



::आयुक्त (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: commrappl3-cexamd@nic.in



रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20221264SX00007227D4

क	अपील / फाइल संख्या / Appeal / File No. 582 V2/10-15/RAJ/2021	मूल आदेश सं / OIO No. AC/JAM-I/CEX/07/2021-22	दिनांक / Date 15-11-2021
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-387-2022

आदेश का दिनांक / Date of Order:	30.11.2022	जारी करने की तारीख / Date of issue:	09.12.2022
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shlv Pratap Singh, 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. Gold Star Battery Pvt. Ltd., Rajkot Road, Hapa, Jamnagar.

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 88 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 सीमा शुल्क, केन्द्रीय उत्पादन 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 (रिस्टेट) 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- I(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 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 88(1) के अंतर्गत सेवाकर नियमवली, 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 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 upto five 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) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 उपायुक्त, 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 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.

- (iii) 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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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 8 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्ज़ी एवं अपील को लागू नहीं होगी। /

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 पुनरीक्षणयाविका निम्नलिखित मामले 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

- (iii) 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 on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iv) 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.

- (v) 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 (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायोजिधि 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.

- (vi) 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 संश्लेषण 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.

- (vii) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 दंग से किया जाना चाहिए। इस तथ्य के हित हए भी की लिखा पढ़ा 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, 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 filed 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 टिकट 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 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 अपीलीय प्राधिकारी 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



अपील आदेश /ORDER-IN-APPEAL

M/s 'Goldstar Battery Pvt. Ltd (Now Goldstar Power Ltd), Rajkot Road, Hapa, Dhuvav, Jamnagar-361 120 (hereinafter referred to as the appellant) has filed appeal No.552/RAJ/2021 against Order-in-Original No. AC/JAM-1/CEX/07/2021-22dated 15.11.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central Excise & CGST, Division-1, Jamnagar (hereinafter referred to as 'adjudicating authority').

2. Facts of the case in brief are that during the course of audit it was noticed that (i) the appellant had availed Cenvat credit on purchased trading goods which have not relationship with the manufacture of final product, (ii) the appellant had purchased and sold scrap of used batteries but not reversed Cenvat credit on common input services to the extent of six percent of value of exempted goods as required under rule 6 of Cenvat Credit Rules, 2004 and (iii) the appellant had written off capital goods from the books of account but not reversed Cenvat credit as required under rule 3(5A)(a) of Cenvat Credit Rules, 2004. Therefore a show cause notice dated 23.04.2020 was issued demanding Cenvat credit of Rs.6,05,719/-, Rs.7,39,999/- and Rs.45,681/- under rule 14 of Cenvat Credit Rules, 2004 and proposing to impose penalty under Rule 15(2) ibid read with Section 11AC of Central Excise Act, 1944. The adjudicating authority confirmed the said demand and imposed penalty equivalent to the duty confirmed.

3.1 Being aggrieved, the appellant filed the appeal wherein they, *inter alia*, contended that the adjudicating authority had erred in confirming the demand of Rs.6,05,719/- ignoring the fact that the goods were exported after verification by Range Superintendent and after stuffing in the factory premises and also ignoring the fact that the appellant has received refund of duty paid. The appellant submitted that the department had knowledge of the fact that the goods exported were traded goods and hence extended period of limitation is not applicable. The appellant also contended that the finding of the adjudicating authority that HSN code of the goods exported is different from HSN code under the invoice on which the goods purchased is beyond the scope of show cause notice.

3.2 The appellant submitted that the adjudicating authority erred in confirming the demand of Rs.7,39,999/- on the ground that the appellant had wrongly classified the scrap under heading No.8548 as the same is beyond scope of show cause notice. They contended that they were declaring such clearance in ER-1 returns. The appellant contended that the adjudicating authority had ignored the fact that the appellant had reversed proportionate credit on such



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clearance as per rule 6(3A) of Cenvat Credit Rules, 2004.

3.3 The appellant submitted that the adjudicating authority had erred in confirming the demand of Rs.45,681/- as the capital goods were only written off in the books of account and were not removed from the factory premises.

The appellant submitted that no penalty is imposable on them.

