

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(72)73 /Ahd-III/2015-16/Appeal-I /1920 to 1924

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-116-16-17

दिनांक Date : 21.09.2016 जारी करने की तारीख Date of Issue 23/09/16

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Abhai Kumar Srivastav Commissioner(Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: 05/AC/DEM/C.EX/2015-16.Date: 29.10.2015
Issued by: Deputy Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Bhairav Alloys Pvt.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 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.

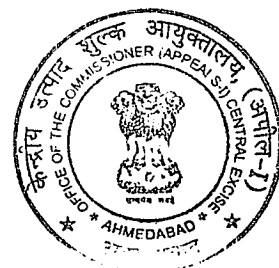
(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित
है।

(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

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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- ष0बी/35-इ के अंतर्गत:-

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

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

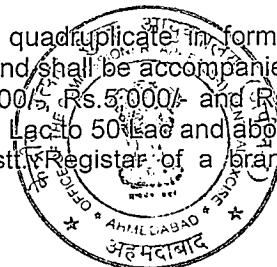
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) 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.

(b) 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 रूपे 5 लाख या उससे कम है वहाँ रूपे 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहाँ रूपे 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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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 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 अर्ज़ी 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 संदर्भ में, 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. Bhairav Alloys Pvt.Ltd., 76/1/P, At. Vadavi, Tal. Kadi, Dist. Mehsana (hereinafter referred to as the 'appellant' for the sake of brevity) has filed this appeal against OIO No. 05/AC/Dem/CEX/2015-16 dated 29.10.2015, passed by the Deputy Commissioner, Central Excise, Kadi Division, Ahmedabad-III (hereinafter referred to as the "adjudicating authority" for the sake of brevity).

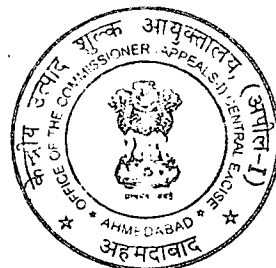
2. Briefly stated, the facts are that Central Excise Audit, after going through the books of accounts of the appellant, raised an objection that though they had shown a deduction in the 'Rolls' on which they had availed CENVAT Credit under capital goods, they had not reversed the credit as per Rule 3(5A)(b) of the CENVAT Credit Rules, 2004. Therefore, a show cause notice dated 19.12.2014, *inter alia*, proposing recovery of wrongly availed CENVAT Credit along with interest and further proposing imposition of penalty, was issued. This notice was adjudicated vide order dated 29.10.2015, wherein the adjudicating authority confirmed the demand of Rs. 56,919 (Rs. 30,657/- for 2012-13 and Rs. 26,262/- for 2013-14) along with interest and imposed penalty of Rs. 56,919/- under Section 11AC of the Central Excise Act, 1944.

3. Aggrieved, the appellant has filed this appeal mainly on the grounds that:

- the rolls purchased by the appellant are sharpened and molded for shaping the finished products; that the hot iron after being taken from the furnace passes through different rolls stepwise at least 17 to 18 times; that due to this process the diameter of the roll gets reduced; that after passage of time, the rolls are again sharpened and molded;
- that they have deducted the value equal to the wear and tear of rolls on account of production process; that this deduction is correctly reflected in the balance sheet;
- that they have neither sold the rolls nor claimed the depreciation;
- that the value of the rolls get reduced due to continuous use; that no reversal of CENVAT credit is required as the rolls are consumed during the course of manufacture;
- that since it is only reduction of value due to use and not a write off or sale, no reversal of credit is required; and
- The appellant also cited the following case laws viz Spack Automobiles [2008(226) ELT 149], Autoline [2015(315) ELT 610], Zenith Fibres Ltd [2014(302) ELT 423], Hemnbil Metal Processors P Ltd [2010 (261) ELT 429].

4. A personal hearing in the matter was held on 24.8.2016, wherein Shri R.K.Jain, Advocate appeared on behalf of the appellant and reiterated the submissions advanced in the grounds of appeal.

5. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made at the time of personal hearing. The question to be decided in the present appeal is whether the reversal of credit under Rule 3 of CENVAT Credit Rules, 2004, ordered in respect of credit availed on rolls as capital goods, is correct?



6. The relevant extracts of the CENVAT Credit Rules, 2004, which deals with removal of capital goods is reproduced below, for ease of reference:

“Rule 3. CENVAT credit. -

(5) *When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:*

Provided :

Provided:-

(a) *for computers and computer peripherals:*

.....

