



राष्ट्रीय अर्थशास्त्र के अन्तर्गत, केन्द्रीय अर्थशास्त्र के अन्तर्गत, केन्द्रीय अर्थशास्त्र के अन्तर्गत
 THE NATIONAL STOCK EXCHANGE OF INDIA LIMITED



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दस्तावेज क्र. नं. 10.06.2018

क	अर्जित : अर्जित दस्तावेज	अर्जित नम्बर : 1	दिनांक : 22-09-2018
	अर्जित नम्बर : 10.06.2018	अर्जित नम्बर : 10.06.2018	
	अर्जित नम्बर : 10.06.2018	अर्जित नम्बर : 10.06.2018	

क) अर्जित अर्जित दस्तावेज (Inter-Exchange)

BUY-EXCUS-001-APP-095-1018-19

अर्जित नम्बर : 10.06.2018 अर्जित नम्बर : 10.06.2018
 Date of Order: 10.06.2018 Date of Order: 10.06.2018

Filed to Shri Sunil Kumar Singh, Compliance, COBT & Central Record, Bandra West.

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ORDER-IN-APPEAL

M/s. Patmar Food Industries, 305, 2nd Floor, 'Surba Mall', Wagikawadi Road, Chavaneraj, 364001 (hereinafter referred to as 'the appellant') has filed this appeal against G.O. No. 10/EXCISE/Ty/16-17 dated 22.09.2016 (hereinafter referred to as 'impugned order'), passed by the Assistant Commissioner of Central Excise, City D/S's an, Bhavnagar (hereinafter referred to as the adjudicating authority).

2. Briefly, the facts are that the appellant had filed a refund claim of deemed input credit amounting to Rs. 43,00,203/- consequent to the Hon'ble Gujarat High Court's order dated 20.06.2014 in the Tax Appeal No. 58 to 74/2008 filed by the appellant against the Internal Order No. CD/23-352/WZR/2008 dated 03.02.2003 in the matter of Commissioner (Appeals)'s Order No. 546 to 567 (199 to 239-Raj)/CL/Coll(A)/And dated 12.10.1995. Out of the above claim, Rs. 33,71,125/- was sanctioned by the adjudicating authority vide G.O. No. R-354/Refund/2014-15 dated 19.02.2015 but had inter alia appropriated amount of Rs. 30,23,452/- towards outstanding confirmed demands against the appellant and granted refund of Rs. 3,47,674/- deemed input credit reversed by appellant prior to 31.03.1997 in Central account. The refund of Rs. 9,31,167/- was rejected on the grounds mentioned in the G.O.

3. Being aggrieved by the G.O. No. R-354/Refund/2014-15 dated 19.02.2015, Department preferred appeal before the Commissioner (Appeals) mainly on the grounds that the said refund amounts were pertaining to the deemed input credit available by the appellant in view of the Govt. of India Order No. 75/36-91-FRL dated 01.01.1991 which was originally reversed by the appellant on 27.07.1997 in compliance of G.O. No. R96/48 to 36/95 dated 15.06.1993, the erst adjudicating order in the matter of the appellant and the said deemed input credit was liable to be taxed in light of the Circular No. 325M2/97-CX dated 25.07.1997 read with Notification No. 25/1997 CE(NT), 25/1997-CL(NT) & 27/1997 CE(NT) all dated 25.07.1997. The Commissioner (Appeals-II) vide its order No. 5114-8318 300 APP 09/15-17 dated 28.07.2016 forwarded the case to the adjudicating authority to decide the availability of the deemed input credit in light of the provisions of Notification No. 25/1997-CE(NT), 25/1997-CL(NT) & 27/1997-CL(NT) all dated 25.07.1997 and a clarificatory Circular 326/42/97 CX dated 25.07.1997 and decide availability of the said deemed input credit for the appropriation towards the pending recovery against the appellant and post returned orders after following the principles of natural justice within 60 days from receipt of order.

4. The adjudicating authority vide G.O. No. 10/EXCISE/2016-17 dated 22.09.2016 (impugned order) sanctioned amount of Rs. 33,71,125/- and the whole amount was to be given as deemed credit which was required to be taxed and rejected Rs. 9,31,167/-. Further the adjudicating authority ordered that there is no adjustment of this amount against the pending amount of Rs. 30,23,452/- ordered earlier and the amount is still pending against the appellant.

Sd/-

4. Being aggrieved, the appellant has filed this appeal along with condonation of delay of 9 days for filing the appeal on the following grounds:

- That the adjudicating authority has not at all followed the principle of natural justice and passed the order for payment of revenue. That period of 3 months is available for filing appeal and stay application and they have informed the adjudicating authority not to decide the matter as they want to file an appeal against the impugned order without granting any periodical hearing and without giving any more time to produce the relevant documents etc. The adjudicating authority passed the impugned order, therefore this order is liable to be quashed and set aside as being illegal, void and in violation of principle of natural justice.
- That they were compelled not to debit the MODVAT account during the relevant period and as a result they had to pay duty out of the P.A. That by reason of the department's action or default they were unable to avail of the MODVAT credit which they were entitled to. It is a matter to give them relief following the order of the High Court by giving relief in allowing the said credit in credit account. That due to no fault of them, the credit was denied. That they were compelled to pay the duty which was otherwise payable from the MODVAT credit account, by cash i.e. from the personal ledger account. Had the credit not been denied they would not have been required to pay the cash and would have saved the amount in cash and the same cannot be ascertained.
- That the issue is not the refund or unutilized credit, but the credit, which might have been used for payment of duty at the insistence of the revenue or has been reversed because the Department was of the view that the same is not available for utilization. Had the department not prevented them from utilizing the credit otherwise available to them, they would have been in a position to use the same towards payment of duty on their final product, which obligation they had to discharge from their P.A. account. On success of their claim subsequently, if they are not obtaining MODVAT credit and are in a position to use the same for future clearances, it should be normally be credited back in the same account from where it was debited i.e. RG 234 Part II account.
- That they rely on the final Order No. 6/13411-13422/2017 dated 13.11.2017 issued by the Hon'ble Tribunal of Ahmedabad which is squarely applicable to their case.
- That the amount of Rs. 33,71,026/- is refunded them as deferred MODVAT credit in their credit account, as they had paid their duty liability in cash due to insistence of the department.

