



::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::

O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस 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-20210264SX0000711848

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	V2/163-201/RAJ/2010	402-440/2009-10	26.02.2010

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

KCH-EXCUS-000-APP-042-TO-080-2021

आदेश का दिनांक / 12.02.2021 जारी करने की तारीख / 15.02.2021
Date of Order: Date of issue:

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Akhilesh Kumar, Commissioner (Appeals),
Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
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. Shashwat International Ltd, Survey No. 453-455, Village Paddhar, Taluka Bhuj, District Kutch.

इस आदेश (अपील) से 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 मामले 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 सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा 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) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये 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, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न 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, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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 fee of Rs. 1000/- 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) वित्त 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 सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय 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 of the Finance Act 1994, shall be filed in Form 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 अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन जर्जी एवं अपील का लागू नहीं होगा। /
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 पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त 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, जहां नुकसान किसी माल को किसी कारखाने से 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिका 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 प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य 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 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.
- (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 ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय 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, not withstanding 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-I in terms of the Court Fee Act, 1975; as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbcc.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.cbcc.gov.in



:: ORDER-IN-APPEAL ::

M/s Shashwat International Ltd, Village-Paddhar, District Kutch (hereinafter referred to as "Appellant") filed appeal Nos. V2/163-201/RAJ/2010 against Re-Credit Order No. 402-440/2009-10 dated 26.2.2010 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, Central Excise Division, Gandhidham (hereinafter referred to as "sanctioning authority").

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of excisable goods falling under Chapter 69 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAICS0842BXM002. The Appellant was availing benefit of Notification No. 39/2001-CE dated 31.07.2001, as amended (hereinafter referred to as 'said notification'). As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per prescribed rates and refund was subject to condition that the manufacturer has to first utilize all Cenvat credit available to them on the last day of month under consideration for payment of duty on goods cleared during such month and pay only the balance amount in cash. The said notification was amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which altered the method of calculation of refund by taking into consideration the duty payable on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity. The Appellant had opted for availing the facility of re-credit, in terms of para 2C(a) of the said notification.

2.1 The appellant had filed re-credit applications for the period from November, 2006 to January, 2010 for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA totally amounting to Rs. 4,60,54,695/- on clearance of finished goods manufactured by them.

2.2 On scrutiny of re-credit applications, it was observed by the sanctioning authority that,

- (i) the Appellant was eligible for exemption only at the rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and the Appellant was not



entitled to re-credit full amount paid through PLA.

(ii) exemption under the said notification was available only to Central Excise Duty and the said notification did not cover Education Cess and Secondary & Higher Education Cess and hence, the appellant was not entitled for refund of Education Cess and S.H.E. Cess.

3. The sanctioning authority vide the impugned order determined correct re-credit amount to the tune of Rs. 4,31,60,728/- and rejected excess claimed re-credit amount of Rs. 28,93,967/- and ordered the Appellant to reverse the excess amount claimed along with interest in terms of Para 2C(e) of the said notification.

4. Being aggrieved, the appellant has preferred the present appeals, *inter-alia*, on the grounds that,

(i) The sanctioning authority failed to consider the earlier reversal made for Rs 4,55,110/- by them in the month of January, 2009 for the excess re-credit claim related to the months of April, 2008 to June, 2008. The reversal was towards the excess re-credit claim for the above said months. Since they have already reversed re-credit of Rs. 4,55,110/-, the claimed re-credit amount is also required to be reduced to Rs. 4,55,99,585/- (Rs 4,60,54,695/- less Rs 4,55,110/-) and simultaneously, the impugned order for reversal of Rs 28,93,967/- is also required to be reduced by Rs 4,55,110/-, otherwise, the appellant would suffer from double jeopardy as the appellant had already reversed the said amount of 4,55,100/- on the direction of the Superintendent and again the lower authority directed to reverse the said amount under para 2C(e) of the notification No. 39/2001-CE dated 31.07.2001. Therefore, it is requested to set aside the impugned order to the extent of Rs 4,55,110/-.

