

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(38)29/Ahd-III/2016-17/Appeal-I
V2(38)30/Ahd-III/2016-17/Appeal-I 1194 5/11/98

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-274 to 275-16-17

दिनांक Date : 27.03.2017 जारी करने की तारीख Date of Issue 30/3/17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker 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: AHM-CEX-003-ADC-MLM-053-054-15-16 Date:

26.02.2016 Issued by: Additional Commissioner, Central Excise, Din:

Gandhinagar, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Smaltochemical India 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 प्रक्रिया के दौरान हुई हो।

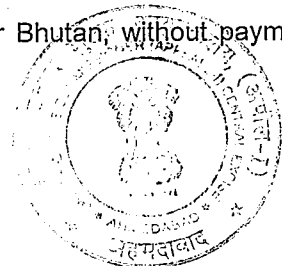
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 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- णबी/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

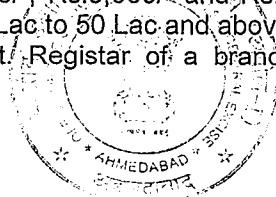
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(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 मैटल 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 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर 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 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 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 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 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 होंगे।

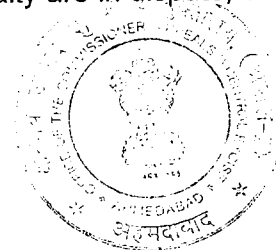
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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



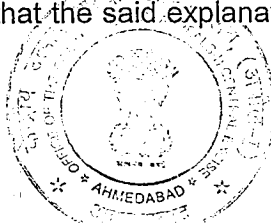
ORDER-IN-APPEAL

M/s Smaltochimica India Pvt. Ltd., Survey No. 478, Block No. 439, Village: Chandrala, District: Gandhinagar (hereinafter referred to as 'the appellant'), holding Central Excise Registration No.AAMCS4939FXM001 has filed two appeals, against Order-in Original No. **AHM-CEX-003-ADC-MLM-053-054/15-16** dated **26/02/2016** (hereinafter referred to as 'the impugned orderss') passed by the Additional Commissioner, Central Excise, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case, stated briefly, are that during the course of EA-2000 Audit, it was observed that the appellant had taken improper CENVAT credit of Service Tax amounting to **Rs.38,62,643/-** for the period **March-2011 to January-2014**, in respect of **commission paid on sales to M/s Weldekor Agencies Pvt. Ltd.**, (hereinafter referred to as 'M/s Weldekor'). Further, it was also observed by Audit that by virtue of O.I.A. No.157/2014/Cus/Commr(A)/AHD dated 09/04/2014 passed by Commissioner (Appeals), Customs, Ahmedabad, the Customs duty originally paid under Bill of Entry No.3371203 dated 25/09/2013, filed for the import of Basic Pro EOBAS (Specific Photo Meter) Twinvision Scanner and Ink Tester from Italy, was reduced by Rs.10,13,647/-, whereas the appellant had availed CENVAT credit on the total CVD and SAD component in the said Bill of Entry being excess CENVAT credit of **Rs.1,12,026/-** under Bill Of Entry No.3371203 dated 25/09/2013. Therefore, a Show Cause Notice (referred to as SCN) F.No.V.38/15-193/DEM/OA/14 dated 07/04/2015 was issued to the appellant for recovery of Rs.38,62,643/- and Rs.1,12,026/-, under Rule 14 of Cenvat Credit Rules, 2004 (CCR, 2004) read with Section 11A(4) / 11A(1) of Central Excise Act, 1944 (CEA, 1944), along with interest under Rule 14 of CCR, 2004 read with Section 11AB / 11AA of CEA, 1944 and proposing to impose penalty on the appellant under Rule 15(2) / 15(1) of CCR, 2004 read with Section 11AC of CEA, 1944. Another SCN F.No. V.38/15-71/DEM/OA/15-16 dated 23/10/2015 was issued to the appellant invoking similar provisions for recovery CENVAT credit of input service amounting to **Rs.14,05,222/-** availed during the period of **February-2014 to March-2015** on sales commission. Both these SCNs were adjudicated vide the impugned orderss, whereby all the proposals in the two SCNs have been confirmed by the adjudicating authority.

