

मुख्य आयुक्त का कार्यालय

OFFICE OF THE CHIEF COMMISSIONER

केन्द्रीय जीएसटी और केंद्रीय उत्पाद शुल्क, वडोदरा जोनुCENTRAL GST AND
CENTRAL EXCISE, VADODARA ZONE

द्वितीय तल, केंद्रीय उत्पाद शुल्क भवन, रेसकोर्स सर्कल, वडोदरा-390007(गुजरात)
2nd Floor Central Excise Building, Race Course Circle, Vadodara - 390007 (Gujarat)
दूरभाष सं./Telephone No. 0265-2331002, फैक्स सं./ Fax No.: 0265-2339226

BY SPEED POST

F. No. IV/16-168/CCO/RTI/2019

RTI MATTER/TIME BOUND
Vadodara, dated: 05.11.2019

13/19

To,
Shri Ram Ratan Roy,
Joint General Manager,
Electrosteel Castings Limited,
G.K.Tower, 19, Camac Street, Kolkatta-700 017.

Sir,



Sub:-**Seeking information under RTI, Act 2005 by Shri Ram Ratan Roy, Kolkatta - reg.**

Please refer to your RTI application No.RTI/19-20/65 dt
30/10/2019.

2. In this regard, the point wise reply is as under

- (a) Yes, the order has been accepted.
- (b) Copy of note sheet pages enclosed.
- (c) Not applicable.

3. If you are not satisfied with the above reply, you may file an appeal under Section 19 of the RTI Act 2005 before the Appellate Authority i.e. Smt Manisha Saxena, Additional Commissioner (CCO), 2nd Floor, Central GST & Central Excise Building, Racecourse Circle, Vadodara-390007, within 30 days of receipt of this communication.

Encl: as above

Yours faithfully,

(Signature)
(D S Tolia)
CPIO/ Assistant Commissioner (CCO)

Sub : Concurrence for acceptance of the CESTAT Order No. A/10655/2019, dated 05.04.2019 issued in the case of M/s National Lamination Industries, Daman- reg

Submitted please:

Kindly peruse letter F. No. V (Final) 1-21/DMN/19-20/RC, dated 11.09.2019 (P/71-75) of the Principal Commissioner, Daman regarding concurrence for acceptance of the CESTAT Order No. A/10655/2019 dated 05.04.2019 issued in the case of M/s. National Lamination Industries, Daman-396210 alongwith its enclosures.

2. Vide referred letter, Pr. Commissioner, Daman has submitted that:
 - 2.1. M/s. National Lamination Industries, Daman (the claimant) filed an application under Rule 5 of CCR, 2004 for refund of accumulated Cenvat Credit amounting Rs.14,22,59,084/- on account of cease of manufacturing activities due to closure of unit. As the law prima facie did not have any provision for allowing such refund, the competent authority issued SCN No. V/18-412/Div-III/ 2016-17 dated 03.03.2017 (P/25-33) proposing rejection of refund claim. The adjudicating authority while deciding the impugned SCN vide OIO No. DMN-III/AC/DEM/01/17-18 dated 25.04.2017 (P/35-45) rejected the refund claim holding that the claimant had failed to demonstrate that unutilized CENVAT credit was in respect of inputs or input services used for manufacture of final products exported by them or intermediate products used for export.
 - 2.2. Being aggrieved by the said OIO, the claimant have filed an appeal with the appellate authority on the grounds that their refund application is on account of unutilized Cenvat Credit lying in balance on account of cease of manufacturing activities due to closure of unit and not on account of credit remaining unutilized on export of goods. The Commr(A), vide its order-in-Appeal No. CCESA-AUDIT-SRT/VK-072/2017-18 dated 28.03.2018 (P/47-57) allowed the appeal. Aggrieved with, department filed the appeal with CESTAT.

3. Hon'ble CESTAT vide its Order No. A/10655/2019 dated 05.04.2019 (P/59-69) held that:-

"Heard both sides. We find from the impugned Order-in-Appeal that the main reason for accumulation of cenvat credit is that the appellant's final product were manufactured out of imported raw material on which cenvat was availed by them. Consequent to imposition of 4 % SAD which was also available as credit, the balance of credit increased. The Appellate Commissioner has discussed the reasons and costing of goods also. Also for the reason that the respondent has sufficient balance in their credit account, they were insisted to pay duty in cash from PLA which resulted into excess payment of Rs.14.23 Cr. Therefore the adjustment of credit was not possible. Once the factory was closed there was no scope of utilising the credit so accumulated. We find that respondent has cited plethora of judgments of Hon'ble High Courts and Apex Court in addition to the various Tribunal's Order wherein the refund of accumulated cenvat

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stands allowed. Also in the present case we find that one of the reason for accumulation of credit was due to payment of duty in cash and imposition of additional SAD of 4%. The Hon'ble Gujarat High Court in case of Ishaan Copper Pvt. Ltd. 2018 – TIOI – 1361-HC-AHHM-CX has allowed the refund of cenvat credit. Further in case of M/s Slovak trading Co. supra the Tribunal's order stands upheld by the Hon'ble High Court. The Appellant has cited plethora of judgments supra wherein the refund stands allowed. In view of the Hon'ble Supreme Court judgment in the case of Kamalakshi Finance Corporation Ltd 1991 (55) ELT 433 (SC), we are bound by the aforesaid decisions. We thus do not find any reason to interfere with the impugned order in the light of judgments cited by the Respondent. We thus uphold the impugned order and dismiss the appeal filed by the revenue."

