



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय, Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलीफैक्स 07926305136



DIN: 20231264SW000027682E

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1592/2023 / ४४५६ - ६०
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-185/2023-24**
दिनांक Date: 30-11-2023 जारी करने की तारीख Date of Issue 04.12.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain, Commissioner (Appeals)**
- ग Arising out of OIO No. 34/CGST/Ahmd-South/JC/MT/2022-23 दिनांक: 14.12.2022 passed by
The Joint Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Raj International,
92, New Cloth Market,
Near Raipur Gate,
Ahmedabad.

जेई व्यक्तित्व 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:

(i) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत 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 हानिकार खाने 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.



- (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 हों।

- (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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 घालान 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 होतो 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 सेवा कर 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, अपीलों 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 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- 1^o सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

- ⇒ यह पूर्व जमा 'तंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

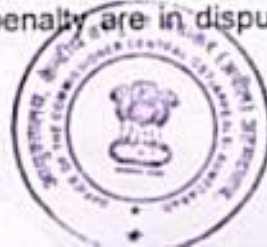
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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

The present appeal has been filed by M/s. Raj International, 92, New Cloth Market, Near Raipur Gate, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 54/CGST/Ahmd-South/JC/MT/2022-23 dated 14.12.2022 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, on the basis of scrutiny filed by the assessee, it was noticed that they have not filed ST-3 returns from April 2016-17 to June 2017 nor paid Service Tax. Therefore, in order to protect the revenue and to check the possible evasion of service tax enquiry was initiated against the assessee.

2.1 The Show Cause Notice was adjudicated, vide the impugned order by the adjudicating authority wherein the order to recover Cenvat Credit of Rs. 37,04,197/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 read with rule 14 of Cenvat Credit Rules 2004 along with Interest under Section 75 of the Finance Act, 1994 read with rule 14 of Cenvat Credit Rules 2004. Further (i) Penalty of Rs. 37,04,197/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 31,200/- was imposed on the appellant under Section 77 of the Finance Act, 1994.

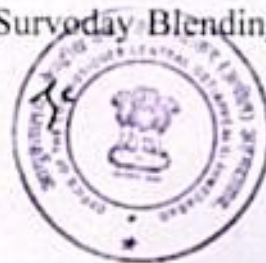
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The department also observed that as per the ST-3 returns, the noticee has availed and utilized Cenvat at credit of Rs.37,04,197/- (including Cess) .
- Denial of cenvat credit amount to Rs.37,04,197/-on the reason being that Rule 9(1) of Cenvat Credit Rules prescribes that Cenvat Credit can be taken on the basis of ;

➤ Invoice of manufacturer from factory



- Invoice of manufacturer from his depot or premises of consignment agent
 - invoice issued by registered importer
 - invoice issued by importer from his premises or consignment registered with Central Excise
 - Invoice issued by registered first stage or second stage dealer
 - Supplementary Invoice by supplier-manufacturer or service provider, except where such payment was on account of fraud, suppression of facts etc. Bill of Entry
 - Certificate issued by a customs in respect of goods imported through foreign post office.
 - GAR-7 challan evidencing payment of service tax by the service recipient as the person liable to pay service tax
 - Invoice, bill or Challan issued by provider of input service on or after 10-09-2004
 - Invoice, Bill or Challan issued by input service distributor under rule 4A of Service Tax Rules.
- Credit can be on the basis of any copy - Earlier, Cenvat credit was allowable only on basis of Invoice copy marked 'Duplicate for Transport'. Now there is no such copy specified.
 - Credit can be taken on basis of own invoice - In Madhava Laxmi Mills Ltd. v. CCE (2003) 3 STT 147 (CESTAT), assessee cleared manufactured goods (single yarn) to job workers for purpose of doubling. After return of double yarn (which was intermediate product), assessee took Cenvat credit on the basis of his own invoices. It was held that assessee is within his right to do so.
 - Cenvat credit can be taken on basis of own invoice - Godavari Sugar Mills v. CCE 2006 (196) ELT 74 (CESTAT).
 - No Cenvat on Photostat/Xerox copy - Cenvat credit cannot be taken on basis of Photostat/Xerox copy of Invoice - Nexus Computers v. CCE 2005 (190) ELT 55 (CESTAT) * CC v. Avis Electronics (2000) 117 ELT 571 (CESTAT Large bench) CCE v. Vandana Energy (2008) 9 STR 31 = 223 ELT 83 (CESTAT SMB) * CCE v. Suryoday Blending (2012) 278 ELT



373 (CASTAT SMB) DSM Sugar v. CCE (2013) 287 ELT 236 (CESTAT SMB).

