



आयुक्त (अपील) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क  
 THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE.



एडिजीव टावर, जी एच टी रोड / 2<sup>nd</sup> Floor, GST Bhawan,

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व्यक्तिगत प्रकाश, सी. नम्बर :-

क. अपील / अपील संख्या /  
 Appeal / Case No  
 69/163/RAJ/2017  
 69/200/RAJ/2017

मूल आदेश सं. /  
 O.I. No.  
 69/D/AC/2016-17  
 12/Suptt/COE/C.Ea Div-  
 1/Rajkot/2016-17

दिनांक /  
 Date  
 28-02-2017  
 27.03.2017

ख. अपील आदेश संख्या (Under the Appeal No.):

**RAJ-EXCUS-000-APP-009-10-010-2018-19**

आदेश का दिनांक /  
 Date of Order. 02.04.2018

जारी करने की तारीख /  
 Date of Issue. 11.04.2018

11.04.2018

Issued by Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.

अधिकृत संख्या 242/2017 के.उ.सु. (एन.टी.) दिनांक 02.04.2018 में साथ में दोनो अपील सं. 69/163/राज/2017 के अन्तर्गत में, या संकेत नाम, जिन न्यायनियम ऑडिट, अहमदाबाद जिला न्याय के विरुद्ध आयिनिटम 1982 की धारा 25 के अंतर्गत, के साथ में दोनो अपील सं. 69/200/राज/2017 के अंतर्गत में अपील अर्थात् कर के अंतर्गत में अपील अधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 25/2017-C.E. (I) dated 17.01.17 read with Board's Order No. 85/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 90 of the Finance Act, 1994.

क. जिन मामलों संख्या 242/2017 के.उ.सु. (एन.टी.) के अंतर्गत में, या संकेत नाम, जिन न्यायनियम ऑडिट, अहमदाबाद जिला न्याय के विरुद्ध आयिनिटम 1982 की धारा 25 के अंतर्गत, के साथ में दोनो अपील सं. 69/163/राज/2017 के अंतर्गत में अपील अर्थात् कर के अंतर्गत में अपील अधिकारी के रूप में नियुक्त किया गया है.

ख. अपीलकर्ता & प्रतिवादी का नाम एवं पता (Name & Address of the Appellants & Respondent) :-  
 I.M/s Rolar Rings P. Ltd., Near Rajkumal Petrol Pump, Gondal Road Via : Kotharia, Rajkot.

इस आदेश/आपील, में उल्लिखित सभी अपील न्यायनियम (अंतर्गत में) में उल्लिखित में उल्लिखित के अंतर्गत में अपील अर्थात् कर के अंतर्गत में अपील अधिकारी के रूप में नियुक्त किया गया है।  
 Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in this behalf.

ग. सी.ए. अंतर्गत में अपील सं. 69/163/राज/2017 के अंतर्गत में, या संकेत नाम, जिन न्यायनियम ऑडिट, अहमदाबाद जिला न्याय के विरुद्ध आयिनिटम 1982 की धारा 25 के अंतर्गत, के साथ में दोनो अपील सं. 69/200/राज/2017 के अंतर्गत में अपील अर्थात् कर के अंतर्गत में अपील अधिकारी के रूप में नियुक्त किया गया है।  
 Appeal in Customs, Excise & Service Tax Appellate Tribunal under Section 35 of C. A, 1944 / Under Section 90 of the Finance Act 1994 an appeal was made.

घ. न्यायनियम अंतर्गत में उल्लिखित सभी अपील सीमा शुल्क केन्द्रीय अधिनियम 1982 के अंतर्गत में अपील न्यायनियम ऑडिट, अहमदाबाद जिला न्याय के विरुद्ध आयिनिटम 1982 की धारा 25 के अंतर्गत, के साथ में दोनो अपील सं. 69/163/राज/2017 के अंतर्गत में अपील अर्थात् कर के अंतर्गत में अपील अधिकारी के रूप में नियुक्त किया गया है।  
 The appeal under of Customs, Excise & Service Tax Appellate Tribunal of West India No. 2, K.C. Baran, Near Ashu Jain 2, 1 market relating to classification and valuation.

