



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

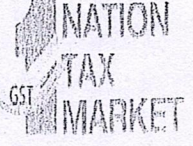
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

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क फाइल संख्या : File No : GAPPL/COM/CEXP/89/2020 /1313 70 1317
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 01/2021-22
दिनांक Date : 27-04-2021 जारी करने की तारीख Date of Issue 18/05/2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No AC/01/JSB/DIV-II/2020-21 dated 27.05.2020 issued by Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South.

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

M/s Rubicon Cables Industries, Plot No. C-1/89/6, Phase-I, Near Pushpak Estate Cross Road, GIDC Vatva, Ahmedabad-382445.

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 issued under the Central Excise Act 1944, 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 ईए-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 ई. 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) **केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-**

Under Section 112 of CGST act 2017 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 पढ़ी 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 Appellate 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) -

(iv) (Section) खंड 11D के तहत निर्धारित राशि;

(v) लिया गलत सेनवैट क्रेडिट की राशि;

- (vi) 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:

(ixiv) amount determined under Section 11 D;

(ixv) amount of erroneous Cenvat Credit taken;

(ixvi) 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।

- 6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to states) Act, 2017, may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



ORDER-IN-APPEAL

This order arises on account of an appeal filed by M/s. Rubicon Cables Industries, Plot No. C-1/89/6, Phase-I, Near Pushpak Estate Cross Road, GIDC Vatva, Ahmedabad-382445 (hereinafter referred as '*the appellant*') against the Order-in-Original No. AC/01/JSB/Div-II/2020-21 dated 27.05.2020 (hereinafter referred as '*the impugned Order*') passed by the Assistant Commissioner, Central GST, Division-II, Commissionerate: Ahmedabad-South (hereinafter referred as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant was engaged in the manufacture of excisable goods viz., Insulated Electrical/Electrical Flat/Round Cables of various sizes falling under CTHNo. 85442090 of the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAPFR9313LEM001. During the course of audit of M/s. Aroma Polymers, J-598, Sitapur Industrial Area, Jaipur (hereinafter referred as '*the principal manufacturer*') by the officers of Central Excise, Audit, Jaipur, it was observed that the PVC compound manufactured by the said principal manufacturer, out of Plastic Waste & Scrap as principal raw material, adding some additives viz. Plasticizers, Calcium Carbonate, CPW, Stabilizers etc., were exempt from levy of Central Excise duty by virtue of Notification No. 04/2006-CE dated 01.03.2006, as superseded by Notification No. 12/2012-CE dated 17.03.2012. However, the said principal manufacturer had cleared such finished goods (PVC compound manufactured out of PVC Waste & Scrap) on payment of Central Excise duty, on their own, violating the provisions of Sub-Section 5 (1A) of the Central Excise Act, 1944 which specified that "where an exemption under sub-section (1) in respect of any excisable goods for whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of excisable goods shall not pay the duty of excise on such goods".

2.1 The Central Excise, Audit Commissionerate, Jaipur intimated to the adjudicating authority that the principal manufacturer had issued Invoice No. AP/469/2013-14 dated 20.02.2014 in favour of the appellant on which duty of Rs. 13,289/- was paid by them. Further, it was informed to take necessary action against the appellant, in case, they have availed Cenvat Credit thereof, in terms of the CBEC Circular No. 940/01/2011-CX dated 14.01.2011 which is also reproduced below:



"1. Attention is invited to Board's Circular No. 937/27/2010-CX dated 26.11.10 issued from F.No. 52/1/2009-CX1 (Pt.), wherein based on the opinion of the Law Ministry, it was clarified that in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs.

2. It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the CENVAT Credit Rules, 2004."

2.2 Accordingly, a Show Cause Notice under F.No. V.85/16-27/SCN-Rubicon/2015-16 dated 02.11.2015 was issued to the appellant for recovery of Cenvat Credit amount of Rs. 13, 289/- availed on the basis of Invoice No. AP/469/2013-14 dated 20.02.2014, issued by the principal manufacturer, alongwith interest leviable thereon under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. Penalty was also proposed under Rule 15 (2) of the Cenvat Credit Rules, 2004 read with Section 11 AC (1) (c) of the Central Excise Act, 1944, as amended vide the Finance Act, 2015.

