



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20230364SW0000333DBB

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/286/2022-APPEAL / 9 623-31
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-147/2022-23 and 15.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	20.03.2023
(ङ)	Arising out of Order-In-Original No. AC/S.R./03/CEX/KADI/21-22 dated 23.12.2021 passed by the Assistant Commissioner, CGST, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bhairav Alloys Pvt. Ltd., Survey No. 76/I/P at Vadavi, Taluka – Kadi, Mehsana-384004

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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.



उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

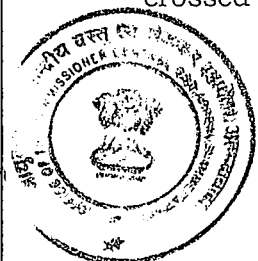
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

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.

(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।

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."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Bhairav Alloys Pvt. Ltd., Survey No. 76/I/P at Vadavi, Taluka-Kadi, Dist.: Mehsana - 384004 (hereinafter referred to as the appellant) against Order in Original No. AC/S.R/02/CEX/KADI/21-22 dated 23.12.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Central GST, Division - Kadi, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were engaged in manufacture and clearance of MS Angles, Channels, Flats, Bars, Round and Square Bars falling under Chapter 72 of the Central Excise Tariff Act, 1985 (CETA,1985) and having Central Excise Registration No.AAACB1787FXM001 for the same. During the course of audit of the records of the appellant conducted by the officers of Central Excise Audit, Ahmedabad – III, it was observed that during the F.Y.- 2012-13, the appellants had availed Cenvat Credit on 'Metal Rolls' under the category of 'Capital Goods'. It was further observed by Audit that in the Audited Balance Sheet for the F.Y.-2012-13, the appellants availed deduction of Rs. 4,25,000/- under the head-'Rolls', on which they had availed Cenvat credit under Capital Goods but did not reverse the Cenvat Credit availed as required in terms of the provisions of sub-rule 5A(b) of Rule 3 of the Cenvat Credit Rules, 2004. It was also observed by audit that these rolls were purchased by the appellant during the F.Y. 2010-11, and the value of the Rolls were shown as 'DEDUCTED' in the Balance Sheet without issuing any Invoice for clearance of the Capital Goods. Accordingly, the transaction value was considered as 'NIL' and the amount of credit liable to be reversed was computed after reducing the value of the Capital Goods to Rs. 2,97,640/- (reduced by 30% for 12 quarters @ 2.5% per quarter). The Cenvat credit liable to reversed was computed @ 10.3% amounting to Rs.30,657/- which was recoverable alongwith interest in terms of Rule 14 of the Cenvat Credit Rules, 2004. Final Audit Report No.97/2014-15(Excise) dated 11.08.2014 was issued with the above observation at Revenue Para – 1. Superintendent was directed to recover the dues.

2.1 The Jurisdictional Range Superintendent further inquired with the appellant whether similar clearances were effected in the F.Y. 2013-14. The appellant vide letter dated 19.09.2014 submitted the Balance Sheet for the F.Y. 2013-14 wherein



similar entry was observed and the value shown was identical as Rs.4,25,000/- for the 'Rolls' purchased by them during the F.Y. 2010-11. As no invoice was issued for the clearance of the said capital goods, the transaction value was calculated as Rs. 2,55,000/-, (reduced by 40% for 16 quarters @ 2.5% per quarter). The Cenvat credit liable to reversed was computed @ 10.30% amounting to Rs. 26,262/-, which was liable to be recoverable alongwith interest in terms of Rule 14 of the Cenvat Credit Rules,2004.

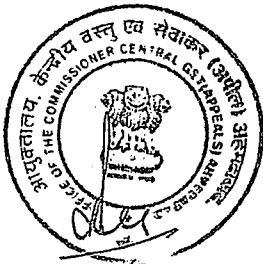
3. The appellant was issued a Show Cause Notice No. V.Ch.72/03-20/Adj/Bhairav/Kadi/14-15 dated 19.12.2014 (in short SCN) for demand and recovery of Cenvat Credit amounting to Rs. 56,919/- (Rs.30,657/- + Rs.26,262/-) for the F.Y. 2012-13 and F.Y. 2013-14 under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (4) of the Central Excise Act, 1944 (CEA,1944), as amended, by invoking the extended period of limitation alongwith interest and penalty under Section 11 AC of the CEA,1944.

4. The SCN was adjudicated vide OIO No. 05/AC/DEM/C.Ex./2015-16 dated 29.10.2015 by the Deputy Commissioner, erstwhile Central Excise, Kadi Division, Ahmedabad-III Commissionerate, wherein the demand of Cenvat Credit was confirmed alongwith interest and equivalent penalty, as proposed in the SCN.