डि. अपीलकर्ता अपील सं. 69/163/राज/2017 के अंतर्गत में, या संकेत नाम, जिन न्यायनियम ऑडिट, अहमदाबाद जिला न्याय के विरुद्ध आयिनिटम 1982 की धारा 25 के अंतर्गत, के साथ में दोनो अपील सं. 69/200/राज/2017 के अंतर्गत में अपील अर्थात् कर के अंतर्गत में अपील अधिकारी के रूप में नियुक्त किया गया है।

By the West of India Unit of Customs, Excise & Service Tax Appellate Tribunal, 242/2017-C.E. (I) at 2<sup>nd</sup> Floor, Ashu Jain, Dheerwar, Ashu Jain Ahmedabad-380015 in case of appeal under Section 35 of Central Excise Act, 1944.





## ORDER IN APPEAL

M/s. Balax Kings S. Ltd., Near Rajkumar Petrol Pump, Gandhi Road, Via Kathana, Rajkot (hereinafter referred to as the appellants) have filed two appeals No. 165/RAJ/2017 and 200/RAJ/2017 against Order-in-Original Nos. 69/DIAC/2016-17 dated 28.05.2017 and 12/RAJ-IT/2016/1186/DIAC/1/Rajkot/2016-17 dated 27/08/2017, respectively passed by the Assistant Commissioner of Central Excise, Area-III, Rajkot and Superintendent of Central Excise (Adjudication), Division 1, Rajkot (hereinafter referred to as the adjudicating authorities). Since the issue involved and appellants are same, both the appeals are taken up for decision together.

2. Briefly stated, during the course of audit of the Unit of appellant No. 1, it was noticed that they have availed Central credit of excise tax paid on inspection charges and warehousing charges. It appeared that since both the services are availed after clearance of the goods by the appellant No. 1, the services availed cannot be termed as "input service" as defined under rule 2(f) of the Central Credit Rules, 2004. Therefore, first SCN dated 31.03.2015, covering the period from April-2011 to September-2015 was issued to the appellant proposing recovery of wrongly availed credit of Rs. 6,76,257/- alongwith interest and also proposing penalty under rule 13 of the Central Credit Rules, 2004 read with section 116C of the Central Excise Act, 1944. The second SCN dated 04.01.2017, covering the period from October-2016 to November-2016 was issued to the appellant proposing recovery of wrongly availed credit of Rs. 1,89,268/- alongwith interest and also proposing penalty under rule 13 of the Central Credit Rules, 2004 read with section 116C of the Central Excise Act, 1944. The SCNs were adjudicated by the adjudicating authorities vide OOs dated 28.02.2017 and 27.03.2017 and the demand of wrongly availed credit is with interest and penalty under rule 13 of the Central Credit Rules, 2004 read with section 116C of the Central Excise Act, 1944 were imposed on the appellant firm.

3. Aggrieved, the appellant filed these appeals on the following grounds:

- (i) The observation of the adjudicating authority, that the services availed are not an input service, and hence, eligibility thereof is not in
- (ii) The settled law is that the input service is not restricted to factory premises but is availed outside the factory premises in connection

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 2017

with the business activity, is covered by the definition of the word "input services".

- (ii) The adjudicating authority has ignored the decision of Hon. C-38107, Ahmedabad and also observed that the decision delivered in 2014 was distinguishable in the year 2005. The decision referred by adjudicating authority is not applicable to the present case inasmuch as, the second time i.e. material supplied by the appellant to the appellant's department has a legal character and responsibility are not part of the cost and therefore the observations and the findings are liable to be set aside.
- (iii) The activity being pre-condition for supply of material is connected with the manufacturing activity and therefore the credit is available.
- (iv) The adjudicating authority has ignored the fact that the department had full knowledge of the fact of availability of credit and the fact that a large number of suppliers are not assessed. The sustained order as required for assessment is based on imitation and the extensive period of limitation cannot be sustained.
- (v) The grounds raised for setting aside the demand may be treated as part of the ground for setting aside interest and penalty. In any case, the assessment is interpreted as a relief not a levy and the absence in law of penal law, the penalty provisions are set aside.

4. Hearing in the matter was held on 12.03.2018 which was attended by Shri Parash Bhatt, Advocate. He reiterated the submission of appeal memo, submitted in copies of 4 judgments of Tribunal and Hon. Apex Court alongwith documents to prove their case in the relevant.

