



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एम टी भवन / 2nd Floor, GST Bhavan.
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-DIN- 20200964SX 00 002 AF 84F

क	अपील / फाइल नम्बर/ Appeal / File No.	मूल आदेश नं / OIO No	दिनांक/ Date
	V2/10/RAJ/2020	17/D/AC/2019-20	15-01-2020

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-090-2020

आदेश का दिनांक / Date of Order:	25.08.2020	जारी करने की तारीख / Date of issue:	02.09.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :

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

M/s Gujarat Forgings Pvt. Ltd., P.O. Box. No. 1004, Opp. PDTC, Aji industrial Area, Rajkot.

इस आदेश (अपील) में व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा अहमदाबाद- 380016 को की जानी चाहिए। /

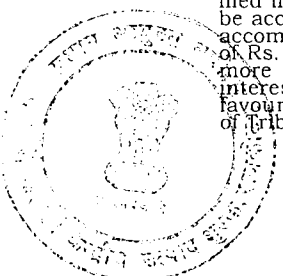
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवानी, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति मंलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मान्यजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा। /

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.5000/- Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवानी, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में मंलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति मंलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मान्यजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपील की न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील की प्राधिकरण (मेन्टेड) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विन अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील की प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, वरन् कि इस धारा के अंतर्गत जमा कि. जान वाली अपेक्षित देय राशि इस कगोड़ रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - संदेह जमा की गयी गलत राशि
 - संदेह जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- वरन् यह कि इस धारा के प्रावधान विनियम (नं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील की प्राधिकरण के समक्ष विवादाधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे। /
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण यात्रिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी कारखाने में भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs 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
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिश्चिन उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायात्रिधि पर या बाद में पारित किए गए हैं। /
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के मंजूरण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्य के तौर पर TR-6 की प्रति संलग्न की जानी 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 OI 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.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त हंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपील की न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील की न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपील की प्राधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



:: ORDER-IN-APPEAL ::

M/s Gujarat Forgings Pvt. Ltd., P.O Box. No. 1004, Opp. PDTC, Aji Industrial Area, Rajkot (hereinafter referred to as "**the appellant**") filed the present appeal against Order-In-Original No. 17/D/AC/2019-20 dated 15.11.2019 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central Excise & GST Division, Rajkot-I (hereinafter referred to as "**the adjudicating authority**").

2. Brief facts of the case are that during the course of the audit it was observed that the appellant had wrongly availed cenvat credit of service tax paid on bills/invoice raised by service provider i.e M/s Jayshree Enterprise, Rajkot, who were providing Maintenance and Repairing service of Diesel Engines cleared by the appellant with one year warranty period. During the warranty period, M/s Jayshree Enterprise, Rajkot was attending the complaints regarding maintenance and repairing of Diesel Engine on behalf of the appellant and was charging service charges from the appellant for the said services (after sale service). The audit observed that the benefit of service tax credit was not admissible to the appellant as there was no direct or indirect use of the said services in relation to manufacture of final product and therefore, the credit availed and utilized by the appellant was incorrect. Therefore, the following Show Cause Notices were issued to the appellant to recover the wrongly availed input service tax credit alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004, (hereinafter referred to as '**CCR**') read with Section 11A of the Central Excise Act, 1944 (hereinafter referred to as '**CEA**') and proposed penalty under Rule 15 of the CCR read with Section 11 AC of the CEA.

Sr. No.	SCN No. & Date	Period covered	Amount (in Rs.)
1.	V.RJT-1/AR.V/ADC/255/2010 dated 18.10.2010	January-2008 to March-2010	14,73,341
2.	V.84/15-181/Adj-2011 dated 29.04.2011	April-2010 to June-2010	3,14,289
3.	V.RJT-1/AR.V/ADC/129/2011 dated 19.07.2011	July-2010 to March-2011	9,74,361

2.1 The adjudicating authority confirmed the demand of Rs. 27,61,791/- along with interest and penalty amounting to Rs. 19,23,341/- proposed in the above Show Cause Notices vide OIO dated 30.12.2011.

2.2 Being aggrieved, the appellant preferred an appeal before the Commissioner(Appeals), Rajkot who vide stay order dated 27.04.2012 granted stay with condition to deposit 100% amount of confirmed Cenvat Credit of service tax and 50% of the penalty amount within 7 days from the date of the receipt of the stay order. The appellant complied with the same. Further, the appeal of the appellant was rejected by the Commissioner (Appeals) vide OIA dated 23.08.2012. Aggrieved the appellant preferred an appeal before the CESTAT, Ahmedabad. The CESTAT vide Order No. A/10505/2014 dated 04.04.2014 allowed the appeal filed by the appellant with consequential relief.