(ii) The sanctioning authority has short sanctioned their claim by Rs. 5,74,716/- for the months of November, 2007, April, 2008 and November, 2008 as per summary of duty payable, duty paid, refund admissible and refund granted reproduced as under:

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Month	DUTY PAYABLE	CENVAT CREDIT	PLA	TOTAL	Refund Admissible	Refund Granted	Appealable Difference
	BASIC	BASIC	BASIC	BASIC	BASIC	BASIC	BASIC
Nov-07	6694404	771561	5922843	6694404	5922843	5467243	455600
Apr-08	863589	256426	607163	863589	310892	204234	106658
Nov-08	244435	168896	75538	244434	87996	75538	12458
Toal	7802428	1196883	6605544	7802427	6321731	5747015	574716

(iii) The sanctioning authority has wrongly calculated their claim amount by taking into account only Basic Excise Duty paid and ignored the Education Cess and Secondary and Higher Education Cess and thereby Rs. 12,19,339/- was short sanctioned on the grounds that as per notification, exemption is available to the Basic Excise duty or Additional Excise duty, but it does not cover Education Cess and Secondary and Higher Education Cess. However, as per Section 93(3) of the Finance (No. 2) Act, 2004, all provisions of the Central Excise Act, 1944 including those relating to refund, exemption, penalties will apply to Education Cess and Secondary and Higher Education Cess. Therefore, this declaration in the section levies no room for doubt as to whether Education Cess is a duty of Excise for the purpose of the exemption notification and other purposes and exemption related to the Excise duty will automatically applicable to the Education Cess also and relied upon case law of Bharat Box Factory-2007 -(214) ELT 534 (Tri. Delhi); that the contention of the department that education cess is outside the purview of the benefit of the exemption notification No. 39/2001-CE dated 31.07.2001 is clearly not tenable and liable to be set aside.

5. The Appeals were transferred to callbook in view of pendency of appeals filed by the Department against the orders of Hon'ble High Court of Gujarat in the case of VVF Ltd & others before the Hon'ble Supreme Court. The said appeals were retrieved from callbook in view of the judgement dated 22.4.2020 passed by the Hon'ble Supreme Court and have been taken up for disposal.

5.1 Personal hearing in the matter was scheduled on 29/30.12.2020 and communicated to the Appellant vide letter dated 17.12.2020 by Speed Post as well as through email. The said letter was returned undelivered by the Postal Department with remarks "The unit is closed since long hence letter is returned to the sender". Further hearings were scheduled on 12.1.2021 and 19.1.2021 and communicated to the Appellant vide email. The jurisdictional



Dy. Commissioner was also requested to serve the PH letter to the Appellant. The Deputy Commissioner, CGST, Bhuj vide letter No. GEXCOM/RFD/MISC/123/2020-CGST-DIV-BHUJ-COMMRTE-KUTCH dated 21.1.2021 informed that PH letter could not be served due to reason that the plant and machinery and land property held by the Appellant was auctioned by State Bank of India under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 24.5.2016. Sufficient attempts have been made but PH letter could not be served to the Appellant. Since, the Appeals cannot be kept pending indefinitely, I take up the appeals for decision on the basis of available records and grounds raised in Appeal Memorandum.

6. I have carefully gone through the facts of the case, impugned order and submissions made by the appellant in grounds of appeals. The issue to be decided in the present appeal is whether rejection of alleged excess claimed re-credit amount of Rs. 28,93,967/- by the sanctioning authority is correct, legal and proper or not.

7. On going through the records, I find that the Appellant was availing the benefit of area based Exemption Notification No. 39/2001-CE dated 31.7.2001, as amended. As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008. I find that the Appellant had opted for availing the facility of re-credit, in terms of para 2C(a) of the said notification. The appellant had filed re-credit applications for the period from November, 2006 to January, 2010 for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA, totally amounting to Rs. 4,60,54,695/-, on clearance of finished goods manufactured by them. The sanctioning authority determined re-credit amount to the tune of Rs. 4,31,60,728/- and rejected excess claimed re-credit amount of Rs. 28,93,967/- and ordered for its recovery vide the impugned order on various counts.

