



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

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

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,

Ambavadi, Ahmedabad-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)200/Ahd-South/2018-19

10763 to 10767

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-09-2019-20

दिनांक Date : 22-05-2019 जारी करने की तारीख Date of Issue

29/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr. Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/Ref-04/Dem/SKC/Veeda/18-19 दिनांक: 19.12.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

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

**Veeda Clinical Research 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, 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 प्रक्रिया 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी 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 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 Veeda Clinical Research Pvt. Ltd., Shivalik Plaza-A, Near IIM, Ambawadi, Ahmedabad-380015 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/Div-VI/04/Dem/SKC/Veeda/2018-19 dtd. 19.12.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of CGST, Division-VI (Vastrapur), Ahmedabad-South (hereinafter referred to as "the adjudicating authority").

2. The facts of the case in brief are that the appellant is engaged in various services liable to service tax and for that they are registered. Based on EA 2000 Audit, two show cause notices dated 08.10.2015 and 08.04.2016 for the period of 2011-12 to 2013-14 and 2014-15 respectively were issued to the appellant for denying CENVAT credit on telecommunication service. The appellant continued to wrongly avail cenvat credit on telecommunication service in the following periods and were issued a show cause notice dtd. 19.04.2017 proposing recovery of wrongly availed cenvat credit amounting to Rs. 16,477/- with interest and also proposed imposition of penalty on the grounds that the input service availed by the appellant is not falling under definition of "Input Service" as defined under Rule 2(B) read with Rule 2 I (c) of CENVAT credit Rules, 2004 (for brevity "CCR") as the charges were paid by the employees. The adjudicating authority, vide the impugned order, confirmed the demand of wrongly availed cenvat credit on telecommunication service. He also imposed penalty of Rs. 16,477/- under Section 78 of the Finance Act, 1994 (for brevity "the Act") read with Rule 15 (3) of the CCR.

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

- a) They are providing the service for their work in the name of the company on the basis of fixed maximum usages charges and the excess usages charges amount has been recovered from the employees but the service tax has been borne by the appellant;
- b) The sub-clause (c) of the Rule 2 of the CCR excludes the service availed for the personal use or consumption of any employee whereas in their case, service has been availed during the office hour for carrying out job of service
- c) they rely on the Circular No. 943/4/2011-CX., dtd. 29.04.2011 in which it has been clarified that the credit of all goods and services are





allowed provided they are not used primarily for personal use or consumption of employees;

- d) They rely on the case law of Gateway Terminals Pvt. Ltd. vs. Commissioner of C.Ex., Raigad - 2015 (39) STR-1027 (Tri. -Mum.), ITC Ltd. vs. Commissioner of Customs & C.Ex., Salem - 2009 (14) STR-847 (Tri.-Chen.), Commissioner of C.Ex. vs. Excel Crop Care Ltd.- 2008 (12) STR-436 (Guj.), Aotomag India Pvt. Ltd. vs. Commissioner of C.Ex., Pune-I - 2011 (21) STR-243 (Tri.-Mum);
- e) The entire demand is time barred as all the facts were in the knowledge of the department and there is no suppression, willful misstatement on their part. In view of this, penalty under Rule 15 (3) read with Section 78 of the Act cannot be imposed. They seek reliance on the case law of Steel Cast Industries - 2011 (21) STR-500 (Guj.).

4. Personal Hearing in the matter was held on 02.05.2019. Shri Vipul Khandhar, Chartered Accountant appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is relating to admissibility of input service credit in respect of input service telecommunication service.

6. The adjudicating authority has denied cenvat credit on telecommunication input service mainly on the grounds that the said service does not fall under the definition of "Input service" as defined under Section 2(I) of CCR. On other hand, the appellant has contended that the credit in question in respect of above services is eligible to them as they utilized the same directly or indirectly in the course of business activity.

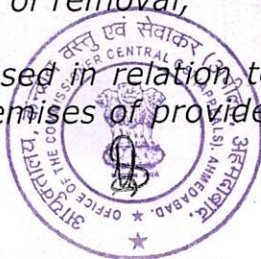
7. During the relevant period under dispute, Rule 2(I) of CCR 2004 defined "input service" as under:

(I) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office





*relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*

**[but excludes], -**

*[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or*

*[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -*

*(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*

*(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]*

*(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, **when such services are used primarily for personal use or consumption of any employee;**] (emphasis applied)*

The definition of "input service" specifically excludes services which are used primarily for personal use or consumption of any employee. Consequent to the amendments made in the definition of input service vide Notification No. 3/2011-CE(NT) dated 1.3.2011, effective from 1.4.2011, this provision has been specifically made in the exclusion clause from the definition of input service. in view of the changes effected in the definition of input service made effective through notification, *ibid*. In view of above discussion, I disallow the credit availed by the appellant in respect of telecommunication service.

Further I find support from the case laws of ICICI LOMBARD GENERAL INSURANCE CO. LTD. Vs. COMMR. OF S.T., MUMBAI-I cited at 2016 (42) S.T.R. 938 (Tri. - Mumbai), COMMISSIONER OF CENTRAL EXCISE, COIMBATORE, Vs. PRICOL cited at 2018 (16) G.S.T.L. 187 (Mad.) and TITAN INDUSTRIES LTD. Vs. COMMISSIONER OF C. EX., BANGALORE-I cited at 2011 (23) S.T.R. 600 (Tri. - Bang.). in which it has been consistently held that the cenvat credit will not be available on that part of the input service which is borne by the employee. In view of this, I find no infirmity in the impugned order and accordingly uphold the same.





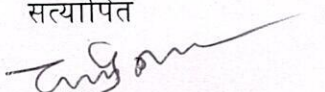
9. As regards penalty imposed, I find that the adjudicating authority has imposed penalty under Rule 15 (3) of CCR read with Section 78 of the Act. The appellant has contended that they have not suppressed the facts with an intention to evade the duty. They have further contended that the full facts of the case were in the knowledge of the department so it cannot be said that they had suppressed any facts. While perusing the impugned order, I find that the appellant had been issued two show cause notices before the show cause notice which has been decided vide the impugned order. It is clear that the appellant knew that the credit on telecommunication service was not admissible yet they continued to avail and utilize. The provisions of the Rule 15(3) provides that in a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax (emphasis applied), the penalty shall be imposed. I therefore hold that suppression of facts is not the only situation inviting penalty action. As regards the cenvat credit wrongly availed by the appellant in respect of the telecommunication service detailed above, penalty is required to be imposed on them as they have failed to discharge their responsibility by contravened the provisions of CCR. In the impugned order, the adjudicating authority has widely discussed the circumstances under which the penalty was imposed and no interference required in respect of penalty imposed on the credit wrongly availed against the service viz telecommunication service. Therefore, I uphold the same.

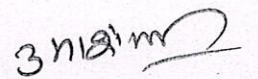
10. In view of above discussion, I reject the appeal.

11. The appeal filed by the appellant stand disposed off in above terms.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

सत्यापित

  
(धर्मेंद्र उपाध्याय)  
अधीक्षक (अपील्स),  
केंद्रीय कर, अहमदाबाद



(उमा शंकर)  
प्रधान आयुक्त (अपील्स)  
केंद्रीय कर, अहमदाबाद  
दिनांक: . . 2019





By RPAD.

To,  
M/s Veeda Clinical Research Pvt. Ltd.,  
Shivalik Plaza-A,  
Near IIM,  
Ambawadi,  
Ahmedabad-380015

Copy to:-

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

