respect of Cenvat credit not availed during the month of June 2017. The reasons for filing the said refund claim is that they inadvertently have not availed the Cenvat credit in respect of some invoices in their Central Excise return filed during the relevant period; that due to implementation of CGST w.e.f 01.07.2017, they could not avail the credit as per the transitional provisions as they have not availed and shown the credit in their excise return as on 30.06.2017. The Adjudicating authority has rejected the said claim as the appellant have failed to follow the provisions of CGST Act by revising the return to claim the Cenvat credit which were not taken during the relevant period.

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

- The issue under consideration involves carry forward, availment and subsequent adjustment thereof of eligible credit of tax/duty paid on goods as inputs and input service, as defined under CCR, against GST liability; that as per provisions of CCR, the credit of input or input services are eligible erstwhile regime and cannot be restricted under GST regime.
- The appellant had not reported the credit in respect of input and input services in the excise/service tax returns furnished for the period of April 2017 to June 2017 and such credit could not be included in the credit carried forward in the return furnished relating to the period ending 30.06.2017, even though they were eligible to claim the credit.
- The credit of tax paid is eligible as ITC upto 06.07.2018 i.e one year from the date of payment; that the period of one year does not lapses one year before 27.12.2017 i.e last date on which GST Tran 1 was required to be filed; hence the right of the appellant to avail the credit stands affected by the enactment of GST. But the facility to avail the credit had become defunct, with the advent of GST and expiry of time

period to file revised ST-3/ER-1 returns of the period ending June 2017.

- Refund under section 142(3) of the CGST is the only remedy available with them in the GST regime. If refund is not available, the appellant may be allowed to approach the GSTIN to avail the ITC in respect of eligible credit.

4. Personal hearing in the matter was held on 21.08.2019. Shri R Subramanya and Ms Vibhuti Baharia, Advocates and Shri Sunny Joseph, Authorized Representative appeared for the hearing and reiterated the submission of appeal memo. The Ld. Advocates further submitted statutory transitional provisions for consideration.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The issue to be decided in the instant case is relating to eligibility of refund amounting to Rs. 8,56,652/ - filed under Section 142(3) of CGST Act.

6. I find that the adjudicating authority has rejected the refund claim in question on the grounds that [i] As per Section 142(3) of CGST Act, the refund claim is required to be decided in accordance with the provisions of existing law i.e CCR and the provisions of CCR does not allow the refund in cash in respect of Cenvat credit not availed and not shown in excise/service tax return; and [ii] the appellant has not availed the facility of filing revised return as per provision of CGST Act in respect of Cenvat credit which were not taken by mistake.

7. I find that the Provisions of Section 142(3) of CGST Act reads as under:

> *(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.*

8. The procedure for transition of tax or duty credit carried forward under existing law or on goods held in stock on the appointed day are specified under Rule 117 of CGST and Rule 120 A of CGST. Rule 117 of CGST stipulates that:-

"Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day. — (1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [of eligible duties and taxes, as defined in Explanation 2 to section 140,] to which he is entitled under the provisions of the said section.."

Rule 120 A of CGST Rule has been inserted on 15.09.2017, vide which revision of TRAN-1 declaration has been permitted for one time only, which reads as under:

[RULE 120A. [Revision of declaration in FORM GST TRAN-1]. — Every registered person who has submitted a declaration electronically in FORM GST TRAN-1* within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1* electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]*

9. In the instant case, I find that the appellant has filed the refund claim of Cenvat credit due to the reason that they could not incorporate the credit in their return pertaining to the month of April 2017 to June 2017 by mistake; that they also could not carry forward the said credit in their GST TRAN-1 as they have not availed the credit as on 01.07.2017. In the instant case, I observe that though the provisions of Rule 120A CGST Rule, 2017 specifically allows the appellant to file a revised GST TRAN-1 once within ninety days of the appointed day, which has been further extended till March 2018 vide CBEC order dated 31.01.12019, the appellant have not availed or bothered to avail such facility and instead, they filed a refund claim on 27.09.2018 which indicates the intention of getting cash of such credit by way of refund by ignoring the statutory provision. This clearly indicates that the appellant deliberately choose not to avail such statutory remedy with a specific intention to encash the CENVAT credit by saying that the credit in question have been left out of the ER-1/ST-3 return and also from GST Trans-1 form inadvertently. The argument or contention of the appellant cannot be accepted legally as it is the responsibility of the appellant to follow the procedures prescribed under relevant statute in respect of carry forward the Cenvat Credit. Claiming refund of the credit which has been left out of the GST trans-1 form inadvertently will lose its relevancy of option of carrying forward the credit through Trans-1 as per Section 140 of CGST Act.

10. More above, I find that the adjudicating authority has rightly rejected the refund claim on the grounds mentioned at para 6 above. Section 142 (3) *ibid* states that the refund filed before, on or after 01.07.2017, 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 CEA. This clearly envisage that for getting a refund of eligible credit prior to 01.07.2017, the appellant should follow the procedure of existing law prescribed i.e in the instant case CCR and any amount eventually accruing to him shall be paid in cash. As contended by the adjudicating authority, the provisions of CCR do not allow the refund in cash in respect of Cenvat credit not availed. As per Section 142 *ibid*, Cenvat credit is pending entertaining in appeal before any forum is required to be refunded in cash. In the instant case, no such situation arises; therefore, the appellant is not eligible for refund under Section 142 of the CGST Act in respect of Cenvat credit not taken prior to 01.07.2017.

11. Further, I find that the appellant has requested alternative remedy in case of non-eligibility of refund. I find that the adjudicating authority, in his impugned order, has already been suggested the appellant to approach GSTN to avail such ITC credit. Therefore, no further suggestion is required in this regard.

12. Looking into the facts and circumstances of the case, 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 uphold the same.

10. In view of above, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

(Gopi Nath)
Commissioner (Appeals)
Date : .09.2019

Attested

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

By RPAD.

To,
M/s Azafran Innovattion,
Bhadra Raj Chambers, Swastik Cross Roads,
Navrangpura, Ahmedabad

Copy to:-

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