4. Advocate Paresh Sheth appeared for personal hearing on 09.11.2022 and submitted a set of documents under a covering note. He reiterated the submissions made in the appeal and stressed upon the fact that there was no suppression on their part in view of the ARE-1, ER-1 returns, Shipping bills filed and the audited books of account maintained by them. Also, as the written off capital goods were not removed, duty cannot be demand on the same. The finding of adjudicating authority in respect of the battery container scrap are self- contradictory. He submitted a copy of citation of latest Calcutta, High Court judgment in case of CCE, Bolpur Vs Hindustan Cables dated 15.06.2022. In view of above, he requested to set aside the Order-in-Original.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum. The issues involved in the present appeal are (i) availing Cenvat credit on trading goods which have not relationship with the manufacture of final product, (ii) non-reversal of Cenvat credit on common input services to the extent of six percent of value of exempted goods as required under rule 6 of Cenvat Credit Rules, 2004 and (iii) non-reversal of Cenvat credit on capital goods written off from the books of account as required under rule 3(5A)(a) of Cenvat Credit Rules, 2004.

6.1 Regarding the issue of Cenvat credit on trading goods, the adjudicating authority has held that since the trading goods have no relationship whatsoever with manufacture of goods, they are not covered under the definition of 'inputs' under rule 2(k) of Cenvat Credit Rules, 2004. In this regard, I find that the goods which have no relationship whatsoever with manufacture of goods are excluded from the definition of 'inputs' under rule 2(k) of Cenvat Credit Rules, 2004. However, it is not forthcoming from the show cause notice or from the impugned order as to whether the traded goods can be used in the manufacture of final products. Rule 3(5) of Cenvat Credit Rules, 2004 provided for clearance of inputs or capital goods as such from the factory. I also find that Rule 16 of Central Excise Rules 2002 provided to take credit of duty on goods brought to the factory. Rule 16(1) is reproduced hereunder:

"Rule 16. Credit of duty on goods brought to the factory. - (1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such



goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules."

6.2 If the contention of the adjudicating authority is accepted, then the provisions of rule 3(5) of Cenvat Credit Rules 2004 and Rule 16 of Central Excise Rules 2002 will become redundant. It is also noteworthy that the export was made under the supervision of the concerned Range Officer and the appellant had mentioned 'Under rule 3(5) of Cenvat Credit Rules 2004 (removal as such)' in the ARE-1. Therefore, I am of the considered view that Cenvat credit on bought out items cannot be denied. I find support in the case of *S. Kumars Nationwide Ltd-2014 (312) E.L.T. 725 (Tri. - Del.)* wherein it is held as under:

"6. On careful examination of the submissions made from both the sides and the impugned order, I find that Rule 16 provides to take credit of duty on goods brought to the factory. Rule 16(1) is reproduced hereunder :

"Rule 16. Credit of duty on goods brought to the factory. - (1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules."

7. As per sub-rule (1) of Rule 16, the assessee is entitled to take cenvat credit on the goods which were brought to their factory for being re-made, refined, re-conditioned or for any other reason. The assessee is entitled to take cenvat credit on receipt of such goods as inputs. The Board's Circular No. 283/117/96-CX., dated 31-12-1996 has clarified that if the inputs are exported as such on that also the cenvat credit is available to the assessee. Further, I find that in the case of the Tapsheel Enterprises, this Tribunal has clarified that if the goods are brought to the factory for any other reason to be held bringing the goods in by the appellant for the purpose of testing and repacking is permissible. The interpretation that the goods are brought to the factory for any other reason can be treated as goods can be removed as such.

8. From above discussion, I find that the appellant has taken cenvat credit on the finished goods when they were brought to their factory but instead of any process they exported the same on payments of duty as such. From the clarification of the Board and as per Rule 16 of Central Excise Rules, 2002, the appellant is entitled to Cenvat credit on the same. Accordingly, the impugned order is set aside and the appeal is allowed."

