



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015. Ambavadi, Ahmedabad-380015



☎ : 079-26305065

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रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.): V2(39)134/Ahd-II/Appeals-II/2016-17 / 500-504

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-274-17-18

दिनांक (Date): 17.01.2018 जारी करने की तारीख (Date of issue): 24/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals)

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

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No. 28/AC/D/BJM/2016 Dated: 30.12.2016 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 Navratan Specialty Chemicals LLP

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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अंतत 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 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

(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।

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- (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 हों।

- (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 :-

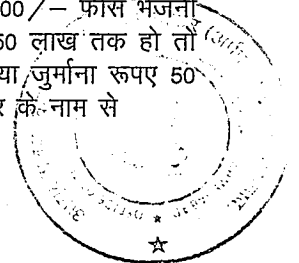
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380013.

- (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। 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 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 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 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), 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।

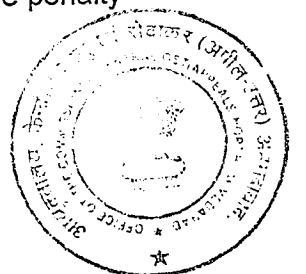
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

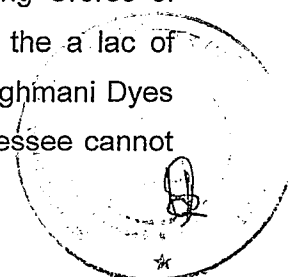
इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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."



M/s Navratan Speciality Chemicals LLP, Sanand-Viramgam road, Village: Chharodi, Taluka: Sanand, District: Ahmedabad (hereinafter referred to as 'the appellant') is holding ECC No. AAIFN8792JEMJ01 and is engaged in the manufacture of excisable product 'PVC Flex sheeting falling under Chapter Heading No. 39219026 of the first schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as 'CET, 1985'). During the course of audit conducted by the officers of the department it was noticed that the appellant had wrongly availed input service credit of Service Tax amounting to **Rs.69,519/-** during the period of **August-2012 to August-2014** on Travelling service, Maintenance and Repair service, Vehicle Expenses, Insurance on vehicle, Foreign exchange broker, Air Travel agent, Hotel expense etc. A Show Cause Notice F.No.VI/1(b)-728/IA/AP-VII/Circle-II/14-15-ISTC/2015 dated 14/12/2015 (hereinafter 'the SCN) was issued to the appellant demanding the impugned credit under Rule 14 of Cenvat Credit Rules, 2004 (CCR, 2004) read with section 11A(5) of the Central Excise Act, 1944 (CEA, 1944) along with interest under Rule 14 *ibid* read with Section 11AB/AA of CEA, 1944, seeking to vacate the protest lodged by the appellant while paying Rs.1,94,322/-, and proposing to impose penalty under Rule 15(2) *ibid* read with Section 11AC(1)(b) of CEA, 1944. Adjudicating the SCN, O.I.O. No.28/AC/D/BJM/2016 dated 30/12/2016 (hereinafter referred to as 'the impugned order') was issued by the Assistant commissioner, Central Excise, Division-III, Ahmedabad-II (hereinafter referred to as the adjudicating authority) disallowing and ordering recovery of CENVAT credit of **Rs.65,579/-** invoking extended period and appropriation of the amount paid by the appellant by vacating the protest, confirming the demand for interest and imposing a penalty of Rs.65,579/- on the appellant as proposed in the SCN.

2. The grounds adduced by the appellant in the present appeal are that it is clear that the exclusion under Clause (c) of Rule 2(A) of CCR, 2004 w.e.f. 01/04/2011 on specified services is for services meant for personal consumption of the employees; if the expenditure is incurred by the company for its business purpose even though spent on employee, then credit will be admissible as the same cannot be considered primarily as not for personal consumption; the adjudicating authority had not given his finding on the catena of decisions relied upon by the appellant; the adjudicating authority had relied upon a very irrelevant decision in the matter of Hemani Organics and Chemicals Pvt. Ltd. – 2013-TIOL-510-CESTAT-AHD; the adjudicating authority had erred in justifying the invocation of extended period despite of proper and statutorily compliant disclosure by the appellant as there was no fraud, suppression of misstatement of misrepresentation with an intent to evade payment of duty as the facts were disclosed in the statutory books as mandated by law and the returns filed by the appellant and submitted as required by the department; when the appellant was paying Crores of rupees in excise, there was no reason to evade payment of duty less the a lac of rupees; Hon'ble high court of Gujarat in the case of Commissioner vs Meghmani Dyes and Intermediates Ltd – 2013 (288) ELT 514 (Guj.) had held that an assessee cannot

