



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

GST Building, 7th Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सतर्फी मंजिल, पोलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



क फाइल संख्या : File No : **V2(73)145 /AHD-III/2016-17** ²⁶¹

ख अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-003-APP-0171-17-18**

दिनांक Date : **21.12.2017** जारी करने की तारीख Date of Issue: **17-1-2018**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :

AHM-CEX-003-ADC-DSN-38-16-17 दिनांक : **21.11.2016** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-DSN-38-16-17**, Date: **21.11.2016**
Issued by: Additional Commissioner, Central Excise, Div: Mehsana, Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Kaira Can Company Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

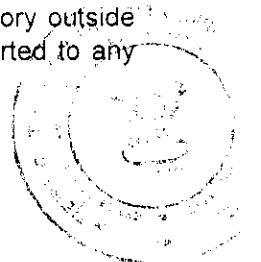
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (C) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad - 380 016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 ~~the same~~ ~~of~~ ~~Rs. 100/-~~ for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे 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 adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क

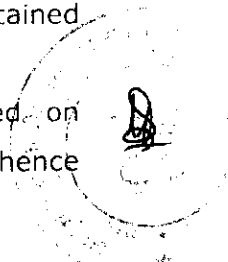
ORDER-IN-APPEAL

This appeal along with condonation of delay in filing of appeal has been filed by M/s Kaira Can Company Ltd (Mehsana Unit), Dudhsagar Dairy Compound, Mehsana [*the appellant*] against Order-in-Original No.AHM-CEX-003-DSN-38-16-17 dated 21.11.2016 [*impugned order*] passed by the Additional Commissioner of Central Excise, Ahmedabad-III [*adjudicating authority*].

2. Briefly stated, the facts of the case are that during the course of audit of M/s Kaira Can Company Ltd (Anand Unit) by Vadodara Central Excise Commissionerate, it was observed that the said company had cleared semi processed goods to the appellant as per CAS-4 value i.e 110% of the cost of production as prescribed under Rule 8 of Central Excise Valuation Rules, 2000. During audit, it further observed that the price of some of their raw materials shot up considerably which resulted to submit a revised CAS-4 certificate by the unit, showing differential value of Rs.7,31,78,592/- against the clearance made to the appellant. On pointed out the different value, M/s Kaira Can Company Ltd (Anand Unit) has paid short levy of the duty amounting to Rs.79,06,679/- in respect of the clearance made to the appellant and issued supplementary invoices and on the basis of the said supplementary invoices, the appellant has taken Cenvat credit of the short paid duty of Rs.79,06,679/-. As it appeared from the letter No.V/1-43/MP/AR-2010 dated 31.01.2012 issued by the Assistant Commissioner, Anand Division that the appellant had taken CENVAT credit of the said mount is based on the duty debited by the Anand Unit on account of willful mis-statement and suppression of facts with intent to evade payment duty, a show cause notice dated 21.01.2013 was issued to the appellant for recovery of CENVAT credit wrongly availed with interest and imposition of penalty. Vide the impugned order, the adjudicating authority has ordered for recovery of the amount with interest and also imposed penalty equal to the amount of CENVAT wrongly availed.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The original duty when paid was not on account of non-payment on the basis fraud, collusion or mis-statement; that when entire duty is available as credit in other unit of the appellant and when two units do not have independent existence, there can never be any question of anything to evade duty.
- Reliance of Rule 9 of CCR has no connection with CAS-4 certificate; that the said rule is quite irrelevant for the purpose of valuation of tin plates and tin sheets that lacquered and printed; that the said rule requires that proper records be maintained and there is no dispute that the records maintained are incorrect or erroneous.
- The credit has been taken openly in the RG 23 account based on supplementary invoices and full knowledge to the department, hence extended period cannot be invoked.



- Imposition of penalty and recovery of interest is not justified.

4. Personal hearing in the matter was held on 16.11.2017. Shri Raj K Vyas, Advocate appeared for the same and reiterated the grounds of appeal. He pleaded that there is revenue neutrality in the matter and extended period invoked is not justifiable. He requested 07 days time for additional submission but as on date no additional submission is received.

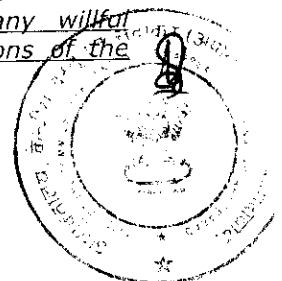
5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing.

6. Before going into the merits of the case, I observe that the appellant has filed the instant appeal with a delay of 22 days from the time limit of 60 days prescribed under Section 35 of Central Excise Act, 1944. The appellant has requested for condone the delay as they could not forward the impugned to their advocate in time. I considered their requested and condoned the delay as per the provisions of Section 35 of CEA entrusted.