2.3 Further, the adjudicating authority vide the impugned order confirmed the demand of the Cenvat Credit of Rs. 13,289/-, alongwith interest leviable thereon, against the appellant towards the Cenvat Credit wrongly availed, in respect of Invoice No. AP/469/2013-14 dated 20.02.2014 issued by the principal manufacturer. A penalty of Rs. 13,289/- was also imposed under Rule 15 (2) of the Cenvat Credit Rules, 2004 read with Section 11 AC (1) (c) of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal mainly on the following grounds:

- (i) It is beyond control of the appellant to ascertain the excisability at the supplier end. There is no dispute about receipt of the goods as well as its consumption in the manufacture of final product and the input was cleared from the end of the supplier on payment of duty. Hence, the benefit of Cenvat Credit is not deniable.



- (iv) The appellant has also relied upon the following judgements:

4. Personal hearing in the matter, through virtual mode, was held on 04.03.2021. Shri Naimesh Oza, Advocate, appeared on behalf of the appellant. He re-iterated submissions made in the Appeal Memorandum.

5.1. On going through the facts of the case, it is observed that the adjudicating authority has confirmed the demand against the appellant towards wrongly availed Cenvat Credit vide the impugned order, on the grounds that the input/raw materials received by the appellant under Invoice No. AP/469/2013-14 dated 20.02.2014 were exempted from levy of Central Excise duty at the time of clearance from the premise of principal manufacturer, by virtue of Notification No. 04/2006-CE dated 01.03.2006, as superseded by Notification No. 12/2012-CE dated 17.03.2012. However, the said principal manufacturer had cleared such goods on payment of Central Excise duty, on their own, violating the provisions of Sub-Section 5 (1A) of the Central Excise Act, 1944 and hence, such duty cannot be allowed as "Cenvat Credit" to the appellant, in terms of clarification issued by CBEC vide Circular No. 940/01/2011-CX dated 14.01.2011.

5.2 On perusal of the available records in the case, I also find that a show cause notice dated 30.04.2015 was issued to the principal manufacturer for demand and recovery of Rs. 32,06,456/- towards Cenvat Credit wrongly availed on the inputs, on the ground that they cannot pay Central Excise duty on their finished goods, which are exempted vide Notification No. 4/2006-CE dated 01.03.2006 as amended vide Notification No. 12/2012-CE dated 17.03.2012 and also, they are not entitled for Cenvat Credit of the duty paid on the inputs, in terms of Rule 6 (1) of the Cenvat Credit Rules, 2004. Subsequently, the said demand was also confirmed by the Additional Commissioner, Central Excise, Jaipur vide OIO No. 121(CE)JP/2016-17 dated 27.03.2017.

5.3 Further, it is observed that the appeal filed by the principal manufacturer against the abovementioned OIO No. 121 (CE) JP/2016-17 dated 27.03.2017 has been allowed by the Commissioner (Appeals), Jaipur vide OIA No. 259 to 270 (SM)/CE/JPR/2017 dated 09.10.2017. As per Para-6 of the said OIA, the Commissioner (Appeals), Jaipur held that:

"6. I take up the first issue that is whether the Notification No. 4/2006-CE dated 01.03.2006 as amended by Notification No. 12/2012-CE dated 01.03.2012 (Sr.No. 147 and 148 of the table) is a conditional one or not.Therefore, I find force in the pleas of the appellant and find that the subject Notifications does not grant unconditional exemption as such the contention of the Revenue based on amended Section 5A (1A) of the Central Excise Act, 1944 is not acceptable that the appellant



could not pay the duty on the goods in dispute and was not entitled for cenvat credit. Contrary to this, I find that since the subject Notification was conditional hence it was optional for the appellant to pay duty and to avail cenvat credit on inputs or to avail exemption and not to pay duty on their subject final products."