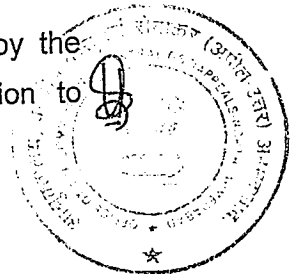


be accused of suppression of facts if the details and information were provided by him in accordance with the format of the return unless he provides any wrong information in such return; the reliance placed by the adjudicating authority on CC vs Candid Enterprises – 2001 (130) ELT 4040 (SC) is not applicable as there was fraud involved in that case, which is not the case in the present matter; despite the eligibility for CENVAT credit on the impugned services, the appellant had reversed the full amount under protest to prove its *bona fide* and to contest the matter on merit; the demand of interest is also without authority as there was no short-levy or short-payment or non-levy or non-payment; the relied upon decision in the case of Lark Chemicals Pvt. Ltd. – 2014 (301) ELT 138 is not applicable as the same is in different context; the imposition of penalty invoking Rule 15 of CCR, 2004 needs to be vacated; Rule 15(2) does not cover the penalties under Section 11AC(1)(b) and Section 11AC(1)(b) does not cover matters involving invocation of extended period.

3. Personal hearing in the case was held on 01/11/2017. Shri Manohar Maheshwari, Sr. G.M. (Commercial) attended and reiterated the grounds of appeal. He also submitted copies of citations.

4. I have gone through the contents of the impugned order as well as the grounds adduced by the appellant in the present appeal. I take up the impugned CENVAT credit, individually in the context of the amendment post 01/04/2011, as follows:

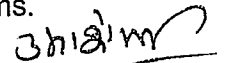
- 1) Travelling: The travelling expenses for Engineers and workers from China to the factory of the appellant for installation of Plant and machinery imported from China and travelling by the employees of the appellant cannot be held to be service used in or in relation to manufacture, whether directly or indirectly or for clearance of final products upto the place of removal. Hence the impugned credit is not admissible.
- 2) Maintenance & repair: As is forthcoming from the impugned order, the appellant had claimed that the service for repairs and maintenance of plant and machinery was meant for upkeep and maintenance of Rollers and other small equipment. This service is integral to manufacturing and hence it is allowed.
- 3) Foreign Exchange broker: This service cannot be treated as having direct or indirect use in manufacture or in relation to manufacture and clearance of final products upto the place of removal. Therefore, the credit on such service is not admissible.
- 4) Vehicle expenses and Insurance on vehicle: There is no evidence produced by the appellant to show that the vehicles were used in the factory. Therefore, the credit of Service Tax on expenses on vehicles is not admissible. As regards insurance on vehicles, the appellant has not claimed or produced evidence that the vehicles were figuring as assets in the balance sheet of the company. Therefore, the said credit is not admissible.
- 5) Air travel Agent and Hotel expenses: There is no evidence adduced by the appellant to show that the said services were used in or in relation to



manufacture, whether directly or indirectly or for clearance of final products upto the place of removal. Therefore, the impugned credit is not admissible.

5. As regards the invoking of extended period, it is clear that the ineligible credit was detected only because of the audit of the records by the officers of the department. After amendment of CCR, 2004, there was no reason for the appellant to continue availing CENVAT credit in the same context prior to amendment. The appellant had never expressed its desire to the department to avail the impugned credit, which it had reason to believe was not admissible. Had it been so then there would be no reason to invoke extended period of demand. Therefore, the ingredient of suppression of facts with intent to evade duty is present in the instant case, justifying the invoking of extended period and imposition of penalty under Rule 15(2) of CCR, 2004. In the light of the above discussion, the demand confirmed in the impugned order along with interest and penalty is upheld as sustainable. The appeal is rejected.


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


(उमा शंकर)

आयुक्त (अपील्स-१)

Date: / / 2018

Attested


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

By R.P.A.D.

To
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Taluka: Sanand, District: Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad-III.
3. The Additional Commissioner, C.G.S.T.(System), Ahmedabad-III.
4. The Deputy Commissioner, C.G.S.T.Division: III, Ahmedabad.
5. Guard File.
6. P.A.