7. As regards the merit of the case, at the outset, I observe that the appellant had taken CENVAT credit amounting to Rs.79,06,769/- on the basis of supplementary invoices issued by M/s Kaira Can Ltd (Anand unit); that the said supplementary invoices were issued by the said Anand unit on the basis of audit objection, wherein it was detected the under valuation of goods cleared to the appellant. I also observe that the jurisdictional Commissionerate has issued show cause notice to M/s Kaira Can Company Ltd (Anand Unit) for undervaluation of goods and recovery short payment duty, by invoking suppression of facts, fraud and willful mis-statement of facts and confirmed the demand. Therefore, the issue to be decided in the instant case is as to whether the CENVAT credit taken on such supplementary invoices is correct or otherwise.

8. I observe that CENVAT credit is admissible on the supplementary invoices where central excise duty has been paid except additional amount of duty became recoverable from the manufacturer on account of any short levy or non-levy by reason of fraud, collusion or any willful mis-statement or suppression of facts etc with intention to evade payment of duty. Rule 9 (1) (b) of Cenvat Credit Rules, 2004 stipulates the procedure for availing credit on the supplementary invoices which is under:

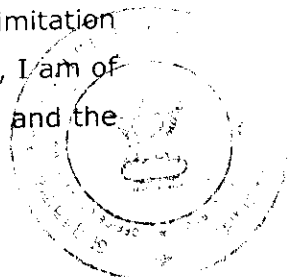
(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the



Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

9. From the facts of the case, I observe that the Vadodara Central Excise Commissionerate, vide its order dated 19.09.2013 has established that the differential duty paid by M/s Kairan Can Co. Ltd (Anand Unit) was not voluntary in nature but on account of Audit Objection and in the said it was proved that the said unit has suppressed the material facts with an intent to suppress the value of the goods and thereby evade the central excise duty. Accordingly, the adjudicating authority has imposed penalty against them. In the circumstances, the CENVAT credit availed by the appellant is clearly in contravention to the Rule 9 (1) (b) *ibid*. In the circumstances, the argument of the appellant that the original duty when paid was not on account of non-payment on the basis fraud, collusion or mis-statement is not correct and sustainable. Therefore, I observe that the adjudication, in the instant case, has correctly denied the CENVAT credit and demanded with interest.

10. The appellant further argued that the extended period cannot be invocable in the instant case and they have shown the said credit in the monthly return. In this context, I observe that adjudicating authority has categorically contended the applicability of extended period of limitation vide para 33 to 34.3 of impugned order. The observation made by the adjudicating authority cannot be taken lightly in view of the fact that the CENVAT credit taken by the appellant is on account of differential duty paid by their Anand Unit which was by way of suppressing the material facts with intention to suppress the value of goods cleared with evasion of duty, as confirmed in the order dated 19.09.2013 of Vadodara Commissionerate. All such facts were only came to the knowledge of jurisdictional Commissionerate when the Assistant Commissioner of Anand Division has issued a letter dated 31.01.2012 in these context. In this case, it is fact that the appellant did not inform the jurisdictional central excise office that they had taken credit from the supplementary invoices issued by their Anand Unit and the said duty was on account of under valuation detected by the Audit officer; that a case for suppression of facts was also booked against the Anand unit on account of such under valuation of goods. In the prescribed monthly returns also, they did not intimate the facts in this regard to the Department. Further, even if they had mentioned the details of credit taken in the monthly return, it is a fact that they did not disclose the fact that the credit taken by them was due to the payment of duty which suppressed by their Anand unit by way of under valuation of goods cleared. These facts came to the notice of the jurisdictional office only after a reference received from Assistant Commissioner of Central Excise, Anand vide his letter dated 31.01.2012. As a result, it is not permissible for the appellant to claim limitation having not disclosed the relevant information to the Department. Therefore, I am of the view that the extended period invoked in the case is absolutely correct and the

ground taken by the appellant in their appeal cannot be accepted in view of the fact discussed above.

11. As regards penalty, I observe that the appellant has been imposed penalty under Rule 15 (2) of CCR read with Section 11 AC of CEA. Looking into ~~the apt of~~ the case and facts discussed at para 10 above, I do not find any merit to interfere with the order of the adjudicating authority as regards imposition of penalty.

12. In view of above, the appeal filed by the appellant is rejected and the impugned order is upheld.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: /12/2017.

Attested

Mohan V.V.
(Mohan V.V)
Superintendent (Appeal)
CGST, Ahmedabad.

By RPAD

To

M/s Kaira Can Company Ltd (Mehsana Unit),
Dudhsagar Dairy Compound, Mehsana

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Principal Commissioner, CGST, South *headquarter*
3. The Addl./Joint Commissioner, (Systems), CGST, South *headquarter*
4. The Dy. / Asstt. Commissioner, CGST Division- II, South *headquarter*
5. Guard file.
6. P.A

