



सत्यमेव जयते

::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7th Floor, Central Excise
Building,
Near Polytechnic,
Ambavadi,
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(13) 28/Ahd-II/Appeals-II/ 2015-16
स्थगन आवेदन संख्या(Stay App. No.):

C. file
~~831 to 835~~
831 to 835

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 0024 -16-17
दिनांक (Date): 21.07.2016, जारी करने की तारीख (Date of issue): 26/07/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No.04/AC/D/UKG/2015 Dated: 29/04/2015
issued by:Assistant.Commissioner.,Central Excise (Div-III), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Hindustan Gum & Chemicals 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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया 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

(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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।

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

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-बी/35-इ के अंतर्गत:-

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

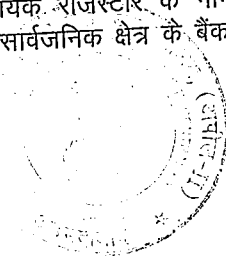
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 हॉस्पिटल 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 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। 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 जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 अनुसूचि-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 a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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।

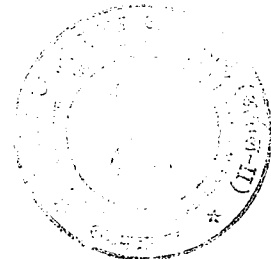
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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.

इस सन्दर्भ 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।

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."



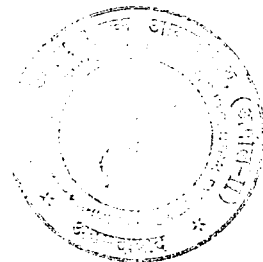
Order In Appeal

The subject appeal is filed by M/s. Hindustan Gums and Chemicals Limited, Block No. 780 and 780 A/P, Ahmedabad Viramgam Highway, Viramgam. Dist: Ahmedabad, (hereinafter referred to as 'the appellant') against Order in Original No 04/AC/D/UKG/2015 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of Guar Gum Powder and Tamarind Kernel Powder falling under CETH 13 of the Central Excise Tariff Act, 1985 [hereinafter referred as CETA-1985]. The Appellant is availing the credit of duty paid on inputs and the service tax paid on input services under Cenvat Credit Rules, 2004.

2. The facts in brief of the case is that, The audit of the appellant's factory was conducted by the department, it was pointed out that CENVAT Credit of Service Tax Rs. Rs.3,48,367/- paid to Suzlon Energy Ltd. for Repairs and Maintenance of Wind Mill Situated at Motisindholi, Gujarat, far away from their factory premises, Same does not fall under the purview of Input Services and not eligible for cenvat credit during the period April 2009 to March 2014. Thereafter, show cause notice dated 03.06.2014 issued for recovery of said cenvat credit availed on repairs & maintenance services, proposed penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Rule 25 of Central Excise Rules, 2002 along with Interest. Said SCN was decided vide the impugned order and confirmed the demand.

3. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following grounds and contended that:

the demand for the period prior to May 2013 was barred by limitation. the demand of Rs. 1,94,483/- is barred by limitation, which relate to the period upto April, 2013, leaving a balance of Rs. 1,53,884/- within the period of limitation. That the period of dispute is from April 2009 to March 2014 where as the notice was received on 05.06.2014, beyond a period of one year. There was no malafide



intention in taking the cenvat credit. credit taken Rs. 1,94,483/- during the period upto April 2013 is barred by limitation That the appellant is filing Monthly return regularly before Range Officials. Hence it cannot be said that it is not ascertainable as Cenvat credit availed without support of invoice/bills.

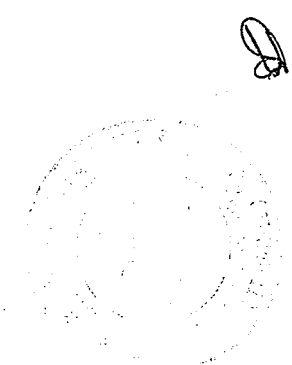
That the CESTAT Ahmedabad ruled in the case of M/s Shah Alloys Ltd. vs. CCE, Ahmedabad-III that " Once ER-1 Return is filed,,,,, it is held that show cause notice which has been issued by the lower authorities demanding reversal of cenvat credit by invoking extended period of limitation is set aside". In view of the above, neither extended period can be invoked nor the penalty under Rule 15 of CCR'2004 read with Rule 25 of Central Excise Rules,2002 should be levied.

They relied on orders of the CESTAT, 1. Rajratan Global Wires Ltd. vs. CCE, Indore [2012 (26) STR 117 (Tri.-Del) 2. Endurance Tech. Pvt. Ltd. vs. CCE, Aurangabad 2011 (273) ELT 248 (Tri.-Mum.), 3. Maharashtra Seamless Ltd. vs. CCE, Raigad [2012 (276) ELT 209 (Tri.-Mum)], which had settled that services pertaining to repairs and maintenance of wind mill are eligible for cenvat credit as input service.

That Electricity generated at Motisindoli which is away from the manufacturing unit of the appellant at Viramgam is used for manufacture of final product at appellant factory situated in Viramgam because such electricity generated at Motisindoli is adjusted to the Electricity used at appellant Factory at Viramgam. they rely In the case of Deepak Fertilizers and Petrochemicals Corporation Ltd. vs. C.C.Ex. Belapur [2013 (32) STR 532 (Born.)] the Division Bench of Bombay High Court.

the definition of capital goods was amended and w.e.f. 01/04/2011 (Notification No. 3/2011- C.E. (N.T.) dated 01/03/2011) and cenvat credit is allowed on capital goods used outside the factory of manufacturer of the final product for generation of electricity for captive use within the factory.