Further, I also find that the appeal filed by the department before Hon'ble CESTAT, against the abovementioned OIA dated 27.03.2017, has also been dismissed by Hon'ble CESTAT vide Final Order No. 51812-51814/2018 dated 07.05.2018. Further, as per the details mentioned in Para-19.3 of the impugned order, the decision of the Tribunal dated 07.05.2018 has also been accepted by the department on monetary grounds.

6. Accordingly, as per the facts available on record, I find that the issue of the legality of payment of duty by the principal manufacturer has attained finality and found to be correct in view of the relevant provisions of law and hence, availment of cenvat credit by the downstream units, such as the appellant, is also legally correct in terms of the provisions of the Cenvat Credit Rules, 2004.

6.1 Further, I also find that the CBEC vide Circular No. 1014/2/2016-CX dated 01.02.2016 also clarified that:

"5. Show Cause Notice denying Cenvat Credit of CVD paid voluntarily by the importers at the time of import is not warranted. It is well settled position in law that a buyer may avail Cenvat Credit, if supplier has paid duty. In this regard, following case law may be referred- (i) CCE Vs. CEGAT [2006 (202) ELT 753 (Mad HC DB)] (ii) CCE Vs. Ranbaxy Labs Ltd. [2006 (203) ELT 213 (P&H HC DB)] (iii) Commissioner of Central Excise, Chennai-I Vs. CEGAT, Chennai [2006 (202) ELT 753 (Mad.)]. Credit is accordingly inadmissible for duty paid voluntarily."

6.2 I also find that Hon'ble CESTAT, Ahmedabad, in the case of Shakun Polymers Ltd. Vs. CCE & Cus., Daman reported at [2009 (241) ELT 250 (Tri.Ahmd)] held that:

"2. After hearing both the sides, I find that the Notification is a conditional Notification and it was the option of the supplier to avail or not to avail the same. In any case, the assessments have already been made at the supplier's end accepting duty payment by him and cannot be re-opened at the appellant's end. Admittedly, duty stands paid by the



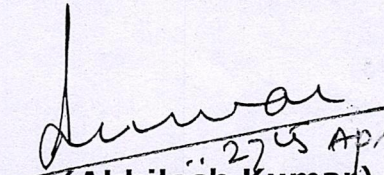
suppliers, in which case the appellants would be entitled to avail the credit on the same."

7. In view of the discussion made above, it is observed in the present case that the issue of payment of duty by the supplier i.e. principal manufacturer has already attained finality, as to be correct, in view of the relevant provisions of law and accordingly, the assessments have already been finalized at the supplier's end accepting duty payment by him. Accordingly, I find that the Cenvat Credit availed by the appellant on the goods purchased and received from the principal buyer, under Invoice No. AP/469/2013-14 dated 20.02.2014 is legally correct and hence, the impugned order passed by the adjudicating authority confirming the demand of Rs. 13,289/- towards wrongly availed Cenvat Credit is not sustainable, in the eyes of law. Further, when the Cenvat Credit taken is taken correctly as per the law, question of demand of interest and penalty does not arise.

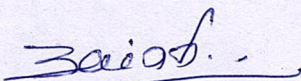
8. Accordingly, the impugned order passed by the adjudicating authority is set aside and allowed the appeal filed by the appellant.

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

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


(Akhilesh Kumar)
Commissioner (Appeals)

Attested


(M.P. Sisodiya)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST :

M/s. Rubicon Cables Industries,
Plot No. C-1/89/6, Phase-I,
Nr. Pushpak Estate Cross Road,
GIDC, Vatva,
Ahmedabad-382445



Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad-South.
3. The Assistant Commissioner, Central GST, Division-II, Ahmedabad-South.
4. The Assistant Commissioner, CGST (System), HQ, Ahmedabad-South.
- ✓ 5. Guard file.
6. P.A. File