3 Being aggrieved by the impugned orders, the appellant has failed the instant appeal, inter alia, on the following grounds:

- 1) Services availed for sale promotion of goods is specifically covered in the definition of input services as it is a service used in relation to sales promotion and hence the denial of CENVAT credit is not legal or proper. Vide Notification No.02/2016-CE (NT) dated 03/02/2016, an explanation has been inserted to Rule 2(l) of CCR, 2004 to the effect that sales promotion includes services by way of sale of dutiable goods on commission basis. It has been held by Hon'ble CESTAT, Ahmedabad in case of M/s Essar Steel India Limited vs CCE & ST, Surat-I – 2016-VIL-155-CESTAT-AHM-ST in para 22 that the said explanation is effective retrospectively.

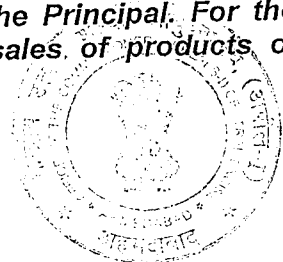


- 2) The adjudicating authority had erred by disallowing CENVAT credit of Rs.112026/- availed on basis of Bill of Entry in terms of provisions of CCR, 2004 because there is nothing in CCR, 2004 to show that when an appeal is allowed, the CENVAT credit is required to be reversed even without department refunding such amount. Ordering recovery of interest is also erroneous.
- 3) The adjudicating authority had erred in imposing savage penalties under Rule 15(2) of CCR, 2004 read with Section 11AC of CEA, 1944 despite there being not even an iota of evidence of suppression or intent to evade payment of duty on part of the appellant and despite the fact that question of interpretation is involved.
- 4) There was judicial indiscipline by not following decision of CESTAT, Ahmedabad in the case of CCE vs Shree Kamrej Vibhag Khand Udyog Sahakari Mandli Ltd. – 2014 (36) STR 814 (Tri.-Ahmd.), where it has been held that when commission paid is for sales promotion, the judgment of Hon'ble Cadila Healthcare Ltd. would cover the issue in favour of the assessee.
- 5) The impugned orders is non-speaking as submission of the appellant made vide letter dated 04/02/2016 soon after the amendment in CCR, 2004 clarifying that sales promotion includes services by way of sale of dutiable goods on commission basis are not considered. There is no discussion or finding in the impugned orders regarding the host of submission and relied upon decisions on part of the appellant indicating sales promotion activities, for instance there is no discussion on decision of Hon'ble High Court of Gujarat in case of Dynamic Industries Ltd. wherein it has been held that in the issue of CENVAT credit of commission, extended period of limitation cannot be invoked. The case laws in the matter of MARUTI SUZUKI LTD. vs CCE – 2009 (240) ELT 641 (SC) and Kiran Ispat Udyog vs. CCE – 2015 (321) ELT 182 (SC), have not been discussed.

4. Personal hearing with regards to both the appeals was held on 28/02/2017. Dr. Nilesh V. Suchak, C.A. appeared on behalf of the appellant and reiterated the grounds of appeal. He pointed out para 3.5 of their agreement dated 01/07/2009. He further submitted that issue is covered in case of Shree Kamrej Vibhag Khand Udyog Shakari Mandli Ltd. – 2014 (36) STR 814 (Tri. Ahmd.) in para 5 & 7. He requested for all consequential benefit. He also pleads limitation.

5. I have carefully gone through the facts of the case on records and submissions made by the appellant. On going through the findings in the impugned orders it is seen that the conclusion to the effect that the services provided by Commission agents in relation to sale of the final products of the appellant cannot be considered as 'sales promotion activity' is not backed by any evidence or reasonable discussion showing as to how the conclusion has been arrived at on the basis of records. In paragraph 5.1 of the impugned orders pertaining to the defence submissions made by the appellant before the adjudicating authority, it has been clearly mentioned that the appellant had drawn attention to paragraph 3.5 of its agreement dated 01/07/2014 with the service provider to indicate that the service provider was carrying out activities relating to sales promotion. The contents of paragraph 3.5 of its agreement dated 01/07/2014 are as follows:

"3.5 It is specifically agreed that the agent has to make all its efforts for sales promotion of goods offered for sale by the Principal. For the purpose of sales promotion or to boost the sales of products of



principal, the agent may carry out advertisement campaign or increased public relations activities or a free-sample campaign or offer any other incentives or arrange awareness or exhibitions or set up competitions or resort to temporary price reductions with approval of principal or provide free gifts or samples at his own cost or as agreed from time to time or carry out any other activities as deemed appropriate by it for promotion or boosting of sales."