- **Credit if duty paying document is lost** - There is no specific provision to avail Cenvat credit if all copies of duty paying documents are lost.
- As per proviso to rule 9(2), if prescribed document contains required minimum details but does not contain all details and if Jurisdictional Assistant/Deputy Commissioner is satisfied that such goods or services covered by the document have been received and accounted for in books of account receiver, he may allow Cenvat credit.
- Thus, document containing prescribed minimum details should be available. The rule makes no provision of situation where no document is available at all
- In Bombay Goods Transport Assn v. UOI 1995(77) ELT 521 (Bom HC DB), it was held that MODVAT credit (based on certified copy or authenticated copy) cannot be mechanically disallowed. Assessee can prove that excisable goods used had been subjected to duty.
- **Unsigned invoice or printed signature on generated on computers** - Rule 11(1) of Central Excise Rules and rule 4 A(1) of Service Tax Rules state that invoice should be 'signed'. It does not say that it should be signed in ink. Thus, even mechanical signature means it is 'signed'. Further, even if not signed, it is at the most a technical lapse. It is well settled that a substantive benefit cannot be lost on account of procedural lapses.
- Industry is not static. There are continuous progresses therein. New processes and methods are developed and new material and components or types of components supersede others. It is unreasonable to give a static interpretation to words used in a tariff schedule by ignoring the rapid march of technology - Progress cannot be stifled by over rigid interpretation - CCCE v. Lekhraj Jessumal and Sons 1996 (82) ELT 162 13 IRLT 300 101 ST 480 (SC) AIR 1997 SC 145.
- **Wrong or different address given** - In CCE v. Jammu Woodplast 2000 (121) ELT 777 (CEGAT SMB), Cenvat was permitted when the only defect was that address of assessee was different, which occurred due to



clerical mistake of consigner's staff - same View in Om Textiles v. CCE 2006 (199) ELT 47 (CESTAT) * Strides Research v. CCE (2008) 227 ELT 479 (CESTAT SMB).

- **Invoice in name of Head Office/administrative office** - Invoice with address of Head Office is eligible for Cenvat credit -Modern Petrofils v. CCE (2010) 29 STT 111 (CESTAT SMB) * CCE v. Chamundi Textiles (2010) 270 ELT 531 50 VST 217 (CESTAT SMB) * Krisha Maruti v. CCE (2012) 34 STT 576 18 taxmann.com 225 (CESTAT SMB). Cenvat credit cannot be denied only on the ground that invoice is on address of administrative office - Moving Picture Company v. CST (2012) 34 STT 33 (Mag) 16 taxmann.com 74 (CESTAT) * Krishna Maruti v. CCE (2012) 277 ELT 357 (CESTAT SMB).
- **Is name of user of goods/receiver of services using inputs/input services necessary on Invoice** - In Wiptech Peripherals v. CCE (2009) 19 STT 306 (CESTAT SMB), it was held that Cenvat credit on mobile phones will be eligible even if the cell phones are in name of employees, if the phone is used for business of assessee. name of job worker 'On account' of Principle Manufacturer. Job worker certified that he In CCE v. Proctor and Gamble (2010) 258 ELT 268 (CESTAT SMB), invoice showed has not availed Cenvat credit. It was held that Principal Manufacturer can avail Cenvat credit.
- This is indeed correct as Central Excise Duty is on 'manufacture' - 'ownership' is irrelevant. Cenvat Credit Rule 3(1) also makes it clear that a manufacturer/service provider shall be allowed to take credit of duty paid on inputs received in the factory/premises of service provider - it does not mention about 'purchase' of capital goods at all. In a contrary decision, in Prakash Strips P Ltd. v. CCE 1998 (100) ELT 155 (CEGAT), Cenvat credit was denied when the invoice did not contain name of assessee as consignee. In Bazpur Coop Sugar Factory v. CCE 1998 (104) ELT 372 (CEGAT), Cenvat was denied when invoice was not in the name of manufacturer - similar decision in Steel Authority of India v. CCE (2008)227 ELT 265 (CESTAT).



- So denial of cenvat credit on the assumption that documentary evidence has not produce has not sustainable & tenable.
- In view of the above submission, the appellant requested to set aside the impugned order.

4. Personal hearing in the case was held on 11.10.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated the content of the oral and written submission made earlier and requested to allow their appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16 to 2016-17.

6. I have gone through the fact of the case and submission made by the appellant in appeal memo and also at the time of personal hearing. I observe that the issue to be decided in this appeal is whether the appellant is entitled to avail Cenvat Credit on this basis of Xerox/without original and not submission of duty paying invoice copy in which credit had been taken.

7. At the onset, I find it proper to go through the relevant provision in this regard.

I. I find that Rule 9 (1) of the Cenvat Credit Rules, 2004 reads as under –

Rule 9. Documents and accounts.- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of –

(1) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer.



