



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

वस्तु एवं सेवा

कर भवन,

सप्तर्षी मंजिल, पोलिटेक्निक के पास,
आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor,,
Near Polytechnic,
Ambavadi, Ahmedabad-
380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(52)60,32,33,34/AHD-III/2017-18 / 826**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0189-192-17-18**

दिनांक Date : **29.01.2018** जारी करने की तारीख Date of Issue: **08/02/18**

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 :
15/CE/REF/AC/2017-18 दिनांक : **29.09.2017** से सृजित

Arising out of Order-in-Original: **15/CE/REF/AC/2017-18**, Date: **29.09.2017** Issued by:
Assistant Commissioner, Central Excise, Div:Kalol, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Arvind 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 हैं।

(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- एबी/35-इ के अंतर्गत:-

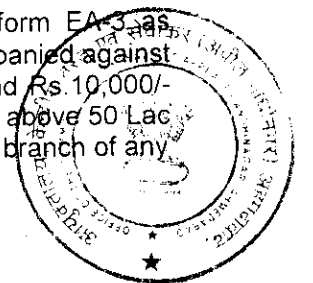
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मेटल हास्पिटल कम्पाउण्ड, नेघानी 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 इए-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 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 संबध 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 पढी 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 Appellate 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 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 (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 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्वांशि 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 होंगे।

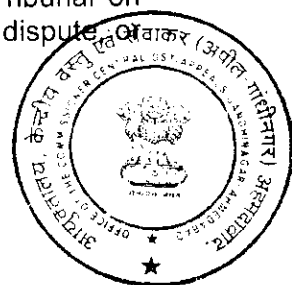
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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

Following 04 appeals have been filed by M/s Arvind Ltd, P.O.Khatraj, Santej, Ta-Kalol, Dist Gandhinagar [for short-appellant] against Orders-in-Original [impugned order] passed by the Assistant Commissioner of CGST, Kalol, Gandhinagar [adjudicating authority]. The details are as under:

S No	Appeal No	OIO No. & Date [impugned order]	Amount involved
1	2	3	4
1	04/GNR/17-18	04/CE/REF/AC/17 dated 28.07.2017	Rs.72,85,318/-
2	05/GNR/17-18	05/CE/REF/AC/17 dated 28.07.2017	Rs.11,30,660/-
3	06/GNR/17-18	06/CE/REF/AC/17 dated 29.09.2017	Rs.38,29,388/-
4	60/GNR/17-18	15/CE/REF/AC/17-18 dated 29.09.2017	Rs.40,59,435/-

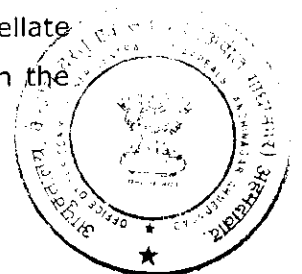
2. The facts of the case are that the appellant filed four refund claims to the amount mentioned at col. No. 4 above before the adjudicating authority. The refund claims were enclosing a statement of capital goods/spare parts having value per piece Rs. 10,000/- received during the period from April 2016 to June 2017. The appellant contended that they had filed the refund since the definition of *input* was amended vide Budget 2016 where under capital goods upto value of Rs. 10,000/- per piece was specifically included as input. The appellant was availing the benefit of notification No. 30/2004-CE dated 9.7.2004, which allowed availing the benefit of CENVAT credit on capital goods vide M.F. (D.R.) Corrigendum F.No. 334/3/2004-TRU (Pt. 1), dated 9-7-2004. Show cause notices were issued to the appellant listing infirmities in the refund claim. Consequently, vide the impugned order, the refunds were rejected by the adjudicating authority.

3. Feeling aggrieved, the appellant has filed these four appeals raising the following contentions:

- that in the impugned OIO in para 10, contentions raised by appellant is accepted; it is also held that no permission is required to be granted for availing credit;
- that the appellant is at loss to understand as to [a] which provisions of section 11B of the Central Excise Act, 1944, is not followed & [b] what infirmity is found in the refund application;
- that though no permission is required for availing credit, the appellant had referred to a safer course of filing refund claim, thereby forcing the department to take a specific stand;
- that the grounds of refund refer to the provisions of CENVAT Credit Rules as the basis of the claim; that had the appellant taken the credit & reversed it with a very next entry the claim would have been maintainable;
- that the original copies of the invoices are enclosed;
- that duty payment and details of suppliers are available from copies of invoices and statement showing the total transactions involved;
- that the relief claimed is permission to avail credit and the refund of credit is outside the purview of unjust enrichment;
- that the availability of credit is time bound these has rendered the appellant remedy-less forcing the refund application;

4. Personal hearings in all four appeals were granted on 24.01.2018. However, the appellant vide their letter dated 23.01.2018 requested the appellate authority to decide the cases on the basis of grounds of appeals reiterated in the

[Handwritten Signature]



letter. Since the appellant has waived the right of personal hearing, I take up all the four appeal for decision.