The above terms of agreement clearly show that M/s Weldekor Agencies (P) Ltd. was carrying out sales promotion for the goods manufactured by the appellant. There is nothing in the impugned findings to negate the claim of the appellant that the service provider had provided services for sales promotion per the above clause in its agreement dated 01/07/2014. Further, in paragraph 5.5 of the impugned orders, there is a mention that the appellant had produced a certificate dated 04/05/2015 from Shri Ashwin H. Shah & Co., C.A., confirming that services availed from M/s Weldekor Agencies (P) Ltd. were for sales promotion. The contents of this certificate are as follows:

"TO WHOMSOEVER IT MAY CONCERN

We are the statutory auditors of M/s Smaltochimica India Pvt. Ltd., Survey No. 478, Block No. 439, Village & PO Chandrala-382321, Ta & Dist. Gandhinagar. Based on our audit and records of the said company and agreement with service provider, we hereby certify that the following CENVAT Credits availed by M/s Smaltochimica India Pvt. Ltd. in respect of services provided by M/s Weldekor Agencies (P) Ltd. were availed for sales promotion of dutiable goods manufactured by the said M/s Smaltochimica India Pvt. Ltd.

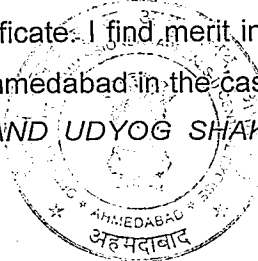
Period during which Credit Availed	CENVAT Credit Availed Rs.
March, 2011 to January, 2014	3862643
February, 2014 to March, 2015	1405222
April, 2015 to March, 2016	772500

We further certify that this fact is also evident from Paragraph 3.5 of agreement dated 1st July, 2009 entered into with M/s Weldekor Agencies (P) Ltd. which is given below for ready reference.

"3.5 It is specifically agreed that the agent has to make all its efforts for sales promotion of goods offered for sale by the Principal. For the purpose of sales promotion or to boost the sales of products of principal, the agent may carry out advertisement campaign or increased public relations activities or a free-sample campaign or offer any other incentives or arrange awareness or exhibitions or set up competitions or resort to temporary price reductions with approval of principal or provide free gifts or samples at his own cost or as agreed from time to time or carry out any other activities as deemed appropriate by it for promotion or boosting of sales."

We have issued this certificate at the request of M/s Smaltochimica India Pvt. Ltd. for the purpose of supporting their claim for CENVAT Credit in respect of input services used in relation to sales promotion. We further state that the definition of 'input service' given in Rule 2(l) of CENVAT Credit Rules, 2004 clearly covers within its scope any services used in relation to sales promotion and the Explanation inserted in Rule 2(l) thereof vide Notification No. 2/2016-CE(NT), dated 03-02-2016 categorically states that "For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis". Hence the CENVAT credit availed by M/s Smaltochimica India Pvt. Ltd. is clearly admissible to them."

The above certificate has not been disputed in the impugned orders. Hence the validity of this certificate remains unchallenged and the services received by the appellant are to be treated as sales promotion, also on the basis of this certificate. I find merit in the reliance placed by the appellant on the decision of CESTAT, Ahmedabad in the case of **C.C.E. & S.T., SURAT-II vs SHREE KAMREJ VIBHAG KHAND UDYOG SHAKARI**

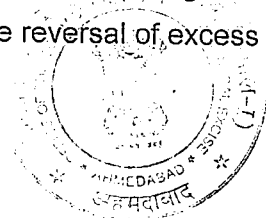


MANDALI LTD. – 2014 (36) S.T.R. 814 (Tri. – Ahmd.), where the validity of C.A. certificate not being proved wrong, the services were upheld as sales promotion. The relevant portion is reproduced as follows:

“7. It can be seen from the above reproduced paragraph that the first appellate authority has relied upon a chartered accountant’s certificate which clearly shows the commission which has been paid by the appellant is for promoting the sale of finished goods. As against such a categorical findings on the facts of the case, I find that the Revenue’s appeal has not adduced any contrary evidence. The entire grounds of the appeal of the Revenue is basically trying to interpret the provisions of the Rule 2(l) of the Cenvat Credit Rules, 2004, to drive home a point; that the sales promotion and such other activities are related sales commission service and do not qualify for as an Input Service. Revenue has placed reliance on the judgment of the Hon’ble High Court of Gujarat in the case of *Cadila Healthcare Ltd. - 2013 (30) S.T.R. 3 (Guj.)* of the judgment leadership, I find that the lordship have categorically held that the Cenvat credit on the service tax paid on the sales commission *per se* is not allowed but if the said commission is paid for promotion, that would be a different. The factual matrix recorded by the first appellate authority indicates that the amount paid by the appellant is a commission for sales promotion expenses.

7. In my view, the judgment of the Hon’ble High Court of Gujarat in the *Cadila Healthcare Ltd. (supra)* would cover the issue in favour of the assessee.”

In view of above, the demand for CENVAT credit of **Rs.38,62,643/-** for the period March-2011 to January-2014 and CENVAT credit of **Rs.14,05,222/-** for the period of February-2014 to March-2015 on sales commission confirmed on the basis of decision of Hon’ble high Court of Gujarat in the case of *Cadila Healthcare Ltd. – 2013 (30) STR 3 (Guj.)* is not sustainable and the same is liable to be set aside. Consequently the interest liability and the penalty imposed with regard to these demands are also liable to be set aside. As regards the demand for reversal of CENVAT credit of **Rs.1,12,026/-**, I find that excess credit of CVD and SAD component in the said Bill of Entry No.3371203 dated 25/09/2013 arises only subsequent to O.I.A. No.157/2014/Cus/Commr(A)/AHD dated 09/04/2014 passed by Commissioner (Appeals), Customs, Ahmedabad, whereby the Customs duty originally paid under Bill of Entry No.3371203 dated 25/09/2013 was reduced by **Rs.10,13,647/-**. The appellant had initially availed CENVAT credit as per the actual payment in Bill of Entry No.3371203 dated 25/09/2013. Therefore, there was no fault on their part in availing the said credit as available at the material time and there can be no *mens rea* or intent to evade duty on their part. Hence the penalty imposed on the appellant in connection with this demand is not sustainable. However, it being an undisputed fact that Customs duty originally paid stands reduced, the appellant is liable to reverse the excess credit of **Rs.1,12,026/-** along with interest. The processing and payment of refund at the end of Customs cannot be a criterion for the reversal of excess credit.



6. In view of the above, I set aside the demand of Rs.38,62,643/- and Rs.14,05,222/- [total demand: Rs.52,67,865/-] along with interest confirmed in respect of sales commission in the impugned orders. I set aside the penalties of Rs.19,28,750/- and Rs.7,02,611/- [total penalty: Rs.26,31,361/-] imposed on the appellant under Rule 15(2) of CCR, 2004 read with Section 11AC of CEA, 1944 with regards to sales commission. I uphold the demand for Rs.1,12,026/-, along with interest in respect of excess CENVAT credit arising consequent to O.I.A. No.157/2014/Cus/Commr(A)/AHD dated 09/04/2014 passed by Commissioner (Appeals), Customs, Ahmedabad and set aside the penalty of Rs.1,17,170/- imposed on the appellant under Rule 15(2) of CCR, 2004 read with Section 11AC of CEA, 1944 in this regard.

7.. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stands disposed of in the above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 27/03/2017

Attested

(K. P. Jacob)

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Smaltochimica India Pvt. Ltd.,
Survey No. 478, Block No.439,
village & PO: Chandrala,
Taluka & District: Gandhinagar – 382 321.

Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner, Central Excise (System), Ahmedabad-III.
4. The D.C. / A.C., Central Excise Division, Gandhinagar, Ahmedabad-I.
5. Guard File.
6. P.A.