5. Personal hearing in the matter was fixed on 12.01.2019, 08.01.2019, 15.01.2019, 29.01.2018 and 16.03.2018 but nobody appeared. Further hearing was fixed on 09.04.2018 and CA Sanju S. Mehta appeared and reiterated the grounds of appeal and written submission filed at the time of first hearing. I find that the appellant has filed the condonation of delay of 9 days. After going through the reasons, I condone the delay of 9 days in filing the appeal in terms of proviso to Section 35(1) of the Central Excise Act, 1911.

Sd/-

7. I have gone through the facts of the case, the appellant's grounds of appeal and submissions made by the respondents during the course of personal hearing. The issue to be decided is whether the appellant is eligible for refund or otherwise.

8. However, before moving to the issue involved, it is observed that the appellant has stated that the adjudicating authority has not followed the principle of natural justice and decided the matter without granting any personal hearing and without giving any more time to produce the relevant documents. On going through the impugned OIO, it is observed that the adjudicating authority has in compliance to remand order of Commissioner (Appeal), OIA No. D-14-EXCUS-000-APP-099 16-17 dated 21.08.2016 to decide the case within 30 days from receipt of order granted only one personal hearing to the appellant i.e. on 29/08/2016 in reference to which the appellant vide their letter dated 05.09.2016 has informed the adjudicating authority that they have decided to file an appeal before Hon'ble CESTAT within the stipulated time and requested to keep the matter pending.

9. The rules of natural justice do not support the law of the land but only supplement it. It is now firmly established that in the absence of express provisions in any statute dispensing with the observance of the natural justice, such principles will have to be observed in all (judicial, quasi-judicial) and administrative proceedings which involve any consequences to the parties. Natural justice recognizes three principles:

- (i) *Nemo debet esse iudex in propria causa* - which means that nobody shall be a judge in his own or in a cause in which he is interested;
- (ii) *Audi alteram partem* - which means to hear the other side;
- (iii) Speaking orders or reasoned decisions.

10. Section 33A of the Central Excise Act, 1944 provides opportunity of being heard to a party by the adjudicating authority from time to time with a limit of adjournment to the party not more than three times. Further, CBEC vide its Circular No. 105.1/2014-CX dated 04/08/2014, has laid down the question of personal hearing has clarified as follows:


14.3 Personal Hearings: After having given a fair opportunity to the parties in complying to the show cause notice, the adjudicating authority may proceed to take a note and then for personal hearing in the case and request the taxpayer to appear before him for a personal hearing by himself or through an authorized representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the taxpayer may avail opportunity of being heard. Separate communications should be made to the noticee for such opportunities of personal hearing. In fact separate letter for such hearing / extension should be issued as advised in the case. The adjudicating authority may, in relevant cases as stated, at any stage of proceedings adjourn the hearing for reasons to be recorded in writing. However, the said adjournment shall be granted for a maximum of three times only unless (continued next page)

11. I find merit in the grounds put forward by the appellant that there is a violation of principles of natural justice. In view of the foregoing, without expressing any opinion on the liability of refund or otherwise, impugned OIO is set aside and the appeal of the Appellant is disposed by way of remand with a

direction to the Adjudicating Authority to decide the refund claim of the Appellant on merits after following the principles of natural justice as enumerated above. The appellant is also directed to furnish their submissions raised on the present grounds of appeal before the adjudicating authority, so as to enable the adjudicating authority to decide all aspects involved in the matter on merits. While retaining the case reliance is placed on the case of M/s. Associated Fertilizers Limited [2015 (37) STR 703 (C.D.)].

2. The appeal is accordingly disposed of in above terms.


Commissioner


(Sunil Kumar Singh)
Commissioner (Appeals)
Commissioner,
CGST & Central Excise,
Gandhinagar

By Regd. Post AD
F. No. 42/44/55/2015

Date: 19.05.2015

To,
M/s. Kalra Steel Industries,
305, 3rd Floor, 'Sudha' Mall,
Waghawad Road,
Bhavnagar-362 001

Copies to:

- (1) The CH of Commissioner, CGST & Central Excise, Ahmedabad.
- (2) The Commissioner (Appeals), CGST & Central Excise, Rajkot.
- (3) The Commissioner, CGST & Central Excise, Bhavnagar.
- (4) The Assistant Commissioner, CGST & Central Excise, City Division, Bhavnagar.
- (5) The Assistant Commissioner (Systems), CGST & Central Excise, Rajkot.
- (6) The Superintendent, CGST & Central Excise, Range-1, Sihan.
- (7) FA to Commissioner of CGST & Central Excise, Gandhinagar.
- (8) Guard file.