5. I have carefully gone through the facts of the case and the grounds of the appeals. The issue to be decided in the present appeal is whether the appellant is eligible for refund or otherwise.

6. I observe that identical issue involved in an appeal filed by the appellant pertains to their Division Arvind Intex, Rajpur Road, Gomptipur, Ahmedabad, vide Order-in-Appeal No.AHM-EXCUS-001-APP-136 & 137/17-18 dated 27.10.2017. Since the said decision is still operative, I follow the same.

7. The refund was rejected by the adjudicating authority on the below mentioned grounds:

- that they have submitted original copies of invoices;
- that the claimant is reluctant to admit as to under which provisions of Central Excise Act, Rules, Notifications the refund claim is filed;
- that it is only upto the claimant to either opt for availing CENVAT credit on inputs and clear the goods on payment of duty or follow the amended provision of Rule 2 of CENVAT Credit Rules, 2004.

8. Facts leading to the refund are that vide notification No. 13/2016-C.E. (N.T.), dated 1-3-2016, the definition of *input* was amended as follows:

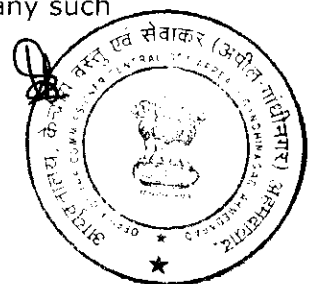
(c) in clause (k),-

(iii) after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely :-

"(v) all capital goods which have a value upto ten thousand rupees per piece .";

However, there was no consequent to the definition of capital goods. The effect of the amendment was that capital goods having a value of upto rupees ten thousand per piece, were included under the definition of **input**. The appellant, operating under notification No. 30/2004-CE dated 9.7.2004, [which allowed availing of CENVAT credit on capital goods only], feeling apprehensive, that if they were to avail CENVAT credit on capital goods below Rs. 10,000/-, it would be construed as having availed CENVAT credit on inputs and may lead to situation wherein they would be denied even the benefit of notification No. 30/2004-CE dated 9.7.2004, has without availing the CENVAT credit filed this refund.

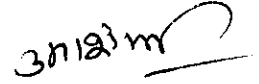
9. The appellant has in his grounds, claimed that that the relief needed is [a] permission to avail CENVAT credit and [b] refund of the said credit, claiming that refund of credit is outside the purview of unjust enrichment. Surprisingly, I do not find any condition under the CENVAT Credit Rules, 2004, which obliges an assessee, to seek permission to avail CENVAT credit. For availing CENVAT credit on inputs, capital goods and input services, the appellant has to fall within the ambit of the definitions of the inputs, capital goods, input services along with fulfilling the conditions enumerated in any exemption notification, in case he is availing any such



benefit. In this era of self assessment, such a request of seeking permission to avail CENVAT credit, not being legally tenable, I reject the same.

10. The second relief claimed is regarding grant of refund which stands rejected by the original authority. Going by the facts of the case, I find that the appellant had purchased these goods [i.e. capital goods having a value of upto rupees ten thousand per piece] on payment of duty. It is no where claimed that these goods were exempted. Further, neither has the appellant produced any notification, rule, section, which provides refund in case he purchases such goods on payment of duty in case they are availing the benefit of the notification, *ibid*. Therefore, it is surprising that the appellant has sought refund from the Government of a tax which the manufacturer of the goods was legally bound to pay which being a purchaser, the appellant was to borne finally being a purchaser of the said goods. The appellant being the one who has borne the excise duty on the capital goods by no stretch of imagination can seek refund of the same just because he is working under a specific exemption. In view of the foregoing, I uphold the decision of the adjudicating authority in rejecting the refund. Hence, the appeal stands rejected.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. All the four appeal filed by the appellant stands disposed of in above terms.




(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : .01.2018

Attested


(Mohanan V.V)
Superintendent ,
Central Tax(Appeals),
Ahmedabad.

By RPAD.

To,

M/s. Arvind Limited
P.O.Khatraj, Santej, Ta-Kalol, Dist Gandhinagar

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Gandhnagar.
3. The Deputy/Assistant Commissioner, Central Tax, Kalol, Gandhinagar.
- ✓ 4. The Additional Commissioner, System, Central Tax, Gandhinagar.
5. Guard File.
6. P.A.