That Bombay High Court in the case of Commissioner of Central Excise and Customs, Aurangabad vs. Endurance Technology Pvt. Ltd. [2015 (6) TMI 82] held that ;



" On perusal of these Rules, it becomes clear that Management, maintenance and repair of windmills installed by the respondent is input service as defined by Clause "I" of Rule 2. Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by the manufacturer of final product would be susceptible to Cenvat Credit. Rule does not say that input services received by a manufacturer must be received in the factory premises."

That the availment of credit by the appellants was a bonafide and conscious act without any malafide intention in view of the pronouncements by various courts. Therefore, provisions of section Rule 11AC cannot be invoked and the penalty imposed is liable to be set aside.

4. Personal hearing was accorded on 04.05.2016, Shri pradeep katariya CA appeared on behalf of the appellant and reiterated the submissions made vide their appeal memorandum. He cited the CESTAT Order No.2015[40]str243[TRI.lb]ahmd.M/S Parry Engg. & Electronics P. Ltd. v. CCE&ST Ahmedabad, and submitted that appeal be allowed. I have carefully gone through the case records, facts of the case, submission made by the appellant at the time of personal hearing and the case laws cited by the appellant. I find that the impugned order have been issued with respect the Company took the Cenvat Credit of service tax paid on repairs & maintenance of Wind Mill as per provision of Rule 2 of Cenvat Credit Rules.2004. Since the services were used in or in relation to manufacture of final products and thus it is covered under Rule. Further, I rely on the following decisions in which, it was held that services of repairs & maintenance of Wind Mill are eligible for cenvat credit.

1. Rajratan Global Wires Ltd. vs. CCE, Indore [2012 (26) STR 117] Tribunal- Delhi. and 2. Endurance Technologies Pvt: Ltd. vs. CCE, Aurangabad [2011 (273) EELT [248] Tribunal-Mumbai.
3. Maharashtra Seamless Ltd. vs. CCE, Raigad[2012 (276) ELT [2009 (Tri.-Mum)].

5. I find that, wind mill can be installed only at place where there is heavy wind available and hence Wind Mill is located at remote place far from the factory. It is pertinent to note that looking into the above issue, the Cenvat Credit Rules were amended vide Notification No. 03/2011-CE (NT) dt. 01.03.2011, w.e.f. 01/04/2011 Capital Goods includes the goods used



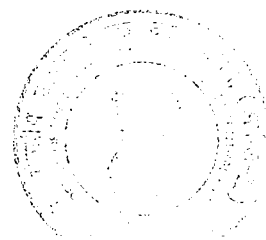
outside the factory for manufacturer of the final product for generation of electricity for captive use within the factory. Since the electricity generation plant outside the factory is hence service used for running and maintaining of it is also eligible as Input Services. As far as nexus of generation of electricity with manufacturing is concerned, it is pertinent to note that electricity generated at Wind Mill is wheeled through GETCO line and Electricity Board use to give credit of unit generated after wheeling in the electricity bill charged from the assessee. In electricity bill, unit generated after wheeling is shown separately. Since the electricity generated at Wind Mill is used for manufacturing the final products and hence it is very well covered in the definition of input services.

6. I find that, the appellant was filing Monthly return regularly before Range Officials. Hence it cannot be said that it is not ascertainable as Cenvat credit availed without support of invoice/bills. I rely on the case law in the case of M/s.ShahAlloysLtd.vs.CCE,Ahmedabad-III in which it was held by the Hon'ble Tribunal that " *Once ER-1 Return is filed,..... it is held that show cause notice which has been issued by the lower authorities demanding reversal of cenvat credit by invoking extended period of limitation is set aside*".

Similarly Hon'able CESTAT Ahmedabad in the case of Asian Tubes Ltd. vs. CCE, Ahmedabad [2011 (263) ELT 707] held that " 'having accepted that the appellant had filed Monthly returns.... hence extended period of limitation cannot be invoked.' In view of the above ruling, I hold that, neither extended period can be invoked nor the penalty under Rule 15 of CCR'2004 can be imposed.

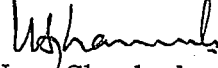
7. I find that, since the demand is not maintainable and hence interest is not applicable. Since the credit of input service was based on decisions given by various Tribunals in which it was held that service tax paid on the Ohning & maintenance of wind mill is eligible for availment of cenvat credit and on the basis of these decisions, they availed the cenvat credit and thus they have not violated any of the Provisions of Central Excise Act, 1944 or Rule made there under. Therefore I hold that, no penalty imposable under Rule 15 of Cenvat Credit Rules'2004.I rely on the decision passed by Hon'ble CESTAT Ahmedabad in the CCE Daman vs. Paras Motor Mfg. Co.[2013 (31) STR 811.

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8. In view of the foregoing discussion and findings, I set aside the impugned order, and allow the appeal filed by the appellant.

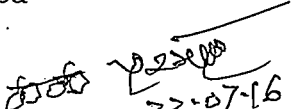
The appeal stands disposed of as above.



[Uma Shanker]

Commissioner (Appeals-II)
Central Excise, Ahmedabad

Attested


22.07.16
[K.K. Parmar]

Superintendent (Appeals-II)
Central excise, Ahmedabad.

By Regd. Post Ad.

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Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Div-HI, AhmedabadII
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.