6.3 In view of the above, I set aside the demand of Rs.6,05,719/- confirmed under rule 14 of Cenvat Credit Rules, 2004.

7.1 Regarding the issue of non-reversal of Cenvat credit on common input services to the extent of six percent of value of exempted goods as required under rule 6 of Cenvat Credit Rules, 2004, the appellant had contended that they have reversed proportionate Cenvat credit on common input services while the adjudicating authority confirmed the demand @ 6% of value of exempted goods sold. In this regard, I find that even though the appellant had made the submission before the adjudicating authority that it is well settled proposition of law that if the assessee proportionately reverse the Cenvat Credit, then benefit of Rule 6(3A) of Cenvat Credit Rules, 2004 should be extended, the adjudicating authority, in the impugned order, has not given any findings on the said submission of the appellant. Rule 6(3A) of Cenvat Credit Rules, 2004 reads as



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“(3A) For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration number of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely :-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as, -

$$C = T - (A + B);$$

Explanation. - Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution;

(iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, -

$$D = (E/F) \times C;$$

where E is the sum total of -

(a) value of exempted services provided; and

(b) value of exempted goods removed, during the preceding financial year;

where F is the sum total of -

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed, and

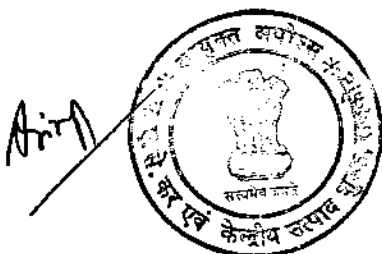
(d) value of exempted goods removed, during the preceding financial year ;

Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty per cent. of the common credit;

(v) remainder of the common credit shall be called eligible common credit and denoted as G, where,

$$G = C - D.$$

Explanation. - For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit;



(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen per cent. per annum.

7.2 On analysis of Rule 6(3A), I find that while exercising the option, the manufacturer of goods or the provider of output service shall intimate in writing to the Department regarding the option exercised. In the present case, admittedly there is no intimation given by the appellant informing the exercise of his option. In the case of *Cranes & Structural Engineers-2017* (347) E.L.T. 112 (Tri. - Bang.) Hon'bl Tribunal held that the said rule does not say anywhere that on failure to intimate, the manufacturer/service provider would lose his right to avail second option of reversing the proportionate credit and that Sub-rule (3A) of Rule 6 is only a procedure contemplated for application of Rule 6(3). Thus, in my considered view, the appellant is required to reverse only proportionate Cenvat credit under Rule 6(3A) of Cenvat Credit Rules, 2004. The adjudicating authority shall verify the calculation and reversal of credit done by the appellant and if there is any amount still required to be paid, inform the appellant who shall pay the same with applicable interest along with amount of penalty under Section 11AC read with rule 15 of Cenvat Credit Rules 2004 which shall be proportionate to the quantum of amount to be reversed under Rule 6(3A).

8.1 Now coming to the issue of non-reversal of Cenvat credit when value of capital goods were written off in the books of account of the appellant, I find that the adjudicating authority has confirmed the demand in terms of Rule 3(5A)(a)(ii) of Cenvat Credit Rules, 2004. The appellant, on the other hand, contended that provisions of Rule 3(5A) of Cenvat Credit Rules, 2004 are not applicable in their case as the capital goods were only written off in the books of account and were not removed from the factory premises. Rule 3(5A) of Cenvat Credit Rules, 2004 reads as under:

"(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely :-

(i) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.



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(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value."

8.2 Plain reading of above provision of law reveals that it applies in a case where capital goods on which Cenvat credit taken are removed after being used. In the present case, I find that, there is no allegation of the appellant removing capital goods from his factory. As such, the demand of Cenvat credit under rule 3(5A)(a)(ii) of Cenvat Credit Rules, 2004 is not sustainable under law. I also find that as per Rule 3(5B), if the value of any capital goods before being put to use is written off fully or partially in the books of account, then the manufacturer is liable to pay an amount equal to Cenvat credit taken. In this case, the appellant has put to use the capital goods and hence the said provision is also not applicable. Thus, the demand of Cenvat credit on this point is also not sustainable on merits.

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

9. The appeal filed by the Appellant is disposed off in terms of the findings in paragraph 6.3, paragraph 7.2 and paragraph 8.2 above.

सत्यापित / Attested

Joseph

Superintendent
Central GST (Appeals)
Rajkot

Shiv Pratap Singh

(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

सेवा में, मे० गोल्डस्टार पवर लिमिटेड राजकोट रोड, हापा, धुवाव जामनगर-360 120	To M/s Goldstar Power Ltd, Rajkot Road, Hapa, Dhuvav, Jamnagar-361 120
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद .
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट .
- 3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, रमंडल-1, जामनगर .

✓ गार्ड फ़ाइल।