2.3 The appellant filed a refund claim in view of the aforesaid CESTAT order. The said refund claim was sanctioned by the refund sanctioning authority vide Order dated 31.07.2014. The refund sanctioning authority sanctioned an amount of Rs.9,61,671/- by way of cheque and restored an amount of Rs. 27,61,791/- as Cenvat Credit in their RG23A PT. II Cenvat Credit Account.

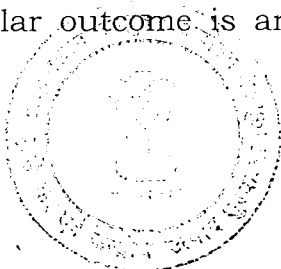
2.4 The Department challenged the above CESTAT's Order before the Hon'ble High Court. Hence, a protective demand dated 16.08.2018 was issued to the appellant for recovery of refund amounting to Rs. 37,23,462/- granted erroneously under Section 11A of the CEA alongwith interest. The adjudicating authority vide the impugned order confirmed the demand alongwith interest. The said appeal was withdrawn by the Department as the tax effect involved was below the minimum threshold limit provided in Circular dated 11.07.2018.

3. Being aggrieved with the impugned order, appellant preferred the present appeal, *inter-alia*, on the various grounds as under:

3.1 That the impugned order is improper and deserves to be quashed and set aside; that once when the issue has attained finality by virtue of order of the Hon'ble Tribunal, having regard to the fact that appeal filed there against before the Hon'ble High Court of Gujarat by the department is withdrawn, the adjudicating authority cannot decide the case on merits.

3.2 That refund is required to be granted once litigation is decided in favour of the appellant; that they find support from the provisions of Section 11B of the CEA.

3.3 That it is settled law that while contesting the matter on merits, when a particular outcome is arrived at, in the course of proceedings pertaining to



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refund which has followed the said main issue, once again merits cannot be reconsidered. In this regard, they have relied upon the following judgements:

(i) Collector of Central Excise, Kanpur Vs Flock (India) Pvt. Ltd. reported at 2000 (120) ELT 285 (S.C.)

(ii) Order of Hon'ble Commr. (A) in the case of Southern Agrifurane Ltd. reported at 2003 (157) E.L.T 610 (Commr. Appeal)

(iii) Agarwal Distributors Pvt. Ltd. Vs Commissioner of Cus., New Delhi reported at 2000 (116) E.L.T 613 (Tribunal).

3.4 In view of the above, they have requested to set aside the impugned order and allow their appeal.

4. Personal Hearing in the matter was attended by Shri D.K. Trivedi, Advocate and Shri Rashesh H Buch, Sr. Manager (Finance & Tax), on behalf of the appellant. They reiterated the submissions of appeal memorandum and submitted copies of the following judgments for consideration.

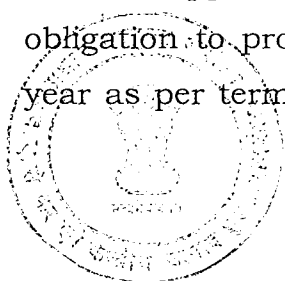
(i) Commissioner of C.Ex., Jamshedpur Vs ICI India Ltd. as reported in 2003(156) E.L.T 426 (Tri.-Kolkata)

(ii) Union of India Vs Kamalakshi Finance Corporation Ltd. as reported in 1991(55) E.L.T 433 (S.C.)

(iii) Padma Raghavan Vs Assistant Commissioner of C.Ex., Mettupalayam as reported in 2018 (8) G.S.T.L 108(Mad.)

5. I have carefully gone through the facts of the case, grounds of appeal and oral submissions made by the appellant. The limited issue to be decided in the instant appeal is whether the appellant is eligible to take Cenvat credit of service tax paid on bills/invoices raised by the service provider i.e M/s Jayshree Enterprise, Rajkot, who were providing Maintenance and Repairing Services of Diesel engines cleared by the appellant within one year warranty period or otherwise.