(b) for capital goods other than computers and computer peripherals @2.5% for each quarter.

(5A) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

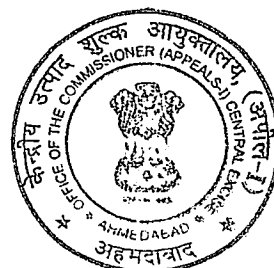
[emphasis supplied]

7. Plain reading of the text of the rule, *ibid*, elucidates that the basic condition for reversal of CENVAT credit is - when the inputs or capital goods on which credit is availed, **are removed** from the factory, either as such or as waste, The appellant has contended that they have **not sold, removed or cleared the capital goods** i.e. rolls, but the rolls were consumed during the process of production. At the same time, I also observe that the appellant has nowhere stated that the goods are still lying in the factory.

8. Certain assets, such as investments and inventory, lose value for various reasons. Inventory may lose value if it becomes obsolete or outdated. A company periodically assesses the value of these assets and re-values the asset in their books of account. The appellant in the grounds of appeal has contended that it is only reduction of value due to usage and not a sale; that the deduction in the balance sheet is because of writing off the assets or the revaluation of assets. It appears that the adjudicating authority missed out the crucial point and failed to give a proper finding on the basic fact as to whether the capital goods, in dispute have been removed as such or as waste & scrap, or they are still lying in the factory premises. Rule 3(5) or 3(5A) of the CENVAT Credit Rules, 2004, would come into operation only if the capital goods have been removed. The facts, in the present dispute, however, lack clarity.

9. The appellant has relied on the following citations:

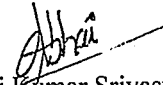
- Spack Automobiles [2008(226) ELT 149]. In this case by relying on the decision of M/s. Bharat Electricals Ltd.[2002 (50) RLT 208], the Tribunal set aside the demand of reversal of CENVAT credit on the ground that inputs are still lying the factory though they have been written off in the books of account. The applicability of this citation, however, is subject to a finding that the goods are still lying in the factory. As is already mentioned supra, no such finding is recorded by the adjudicating authority.
- Autoline [2015(315) ELT 610]. The Hon'ble Tribunal in this case held that valuing the materials at lower than the purchase rates is not equivalent to writing of value of inputs in books of account; that no reversal is required under CENVAT Credit Rules.



- Zenith Fibres Ltd [2014(302) ELT 423]. This case is not applicable since the facts differ.
- Hemnbil Metal Processors P Ltd [2010 (261) ELT 429]. This case is not applicable since the facts differ.

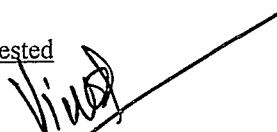
10. The finding of the adjudicating authority that since value has been reduced in the balance sheet, the capital goods must have been disposed off - is assumptive. No evidence is produced by the department to substantiate the fact that the goods were indeed removed. The appellant also has not provided any evidence to substantiate that the capital goods in question are still lying in the factory and have not been removed, and if the same were removed then were the rolls removed as such or as waste/scrap. In the absence of any clear finding, it is not known as to whether the capital goods, in dispute have been removed. Therefore, I am left with no choice but to remand the case to the adjudicating authority, to pass a clear finding as to whether the capital goods in question are still available in the factory, and in case the same were removed, then on which documents these rolls were removed as such / as waste & scrap. While remanding the matter, I rely on the case of M/s. Honda Seil Power Products Ltd [2013(287) ELT 353].

11. The order of the adjudicating authority is therefore, set aside and the matter remanded to the adjudicating authority for compliance of directions as mentioned supra. This appeal stands disposed of accordingly.


(Abhai Kumar Srivastav)
Commissioner (Appeal-I)
Central Excise, Ahmedabad

Date : 21.09.2016

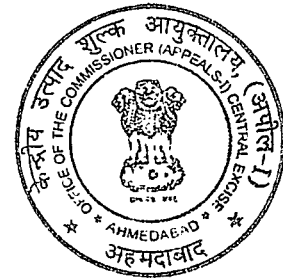
Attested


(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

BY R.P.A.D.

To,

M/s. Bhairav Alloys Pvt.Ltd.,
76/1/P, At Vadavi,
Ta. Kadi, Dist. Mehsana



Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Deputy/Assistant Commissioner, Central Excise, Division-Kadi, Ahmedabad-III.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad-III
5. Guard File.
6. P.A.