8. I find that the sanctioning authority had sanctioned refund of Central Excise duty under Notification No. 39/2001-CE dated 31.7.2001, as amended, but had not sanctioned refund of Education Cess and Secondary & Higher Education Cess on the ground that exemption under the said notification was available only to Central Excise Duty and the said notification did not cover Education Cess and Secondary & Higher Education Cess and hence the appellant was not entitled for refund of Education Cess and S.H.E Cess. On the other hand, the Appellant has pleaded that as per Section 93(3) of the Finance Act,

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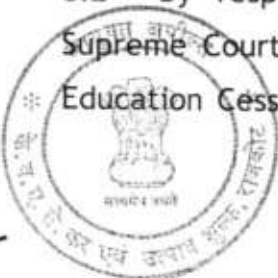


2004, all provisions of the Central Excise Act, 1944 including those relating to refund, exemption will also apply to Education Cess and S.H.E. Cess and that exemption relating to Central Excise duty will automatically apply to Education Cess and S.H.E. Cess also.

8.1 I find that issue regarding refund of Education Cess and Secondary and Higher Education Cess is no longer *res integra* and stand decided by the Hon'ble Supreme Court in the case of Unicorn Industries reported at 2019 (370) ELT 3 (SC), wherein it has been held that,

"40. Notification dated 9-9-2003 issued in the present case makes it clear that exemption was granted under Section 5A of the Act of 1944, concerning additional duties under the Act of 1957 and additional duties of excise under the Act of 1978. It was questioned on the ground that it provided for limited exemption only under the Acts referred to therein. There is no reference to the Finance Act, 2001 by which NCCD was imposed, and the Finance Acts of 2004 and 2007 were not in vogue. The notification was questioned on the ground that it should have included other duties also. The notification could not have contemplated the inclusion of education cess and secondary and higher education cess imposed by the Finance Acts of 2004 and 2007 in the nature of the duty of excise. The duty on NCCD, education cess and secondary and higher education cess are in the nature of additional excise duty and it would not mean that exemption notification dated 9-9-2003 covers them particularly when there is no reference to the notification issued under the Finance Act, 2001. There was no question of granting exemption related to cess was not in vogue at the relevant time imposed later on vide Section 91 of the Act of 2004 and Section 126 of the Act of 2007. The provisions of Act of 1944 and the Rules made thereunder shall be applicable to refund, and the exemption is only a reference to the source of power to exempt the NCCD, education cess, secondary and higher education cess. A notification has to be issued for providing exemption under the said source of power. In the absence of a notification containing an exemption to such additional duties in the nature of education cess and secondary and higher education cess, they cannot be said to have been exempted. The High Court was right in relying upon the decision of three-Judge Bench of this Court in Modi Rubber Limited (*supra*), which has been followed by another three-Judge Bench of this Court in Rita Textiles Private Limited (*supra*)."

8.2 By respectfully following the judgement rendered by the Hon'ble Supreme Court *supra*, I hold that the appellant is not eligible for refund of Education Cess and Secondary & Higher Education Cess. Accordingly, I uphold



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the impugned order to that extent.

9. The Appellant has contended that the sanctioning authority short sanctioned claim by Rs. 5,74,716/- for the months of November, 2007, April, 2008 and November, 2008. I have gone through the details of duty payable, duty paid, refund admissible and refund granted as well as copies of ER-1 and PLA for the said period furnished by the Appellant. Before examining the contention of the Appellant, it is pertinent to mention that Notification No. 39/2001-CE dated 31.7.2001 availed by the Appellant was amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which prescribed rate for value addition for each commodity which formed basis for calculating eligible refund amount. Further, proviso to Para 2 of Notification No. 39/2001-CE dated 31.7.2001 provided that,

“Provided that where the duty payable on value addition exceeds the duty paid by the manufacturer on the said excisable goods, other than the amount paid by utilization of CENVAT credit during the month, the duty payable on value addition, shall be deemed to be equal to the duty so paid other than by CENVAT credit.”

