
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015
☎ : 079-26305065		टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(MS)58/AHD-III/2017-18** 962

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0187-17-18**

दिनांक Date : **29.01.2018** जारी करने की तारीख Date of Issue: 16/2/2018

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 :
08/D/GNR/VHB/2017-18 दिनांक : **20.06.2017** से सृजित

Arising out of Order-in-Original: **08/D/GNR/VHB/2017-18**, Date: **20.06.2017** Issued by:
 Assistant Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
 Name & Address of the **Appellant** & Respondent
M/s. Vinayak TMT Bars

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।

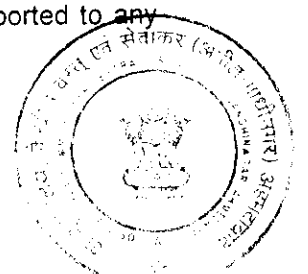
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

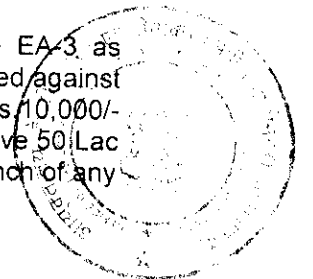
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघानी 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 न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियों सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां 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 वहां 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 scriptoria work if excising Rs. 1 lacs fee 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 paisa 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 63 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 बशर्त 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 होंगे।

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,

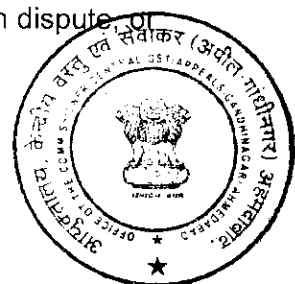
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."



ORDER IN APPEAL

M/s. Vinayak TMT Bars Pvt. Ltd. (*hereinafter referred to as the 'appellant'*), situated at Survey No. 25/1,25/2 & 24/P, Barota na Mosampur, Bayad Road, Post Sampa, Dahegam-382305, Dist. Gandhinagar, are engaged in the manufacture of TMT Bars falling under Chapter No. 72149990 of the first Schedule to the Central Excise Tariff Act, 1985, and hold Central Excise Registration No. AACCV8071HXM001. The appellant had wrongly availed Cenvat credit after six months of the issuance of the invoices. A Show Cause Notice was issued to the appellant on 05.05.2016, seeking to disallow and recover Cenvat credit amounting to Rs.2,81,050/-. The Adjudicating Authority vide his Order-in-Original No.08/D/GNR/VHB/2017-18 dt.20.06.2017, held the Cenvat credit inadmissible and ordered to recover the same. Being aggrieved by the OIO, the appellant has filed an appeal against the same, before me.

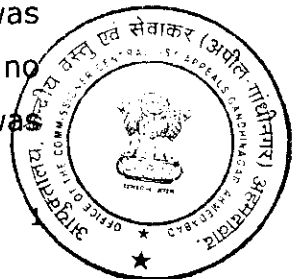
2. The facts of the case, in brief, are that during the Audit of the Appellant's records, two separate issues were brought to the notice, for which Show Cause Notice was issued to the appellant.

(i) The first issue was regarding wrongly availed Cenvat credit of input service worth Rs.13,596/-, for the membership fees paid for the Club or Association. In this regard, the Adjudicating Authority vide the impugned order found the demand not sustainable as the service was actually service of electric exchange, which was used in the manufacture of the final product at the factory.

(ii) The second issue was regarding wrongly availed Cenvat credit of Rs.2,81,050/-, after six months of the issuance of the invoices. As per Rule 4(7) of the Cenvat Credit Rules, 2004, as amended vide Notification No. 21/2014-CE(NT) dt.11.07.2014, the appellant was not eligible to take Cenvat credit after six months w.e.f. 1.09.2014. In this regard, the Adjudicating Authority, found the Cenvat credit to be inadmissible.

3. Being aggrieved by the impugned order dt. 20.06.2017, the appellant has filed this appeal before me on the grounds that (i) the said Notification No. 21/2014-CE(NT) is a prospective notification and not applicable to invoices issued prior to 01.09.2014, for taking credit; (ii) the demand was time barred; (iii) as there was no suppression of the facts, there was no justification for invoking extended period of demand; and (iv) the credit was





availed within six months of the promulgation of the Notification 21/2014-CE(NT).

4. During the personal hearing, Shri M.K. Kothari, Consultant, of the appellant appeared before me and reiterated the grounds of appeal and also submitted that Rule 4(7) has been amended and 1 year has been brought w.e.f. 1.03.2015, and that Notification No. 21/2014-CE(NT) was effective only for 6 months.

5. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of personal hearing.

6. I find that the subject appeal is hit by limitation of 21 days in terms of the provisions contained in Section 35(1) of the Central Excise Act, 1944. The applicant has requested condonation of delay due to unavoidable reasons cited in the application. I therefore, condone the delay of 21 days in terms of the powers vested in me vide proviso to Section 35(1) ibid in the interest of justice.

7. The conditions for availment or allowance of Cenvat Credit, have always been indicated in the Conditions for allowing Cenvat credit prescribed under Rule 4 of the Cenvat Credit Rules, 2004. In the instant case, the appellant had taken the credit of Cenvat on three invoices after the expiry of six months from the date of their issuance. The date of issue and the date of taking of Cenvat credit indicated by the appellant is as shown below :

Date of issuance of invoice	Date of taking of Cenvat credit by the appellant	Amount of Cenvat credit involved (in Rs.)
31.01.2014	15.10.2014	92,568
28.02.2014	15.10.2014	1,03,883
31.03.2014	15.10.2014	84,599
TOTAL		2,81,050

The Cenvat Credit Rules, 2004, at Rule 4(1) and 4(7) prescribed the condition of availment prior to issuance of Notification No. 21/2014-CE(NT) dt.11.07.2014, as indicated below :





"4.(1) The Cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service."

As such, there was no restriction or time-limit on the assessee to avail Cenvat credit, except a guiding directive that it may be taken immediately on receipt of the inputs in the factory of the manufacturer. However, the scenario changed consequent to the issue of Notification No. 21/2014-CE(NT) dt.11.07.2014. The Cenvat Credit (Sixth Amendment Rules) 2014, amended the Rule 4 of the Cenvat Credit Rules, 2004, as indicated below:

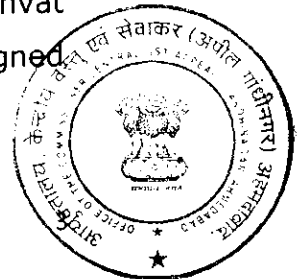
"3. In the said rules, in rule 4, -

(a) in sub-rule (1), after the second proviso, the following proviso shall be inserted with effect from first day of September 2014, namely :-

"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9."

The said amendment, restricting the time of taking the Cenvat credit through the insertion of the proviso, was issued on 11.07.2014, but the same was to be implemented from 1.09.2014. The intention of the legislature was to bring in some time-limit on the taking of the Cenvat credit. The effect however was prospective i.e. from 1.09.2014, to give the assessee's some time to take credit of invoices pending with them pertaining to previous periods. If the legislature's intention was to implement the timelimit prospectively only to invoices issued after the date of introduction of such time-limit, then they need not have given the time of almost 50 days for implementing the same. The introduction was delayed for the only reason to provide some time to the assessee's to avail Cenvat credit on invoices of previous period pending with them. The appellant, in this case, also had the time to avail the Cenvat credit of the above-mentioned invoices consequent to the issue of the Notification i.e. 11.07.2014 up to 31.08.2014. However, the appellant failed to take the credit within the said period and subsequently took the credit on 15.10.2014. As the rule had been amended, from 1.09.2014 onwards the appellant should not have taken Cenvat credit on any invoice after six months of the date of issue of the invoice. The appellant had consequently taken the Cenvat credit in this case on 15.10.2014, by suppressing the fact that the invoices on which Cenvat credit was taken were issued more than six months prior to the date of taking the credit in violation of above-mentioned proviso to Rule 4(1) of the Cenvat Credit Rules, 2004. I therefore, don't find any reason to quash the impugned order as desired by the appellant.





8. The impugned order is therefore upheld and the appeal is dismissed.
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant, stands disposed off in above terms.

U. Shikhar
(उमा शंकर)
आयुक्त (अपील्स)

ATTESTED


(R. B. NATHAN)
SUPERINTENDENT,
CENTRAL TAX APPEALS, AHMEDABAD.

To,

M/s. Vinayak TMT Bars Private Ltd.
Survey No. 25/1, 25/2 & 24/P,
Barot na Masompur, Bayad Road,
Post Sampa, Dehgam,
Gujarat-382305.

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Gandhinagar.
- 3) The Dy./Asst. Commissioner, Division-Gandhinagar, Central Tax, GST, Commissionerate-Gandhinagar.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Gandhinagar.
- 5) Guard File.
- 6) P.A. File.