(ii) inputs or capital goods as such;

(iii) an importer;

(iv) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(v) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any nonlevy or short-levy by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty. Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax by the person liable to pay service tax under subclauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

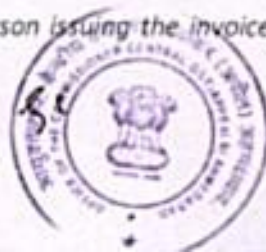
(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,]



name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

(3).....

(4).....

(5) *The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.*

(6) *The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.*

8. In this regard, I find that the availing Cenvat Credit is that the manufacturer or Service provider should have a copy of the invoice issued by the manufacturer, importer, or the dealer, as the case maybe from whom they have purchased the goods or availed the service. In the instant case, I find that the noticee has failed to provide the copies of the invoices despite the fact that umpteen opportunities were provided to him.

9. it is also observed that the appellant have relied upon the judgments of (i) M/s. Nexus Computers v. CCE 2005 (190) ELT 55 (CESTAT) (ii) CC v. Avis Electronics (2000) 117 ELT 571 (CESTAT Large bench) (iii) CCE v. Vandana Energy (2008) 9 STR 31 = 223 ELT 83 (CESTAT SMB) (iv) CCE v. Survoday Blending (2012) 278 ELT 373 (CASTAT SMB) (v) DSM Sugar v. CCE (2013) 287 ELT 236 (CESTAT SMB).

10. It is also observed that the relied upon in the case of (M/s. Nexus Computers v. CCE 2005 (190) ELT 55 (CESTAT) and CC v. Avis Electronics



(2000) 117 ELT 571 (CESTAT Large bench) which are not applicable in the fact of the case.

11. Further, in respect of relied upon the judgment of CCE v. Vandana Energy (2008) 9 STR 31 = 223 ELT 83 (CESTAT SMB) is in favour of department wherein it is held as under;

5.3 In fact, the CBEC had issued a circular on 30-2-1995, in paragraph 10(d) of which, it was stated, "in no circumstances photocopy shall be accepted". In A.C.C. Ltd. v. CCE, Chandigarh reported in 2001 (133) E.L.T. 357 (Tri. Del.), it was observed, in paragraph 5 of the judgment, that there was no provision in the Modvat rules for allowing credit on extra copy of the invoice. The Modvat credit was, therefore, held to be correctly denied. In V.S.L. Alloys India (Pvt.) Limited v. CCE, Meem reported in 1996 (86) E.L.T. 554 (Tribunal), the Tribunal held, in para 7 of the judgment, that since credit could be taken on duplicate copy of invoice under the Modvat scheme, the Assistant Collector had correctly held it to be inadmissible since it was taken on wrong documentation. In CCE, Pondicherry v. EID Parry (I) Ltd., reported in 2005 (186) E.L.T. 417 (T.I.-Chennai), it was held that, it was settled law that, for availing Modvat credit on the basis of original copy of invoice, prior permission of the Assistant Commissioner had to be obtained during the material period. Any credit taken without such permission would not be admissible as held by the Larger Bench in the case of Avis Electronics (supra). In Paranjape Metal Shapers (P) Ltd. v. CCE, Aurangabad reported in 2004 (175) E.L.T. 543 (Tri.-Mumbai), credit taken on the basis of zerox copy of invoice was held to be correctly denied."

12. Further, The judgment of CCE v. Survoday Blending (2012) 278 ELT 373 (CASTAT SMB) and DSM Sugar v. CCE (2013) 287 ELT 236 (CESTAT SMB) also in in favour of the department where the Hon'ble Tribunal ha denied the Cenvat Credit.

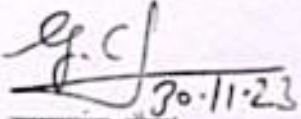
13. I find that the appellant had given ample opportunity to give statement and to submit all the purchase invoices, details of payment made to the suppliers and Cenvat Credit record which is required to be maintained as per Rule 9(5) & 9(6) of Cenvat Credit Rules 2004 but the appellant has not appeared nor submitted any documents. In this case, the appellant was registered with the Service Tax but not complied with the provisions of Service Tax in as much as they have wrongly availed Cenvat Credit and evade a payment of service tax.



14. In view of the discussion above, I do not find merit in the grounds raised by the appellant. Accordingly, I reject the appeal filed by the appellant and uphold the impugned order.

15. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

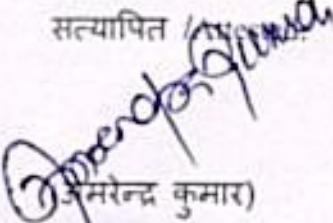
The appeal filed by the appellant stands disposed of in above terms.


30.11.23
(जानचंद जैन)

आयुक्त (अपील्स)

Dated: 30th November, 2023

सत्यापित /



अनरेन्द्र कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST



To,
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92, New Cloth Market,
Near Raipur Gate,
Ahmedabad

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division IV, Ahmedabad South
- 4) The supdt(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 6) PA file