5. Being aggrieved with the said Order, the appellant filed an appeal before the then Commissioner (Appeals-I), erstwhile Central Excise, Ahmedabad who decided the appeal vide Order-In Appeal No.AHM-EXCUS-003-APP-116-16-17 dated 23.09.2016 (OIA), wherein it was ordered that :

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 documentary evidence is produced by the department to substantiate the fact that the goods were indeed removed. In the absence of documentary evidence or 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. 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. The appellant is free to produce any documentary evidence to substantiate his claim that the capital goods in question are still lying in the factory and have not been removed. This appeal stands disposed of accordingly.*



6. The impugned order was issued by the adjudicating authority in the remand proceedings wherein the demand of Cenvat Credit amounting to Rs. 56,919/- was confirmed under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the CEA,1944 alongwith interest under Section 11AA of the CEA,1944 read with Rule-14 of the Cenvat Credit Rules, 2004. Penalty equivalent to demand confirmed was also imposed under Section 11AC of the CEA,1944 read with Rule 15 of the Cenvat Credit Rules,2004.

7. Being aggrieved, the appellants have filed the present appeal on following grounds :

- The rolls used in their manufacturing process are subjected to wear and tear due to their repeated use and hence they are required to be sharpened and molded from time to time. These processes affect the value of the rolls i.e the value of the rolls are considerable reduced. Also this procedure is duly recorded in their balance sheet and therefore there is no suppression of facts on their part.
- They have not sold, removed or cleared the rolls from their factory and therefore provisions of sub rule 5A(b) of Rule 3 of the Cenvat Credit Rules, 2004 would not be applicable on these Capital goods. Since these capital goods are partially consumed due to wear and tear, the question of reversal of Cenvat Credit availed do not arise.
- Although they had filed reply to the Query Memos dated 05.05.2014 and 19.05.2014 issued by Audit, vide their letters dated 09.09.2014 and 19.09.2014, but their explanations were not considered and the Final Audit Report (FAR) No. 97/2014-15 (Excise) dated 11.08.2014 was issued prior to filing of the reply.

7.1 The appeal was filed by the appellant alongwith application for condonation of delay in filing appeal by 30 days citing medical reasons of the Director of the firm.

8. Personal Hearing in the case was held on 09.01.2023 in virtual mode. Shri Ankit Karia, Sr.Accountant and authorized person of the appellant, appeared for the hearing. The appellant re-iterated the submissions made in application for condonation of delay and submitted relevant documents in support of the reason.



Considering the grounds of delay as genuine, the delay in filing appeal was condoned in terms of proviso to Section 35 (1) of the Central Excise Act, 1994.

9. The appellant has subsequently filed additional submission on 20.02.2023 wherein they have made submissions as under :

➤ The show cause notice issued to the appellant was based on assumptions without any corroboration and therefore vague in nature. Hence, proper reply could not be submitted by the appellant. In support they cited the following judgments :

- CCE Vs Shemco India Transport reported as 2011 (24) STR 409 (Tri.Del.)
- Amrit Food Vs CC reported as 2005 (190) ELT 433 (SC).

➤ The contentions of the appellant were not considered and discussed properly in the impugned order as well as the appellants request for physical verification was not considered.

➤ In spite of presenting the fact of non-removal of capital goods from the factory premises, the adjudicating authority assumed that they have been removed and confirmed the demand upon this assumption without any material evidence.

➤ The department has wrongly alleged that they have suppressed the information from the department and therefore extended period was invoked. There are no statutory provisions for informing the department regarding such activities. Since, periodical returns were filed regularly by them there's no question of willful mis-declaration or willful suppression.

➤ The issue involves interpretation of law, hence, charge of suppression cannot be invoked against the appellants.

➤ In support of their above contentions they relied on the following decisions :

- Decision of the Hon'ble Supreme Court in the case of Mohinder Singh Gill Vs Chief Election Commissioner, AIR 1978 SC 851;
- Decision of the Hon'ble Supreme Court in the case of Cyril Lasardo (Dead) Vs Juliana Maria Lasardo 2004 (7) SCC 431.
- Spack Automobiles [2008 (226) ELT 149]
- Bharat Electricals Ltd [2002 (50) RLT 208]