6. The facts of the case are that the appellant is a manufacturer of excisable goods viz. I.C. Engines, Diesel Generating Sets, P.D. Pumps, Marine Engines etc. The appellant was selling Diesel Engines to their buyers and was under obligation to provide repair and maintenance service to its customer for one year as per terms of warranty clause. To provide these services of repairs and



maintenance appellant engaged a service provider i.e M/s Jayshree Enterprise, Rajkot, who provided these repairs and maintenance services on behalf of the appellant. M/s Jayshree Enterprise, Rajkot during the warranty period attended the complaints regarding maintenance and repairing of Diesel Engines on behalf of the appellant and was charging service charges from the appellant for the said services. The appellant was paying Service Tax thereon and was taking Cenvat credit on the Service Tax paid to the services provider. The adjudicating authority was of the view that the services which are not used in relation to the manufacture or clearance of the final products cannot be considered as inputs. Therefore, he observed that the appellant is not eligible to take Cenvat credit of service tax paid on the invoices raised by the service provider i.e M/s Jayshree Enterprises, Rajkot and confirmed the demand.

7. Before deciding the issue, I find it pertinent to look at the definition of 'input service' prior to 01.04.2011 reads as under:

2(l) "input service" means any service,-

- (i) used by a provider of taxable service for providing an output service; or
- (ii) used by the 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 setting up, 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, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal".

7.1 It is clear from the above definition, that there was a change in main portion of the definition with effect from 01.04.2008 and for the words "clearance of the final products **from** the place of removal" were replaced with the words "clearance of the final products **upto** the place of removal". The effect of change w.e.f. 01.04.2008 is such that the main definition as well as the inclusive portion of the definition defines 'input service' in respect of outward transport transportation only as "upto the place of removal" and not for other services.



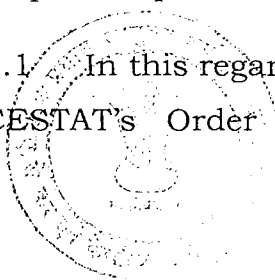
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7.2 Further, on going through the definition of "input service", it appears that all the taxable services availed by output service provider or manufacturer do not become "input service". Had this been so, then the definition would simply be "all the services availed by the service provider or manufacturer is an input service", but as per the definition given in the Cenvat Credit Rules, 2004, it is clearly mentioned that for manufacture, the service must be used in or in relation to manufacture or clearance. The activities which are not directly related to the manufacture or clearance are mentioned separately in the inclusive clause. The services which are not used in relation to manufacture or clearance of final products cannot be considered as input service.

7.3 In the present case, I find that the service provider i.e M/s Jayshree Enterprise, Rajkot were providing Maintenance and Repair Service of Diesel Engines cleared by the appellant. I note that definition of input service provides for inclusion of activities relating to business which are used directly or indirectly in relation to the manufacture of the final product. The nature of service provided by M/s Jayshree Enterprise, Rajkot i.e repair and maintenance during the warranty has no nexus with the manufacture of the goods. Therefore, by their nature itself, they are post manufacturing activities and cannot be included in the category of input services under any part of the definition of input services. I further note that once the finished goods are cleared from the factory premises and thereafter, if the same are returned to a third party for repairs, the same cannot be construed as the activity relating to (directly or indirectly) the manufacturing activity. I also find that the said definition does not cover "after sales service" on the goods cleared, hence such specific exclusion from the definition puts a bar on the appellant for availing any input service credit.

8. As regards to the contention of the appellant that when a particular outcome is arrived at, in the course of proceedings pertaining to refund which has followed the said main issue, once again merits cannot be reconsidered. That in the present case, impugned order which is confirmed by the Hon'ble High Court having regard to the fact that the appeal filed there against was withdrawn by the department, the Hon'ble Tribunal's order is not implemented inspite of specific directions given.

8.1 In this regard, I note that the Department has not accepted the aforesaid CESTAT's Order and filed an appeal before the Hon'ble High Court,



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Ahmedabad. The said appeal has been withdrawn by the Department, as the amount involved is less than the monetary limit prescribed by the Board. Therefore, I find that the said case shall not have any precedent value.

9. In view of the above findings, I find no infirmity in the impugned order passed by the adjudicating authority and uphold the order. The appeal filed by the appellant is rejected.

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

9.1 The appeal filed by the Appellant is disposed off as above.

सत्यापित,
(Signature)
विपिन नाथ
अधीक्षक (अपील)

(Gopi Nath)
Commissioner (Appeals)
26/8/2020

By R.P.A.D.

To,

M/s Gujarat Forging Pvt Ltd
PO Box No. 1004, Opp PDTC,
Aji Industrial Area,
Rajkot.

Copy to:-

1. The Pr. Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot.
3. The Assistant Commissioner, Central Excise & GST Division, Rajkot-I.
4. Guard File.