4. The Tribunal while passing the order mainly relied upon two case laws:-

(i) Hon'ble Gujarat high Court's order in the case of Ishaan Copper Pvt. Ltd. 2018 – TIOI – 1361-HC-AHHM-CX (P/11-15):- the same has been accepted by the department on monetary ground.

(ii) The Tribunal's order In case of M/s Slovak trading Co. supra [2006(205)E.L.T.956(Tri-Bang)] (P/23):- the same is upheld by the Hon'ble High Court of Karnataka, Bangalore [2006(201) ELT.559(Kar)] (P/19-21). Further the Hon'ble Apex Court [2008(223) E.L.T.A170(S.C)] (P/17) also upheld the Tribunal's order and appeal filed by the department before Apex Court has been dismissed by stating that "learned ASG appearing for the Union of India fairly concedes that those decisions of the Tribunal, which were relied upon by the Tribunal, have not been appealed against. In view of the confession made by the learned ASG, this special leave petition is dismissed". The Apex court further observed that The High Court in its impugned order upheld the Tribunal's order {2006(205)E.L.T.956(Tri-Bang)} holding that there is no expressed prohibition in terms of Rule 5 of Cenvat Credit Rules, 2002 therefore refund claim for unutilized Cenvat/Modvat credit is eligible and refund is to be made in cash when the assessee goes out of Modvat. Scheme or when the factory is closed.

5. Further in the instant case, the Tribunal held that in view of the Hon'ble Supreme Court judgment in the case of Kamalakshi Finance Corporation Ltd. 1991 (55) ELT 433 (SC) (P/1-5), they are bound by the aforesaid decision. It is pertinent to mention that in the case of Kamlakshi Finance Corporation Ltd., the Supreme Court held at para 8 that 'The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudication authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.'

6. Also as per instruction of Board vide F.No.390/Misc/69/2017-JC dated 09.11.2017 (P/7-9) the department should not contest a case further if the

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issue has been lost in two previous stages of appeals subject to critical examination by the Commissioner on a case to case basis. Wherever the concerned Commissioner feels that the matter is fit for filing further appeal in a higher fora as there are strong reasons justifying the further expense of monetary and energy resources, he would submit complete justification for appealing a case for the third subsequent time to the Zonal Chief Commissioner. In the impugned case the Department has lost the case on previous two stages of appeal before Commissioner (Appeal) and before Hon'ble CESTAT and there are no strong reasons for filing further appeal. The CESTAT's final order No. A/10655/2019 dated 05.04.2019 may be accepted on merit.

7. In view of the above, the subject CESTAT order may be accepted on merits. Concurrence may please be accorded by the Chief Commissioner for acceptance of the subject CESTAT order. Last date for Review of the said order of Hon'ble CESTAT, A'bad and also for filing appeal before Hon'ble High Court of Bombay is 18.10.2019.

8. In view of above discussion and Board's Instruction vide F.No.390/Misc/69/2017-JC dated 09.11.2017, it is felt that Chief Commissioner may like to accept CESTAT Order No. A/10655/2019, dated 05.04.2019.

9. Put up for kind perusal and order, please.

~~3-11-2019~~
(Dhiraj Kr. Jha) (C.S. Nair)
Insp (DLC) Supdt.(DLC)

~~17.09.19~~
Rig
Deputy Commissioner (CCO)
रोहित निगंधकर
उप आयुक्त

~~16/10/19~~
A-2 (110)

~~16/10/19~~
मनीषा सक्सेना
अपर आयुक्त (मु.आ.का.)

3-11-2019


18.9.19
अशोक कुमार मेहता
मुख्य आयुक्त

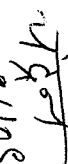
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सादर प्रस्तुत:

कृपया पूर्व के पृष्ठ पर अंकित टिप्पणी को सन्दर्भ में लें।
माननीय मुख्य आयुक्त महोदय ने CESTAT Order No. A/10655/2019, दिनांक 05.04.2019 issued in the case of M/s National Lamination Industries, Daman, को स्वीकृत करने कि अपनी सहमति प्रदान कि है। अतएव, हम यह सूचना प्रधान आयुक्त, दमण को प्रेषित कर सकते हैं।

इस हेतु एक पत्र प्रधान आयुक्त, दमण के नाम तैयार किया गया है जो कि आपके समक्ष अवलोकन एवं अनुमोदन हेतु प्रस्तुत है।


(धोरन कुं डाम)
निरीक्षक/डी.एल.सी.


(सी एस नायर)
अधीक्षक/डी.एल.सी.


उपायुक्त (डीएलसी/मुआका)