



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(ST)3/Ahd-South/2019-20 / 23257 TO 23262

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-068-2019-20  
दिनांक Date : 25-11-2019 जारी करने की तारीख Date of Issue 3/12/2019

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

ग Arising out of Order-in-Original No. 30/Ref/NT/DC/Div-I/18-19 दिनांक: 11.03.2019 , issued by  
Deputy Commissioner, Div-I, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Sap 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, 4<sup>th</sup> 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 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 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

M/s. Sap Industries Limited, 10/A, Krishna Industrial Estate, Nr.Sukhrampura Post Office, Nagarvel Hanuman Road, Rakhial, Ahmedabad (*hereinafter referred to as 'the appellant'*) have filed the present appeal against Order-in-Original number 30/Ref/DC/18-19 dated 11.03.2019 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST, Division-1, Ahmedabad South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant had filed a refund claim of Rs.2,54,507/- on 12.12.2018 on the ground that they had paid Service Tax of Rs.2,54,507/- vide challan dated 19-23/01/2018, on Reverse Charge Mechanism on the basis of Audit Objection; that on implementation of GST w.e.f 01.07.2017, they were not in a position to take Service Tax credit of the said amount paid under Reverse Charge Mechanism and since they have no other option and accordingly they filed the said refund claim under section 11B of Central Excise Act,1944. A show cause notice dated 04.02.2019 was issued to the appellant on the grounds that [i] the said amount with interest and penalty was paid by them in compliance of audit observation which was closed on the basis of such payment; [ii] the appellant has not supported along with the claim under which provision the refund is eligible to them towards service tax paid after 01.07.2017 under Section 11 B of Central Excise Act, 1944. Thereafter, the adjudicating authority has rejected the entire claim of refund vide impugned order.

3. Being aggrieved with the impugned order the appellant has filed the instant appeal on the grounds that the adjudicating authority has decided the matter with a attitude of pro-revenue mind; that without discussing the provisions of Section 11B of CEA, Section 142 (6)(a) and Section 174 of GST Act, he rejected the refund claim. They further claimed that service tax with interest was paid by them on as per existing Service Tax law under RCM but since they were not in a position to utilized the same, they filed refund claim under the provision of 11B of CEA, 1944; that as per rule 3 and 9 of Cenvat Credit Rules, 2004, credit is allowed in respect of payment made under challan. The appellant has also pleaded that the refund claim rejected by the adjudicating authority is legally not tenable and required to be quashed and set aside.

4. In the hearing Shri. R.R.Dave, Consultant appeared on behalf of the appellant and reiterated the contents of appeal memo. He further stated that the amount being service tax paid on rent-a-cab is not admissible under existing law, the same may be allowed as refund by



allowing the appeal. He further produced order dated 20.08.2019 passed by the Assistant Commissioner of other division in the same Commissionerate. He also requested that Section 174 and 142 of CGST Act may be considered while deciding the matter.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of hearing. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 2,54,507/- is correct, legal and proper or not.

6. The adjudicating authority has denied/rejected the refund of the said amount on the grounds that [i] the said amount with interest and penalty was paid by them in compliance of audit observation which was closed on the basis of such payment; [ii] the appellant has not supported along with the claim under which provision the refund is eligible to them towards service tax paid after 01.07.2017 under Section 11 B of Central Excise Act, 1944.

7. I find that the appellant had paid the service tax along with interest and penalty, vide challan dated 19/23.012018 on the basis of audit observation regarding non-payment of service tax under reverse charge mechanism and accordingly the observation raised by the audit was closed. As per appeal memorandum, the periods in dispute for the payment made are pertaining to the year 2012 to 2015. Therefore, as per Rule 9 (bb) of Cenvat Credit Rule, 2004, the said challan is not a valid document for availing Cenvat credit; that as per the said rule, a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made there under with the intent to evade payment of service tax. In the circumstances, no Cenvat credit on such payment was admissible to the appellant even at the material time. Since the credit was not admissible, the question of refund of payment does not arise at any stage. In the circumstances, I do not find any merit in the argument of the appellant that since they were not in a position to avail and utilize the credit, they filed refund claim under the provision of 11B of CEA, 1944. In view of above, no refund is available under Section 11B of CEA in respect of payment of service tax which was due prior to GST regime and paid after 01.07.2017 under reverse charge mechanism.



8. The appellant further argued that the adjudicating authority has not properly discussed the provisions of Section 142 (6) (a) of CGST Act 2017 in the impugned order. I find that Section 142(3) of CGST Act deals with the case for refund of any amount paid under existing law and Section 142(6) (a) deals with the case for refund of admissible credit.

The Section 142(3) of CGST Act, 2017 is reproduced below:-

**Section 142(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 provision of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provision of existing law other than the provision of sub-section 2 of Section 11B of the Central Excise Act, 1944.

**Section 142(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 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act :

9. In this case, I find that the appellant is not eligible for any Cenvat credit under the existing law as discussed at para 7 above. They had paid the service tax under Reverse Charge Mechanism after a lapse of 3 to 4 years on the basis of Audit observation for closing the issue from further proceedings. In other words, the appellant even not disclosed the liability of tax to the department at any point of time. Further, I find that Section 142(8)(a) of CGST Act, 2017 stipulates as under:

a) Where in pursuance of an assessment on adjudication proceedings instituted, whether before on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this act;

According to above said provision, the payment of tax recovered/paid on the basis of audit observation is to be considered as arrears of tax and the same is not admissible to them as input tax credit.

10. In view of above discussion, provisions of Section 142 (3) and 146(a) of CGST Act are also not applicable to the appellant's case. Therefore, the refund of tax paid under reverse charge mechanism is not admissible to them and the rejection of refund by the adjudicating authority is absolutely correct and proper. I, therefore, uphold the impugned order.



11. In view of the discussion held above, I reject the appeal filed by the appellent. The appeal stands disposed off in above terms.

*(Handwritten Signature)*  
(GOPI NATH)  
COMMISSIONER (Appeals)  
/11/2019

ATTESTED

*(Handwritten Signature)*  
(Mohanan V.V)  
Superintendent  
Central Tax (Appeals) Ahmedabad



By R.P.A.D/Speed Post.

To,  
M/s. Sap Industries Limited,  
10/A, Krishna Industrial Estate, Nr.Sukhrampura Post Office,  
Nagarvel Hanuman Road, Rakhial, Ahmedabad

**Copy to:**

- 1) The Principal Chief Commissioner, CGST , Ahmedabad Zone.
- 2) The Principal Commissioner, CGST, Ahmedabad South.
- 3) The Dy./Asst. Commissioner, CGST, Div-I, Ahmedabad South
- 4) The Asst. Commissioner (System), CGST, Ahmedabad South.
- ✓ 5) Guard File.
- 6) P. A. File.