9.1 In backdrop of the above provisions, I find that the Appellant had paid total duty of Rs. 8,63,589/- in the month of April, 2008. As per ER-1 Return and PLA for the said month, the Appellant paid Rs. 6,07,163/- from PLA and remaining Rs. 2,56,426/- from Cenvat Credit Account. By applying rate of value addition @36% on total duty payable, eligible refund amount comes to Rs. 3,10,892/-, whereas the Appellant was sanctioned refund of Rs. 2,04,234/-. Hence, the Appellant is eligible for re-credit of differential amount of Rs. 1,06,658/-. Similarly, for the month of November, 2008, the Appellant had paid total duty of Rs. 2,44,434/-. As per ER-1 Return and PLA for the said month, the Appellant paid Rs. 75,538/- from PLA and remaining Rs. 1,68,896/- from Cenvat Credit Account. By applying rate of value addition @36% on total duty payable, eligible refund amount comes to Rs. 87,996/- but since the Appellant had paid only Rs. 75,538/- from PLA, the eligible amount is correctly restricted by the sanctioning authority to Rs. 75,538/-, in terms of proviso to Para 2 *supra*. As regards refund for the month of November, 2007, I find that the Appellant has paid Rs. 54,67,243/- from PLA as per ER-1 Return for the month of November, 2007 which has been sanctioned to them by the sanctioning authority. Hence, there is no discrepancy in sanction of refund for the month of November, 2007.

9.2 In view of above, I hold that there was short sanction of re-credit



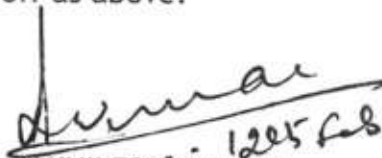
amount of Rs. 1,06,658/- only in the month of April, 2008 and there was no discrepancy in sanction of re-credit for the months of November, 2007 and November, 2008.

10. The Appellant has contended that they had *suo moto* reversed credit of Rs 4,55,110/- in the month of January, 2009 for the excess re-credit claim related to the months of April, 2008 to June, 2008 and hence, the claimed re-credit amount is required to be reduced to Rs. 4,55,99,585/- and re-credit amount ordered to be reversed is also required to be reduced by Rs. 4,55,110/-, but the impugned order has not taken into account said reversal of credit by them. I find that the Appellant themselves filed re-credit applications totally amounting to Rs. 4,60,54,695/-. If they had *suo moto* reversed credit of Rs 4,55,110/- in the month of January, 2009 as claimed by them, then they should have reduced the claimed amount in their re-credit applications while filing the said re-credit applications, which they failed to do. Further, it is also not forthcoming from records that they had brought these facts to the knowledge of sanctioning authority. Under the circumstance, it is not possible for this appellate authority to verify sanctity of such claim at this stage. I, therefore, discard this contention.

11. In view of above, I partially allow the appeals filed by the appellant and set aside the impugned order to the extent of short sanction of re-credit of Rs. 1,06,658/- for the month of April, 2008. I uphold the remaining impugned order.

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

12. The appeals filed by the Appellant are disposed off as above.


(AKHILESH KUMAR)
Commissioner (Appeals)
12th February 2021

Attested



(V.T.SHAH)

Superintendent (Appeals)

By R.P.A.D.

To,
M/s Shashwat International Ltd
Survey No. 453-455,
Village Paddhar,
Taluka Bhuj, District Kutch.

सेवा में,
मे० शाश्वत इंटरनेशनल लिमिटेड
सर्वे न० 453-455, पदधर, तालुका भुज,
जिल्ला कच्छ।



प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भुज मण्डल, भुज को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