5. I have carefully gone through the G.Os, O.Os and grounds of appeal filed by the appellant, as well as conclusions issued during previous hearing. The issue to be decided in the present case is - whether the services of inspection and Warehousing availed by the appellant after clearance of goods from factory can be treated as input service or otherwise and subsequently, whether the appellant is eligible for availing CENVAT credit of the same or otherwise.

6. The appellant has contended that the services of inspection and Warehousing were availed in connection with the business activity and therefore is covered under the definition of "input service" provided under rule 3(1) of the Central Excise Rules, 2004. In this regard, I note that the definition of "input service" as provided under rule 3(1) of the Central Excise Rules, 2004

newly developed a change in the year 2011 vide notification No. 3/2011-OM/ST, dated 11.03.2011. Thus, clause 0.00.2011, the definition read as:

(i) "output 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 from the place of removal,

and it means services used in relation to setting up, modernisation, 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 upon the place of stocks, procurement of inputs, services relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer work (e.g. data inputting, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

The same rule (ii), *ibid.*, reads as under after 01.03.2011.

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

- (i) used by a provider of output service for providing an output service, or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to modernisation, 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 upon the place of stocks, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer work (e.g. data inputting, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

It is not seen from the above that while the inclusive portion of the definition of "input service" refers to services relating to business' activities

*Swati*

01.03.2011, the definition under 01.03.2011 has a wider scope. Therefore, for the period after 01.03.2011, it cannot be argued that some services are related to their business activity. The same is covered under the definition of "input service". I find that in the present case, the period involved is from April 2011 and therefore the argument put forth by the appellant is devoid of merits. Briefly, the case laws cited by the appellant in support of their contention relate to the period before 01.03.2011 and therefore the same are not applicable to the facts of the present case.

7. The first in the said definition, namely "By, for, and on behalf of" is to be read as "by the person responsible for the place of removal". In this regard, I find that since the service is rendered "upto the place of removal" and place of removal in the present case is factory gate of the appellant, the claim of the appellant that warehousing service provided to them at Pune is eligible for credit is not found to be correct and tenable. Similarly, inspection was carried out at the premises of the buyer of the appellant No. 1 when some goods were found to be damaged or not conforming to the standards of the Buyer. Therefore, this type of inspection not being carried out as a routine measure at the premises of the appellant but being carried out only in case of damaged goods at the premises of the buyer, the same is after clearance of the goods from place of removal and hence not eligible for credit credit by treating the same as "input service".

8. Regarding the plea that there was no suppression of facts and that department knew that they were availing such credit, I find that in the case at self assessment, greater responsibility is cast upon the person availing credit (taxpayer) and it was the responsibility of the taxpayer to correctly pay duty as well as correctly avail the credit. The periodical returns being submitted are also simplified and there is no requirement to provide each and every invoice based on which credit is taken. In the circumstances, it is not understandable how the department had knowledge about availing credit on Inspection and Warehousing services by the appellant. The appellant has not put forth any evidence that department was having knowledge about availing of credit on such services. Therefore it is clear that the inadmissible credit was availed by the appellant knowing that services availed after clearance of goods from place of removal cannot be treated as "input service" and no credit can be availed on such services. Therefore, I find that the CTOs passed by the adjudicating authorities are proper and legal and there is no need to interfere with the same.



9. In view of the above, I direct the appeal filed by the appellant and to nullify the orders of the adjudicating authorities.

हस्ताक्षर  
आयुक्त, राजकोट  
15/05/2017  
असिस्टेंट (आ.स.)

*(Signature)*  
15/05/2017  
Commissioner (Appeals)  
Assistant Director General (Audit)

P. No. 155/RAJ/2017

\* 155/200/RAJ/2017

Re: P.D.D.

Ms.  
Mrs. Zoya P. P. Mehta,  
Near Rajbansal Bus Stand,  
Gandhi Road,  
Vic: Kathwadi,  
Rajkot.

Copy to:

- 1) The Chief Commissioner, CGST, Ahmedabad.
  - 2) The Commissioner, CGST, Rajkot.
  - 3) The Assistant Commissioner, CGST, Division 1, Rajkot.
  - 4) The Assistant Commissioner (Systems), CGST, Rajkot.
  - 5) The Superintendent, Central Excise, AR - \_\_\_\_\_, Rajkot.
  - 6) Commissioner (Appeals), CGST, Rajkot.
- cc/ Group 1 P. No.