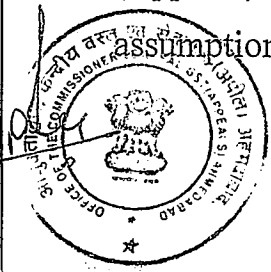
- Commissioner of Cen.Ex. & Cus., Surat Vs Suresh Synthetics – 2016 (332) ELT 385 (SC).
- Vishwa Traders Pvt.Ltd Vs Commissioner of Cen.Ex., Vadodara – 2012 (278) ELT 352 (Tri. Ahm)
- Opel Alloys (P) Ltd Vs Commissioner of Central Excise, Ghaziabad 2005(182) ELT 64 (Tri.Del.)
- Commissioner of Central Excise, Chennai – II Vs Rawf Re-rollers 2015 (317) ELT 499 (Tri.Chennai)
- Kuber Tobacco Products Ltd. Vs Commssioner of C.Ex., Delhi 2013 (290) ELT 545 (Tri.-Del)
- Pushpam Pharmaceuticals Vs CCE – 1995 (78) ELT 401 (SC)
- Unique Resin Industries Vs CCE – 1995 (71) ELT 861 (T)
- Commissioner Vs Binny Limited 2003 (156) ELT A327 (SC).
- Ispat Industries Ltd Vs CCE 2006 (199) ELT 509 (Tri.Mum)
- Chemicals & Fibres of India Ltd. Vs CCE 1988 (33) ELT 551 (Tri.)
- Decision of the Hon'ble Gujarat High Court in the case of Claris Life sciences Ltd. Vs Union of India [2014 (205) ELT 497 (Guj.)]

➤ They requested for a personal hearing.

9.1 Personal hearing was held on virtual mode on 13.03.2023. Shri Pratik Trivedi, Chartered Accountant, appeared on behalf of the appellant. He re-iterated the submissions made in the appeal memorandum and additional submissions made on 20.02.2023.

10. I have gone through the facts of the case, submissions made in the Appeal Memorandum, during personal hearing as well as in the additional written submission. I find that the impugned order has been issued in the remand proceedings ordered vide Order-in-Appeal No.AHM-EXCUS-003-APP-116-16-17 dated 23.09.2016. The issue before me to decide is whether the impugned order issued against the appellant in the facts and circumstances of the case is legal and proper or otherwise.

11. It is observed that during the first round of litigation the Commissioner (Appeals), Ahmedabad had observed that the demand was confirmed on assumption and was, therefore, set aside. The appellate authority had held in the



OIA supra that “...Rule 5¹ or 5A of the CENVAT Credit Rules, 2004, would be applicable only if the capital goods have been removed. The facts, in the present dispute, however, lack clarity ...” and therefore remanded the case for verification of the fact of ‘Removal of the Capital Goods’ from the factory of the appellant.

11.1 It is also observed that the adjudicating authority had verified this fact and recorded at Para-14 of the impugned order that, the appellant had produced Purchase Invoice for the capital goods and photographs evidencing the fact of availability of the capital goods in their factory. Hence, the claim of the appellant that the Capital Goods are not disposed stands justified. Here, I find it relevant to refer to the statute i.e ‘provisions of sub-rule 5A(b) of Rule – 3 of the Cenvat Credit Rules, 2004’, which reads as :

“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:- ...

(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.

I find that the main ingredient for invoking the reversal of the Cenvat credit availed in respect of the capital goods is “removal of the capital goods”. In the instant case it is not disputed that the Capital goods have not been removed from the factory of the appellant.

11.2 I also find that although the appellant had produced documents in support of non-disposal of the Capital Goods, which was acknowledged by the adjudicating authority, however she has travelled beyond the scope and directives of the Commissioner (Appeals) and went on to establish the identity of the goods with the purchase Invoice. Hence the findings of the adjudicating authority in confirming the demand is in clear violation of judicial discipline and therefore, deserves to be set aside. It is further observed that there is no evidence available on record to



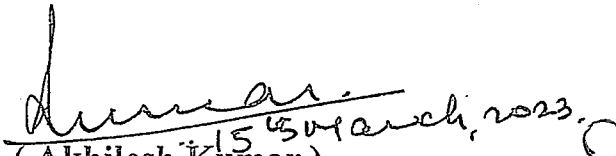
establish removal of the capital goods in question. Hence, the demand confirmed is not legally sustainable. My above findings are further strengthened by the following decision of the Hon'ble Tribunal in identical cases :

- *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.*


12. In view of the above findings and judicial pronouncements, I am of the considered view that the Cenvat credit amounting to Rs.56,919/- availed by the appellant is legal and proper and is not required to be reversed. Therefore, demand confirmed vide impugned order is set aside. Once the demand of cenvat credit fails to sustain, the question of interest and penalty do not arise.

13. In view of the facts discussed above, the appeal filed by the appellant is allowed.

14. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 15th March, 2023

Attested:


(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.



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