



केंद्रीय कर आयुक्त (अपील)



O/O THE COMMISSIONER (APPEALS), CENTRAL TAX

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
Near Polytechnic

सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(73)123 /Ahd-II/Appeals-II/ 2016-17 / 147 to 151
स्थगन आवेदन संख्या (Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 33-17-18
दिनांक (Date): 26-07-2017, जारी करने की तारीख (Date of issue): 24/08/17
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं- _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No. _01/ADC/2010/SA_ Dated: 13/01/2010 issued by:
Additional Commissioner Central Excise (Div-IV), Ahmedabad-II

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

M/s Nova Petrochemicals 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।

P. A



- (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 :-

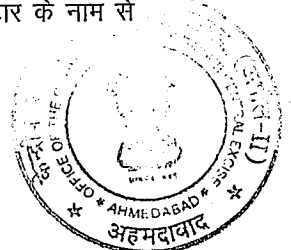
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना 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।

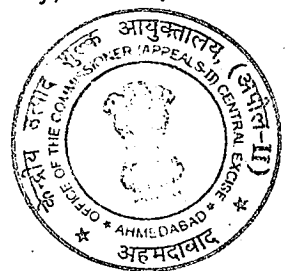
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944; Section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

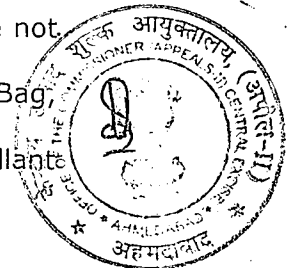


ORDER-IN-APPEAL

M/s Nova Petrochemicals Ltd, Survey No 396/403, Village-Moraiya, Sarkej-Bavla Highway, Dist-Ahmedabad, Gujarat (hereinafter referred to as "the Appellant"), has filed the present appeal against the Order-in-Original No 01/ADC/2010/SA dated 13.10.2010 (hereinafter referred to as 'impugned orders') passed by the Additional Commissioner of Central Excise, Ahmedabad-II, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, the appellant are registered with the Central Excise Department having registration no. AAACN 5419K XM001 and engaged in manufacturing of Polyester Chips, Partially Oriented Yarn (POY), Fully Drawn Yarn (FDY) Drawn Texturised Yarn (DTY) & Texturised Yarn falling under chapter 54 of Central Excise Tariff Act, 1985. It is observed that the appellant has not paid Central Excise Duty on scrap sold by them during the period 2006-07 & 2007-08. The scrap was namely Cartoon, Paper Tubes, Jumbo Plastic Bag, M.S Barrels, Aluminum Filters, and Old Machinery Parts & Iron Scrap. The appellant has availed Cenvat Credit on all such input which was packed in above said goods. Cenvat Credit is also availed on Old Machinery Parts & Iron Scrap. The appellant has shown old machinery as scrap in the clearance invoice. Such clearance should be on payment of duty at transaction value. Accordingly department issued the SCN to the appellant which was adjudicated by the impugned orders. Duty of Rs 19,59,742/- was confirmed. Equivalent Penalty was also imposed. Interest was also demanded.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that the waste and scrap is not excisable goods except those which emerge during the course of manufacturing. The scrap namely Cartoon, Paper Tubes, Jumbo Plastic Bag, M.S Barrels are the packing material in which the material is packed. This activity does not amount to manufacture. In respect of Old Machinery Parts & Iron Scrap, they are the part of machinery which emerge after wear & tear of the plant and the same are not useable. Further waste and scrap of Cartoon, Paper Tubes, Jumbo Plastic Bag, M.S Barrels are not classified in Central Excise Tariff Act. The appellant



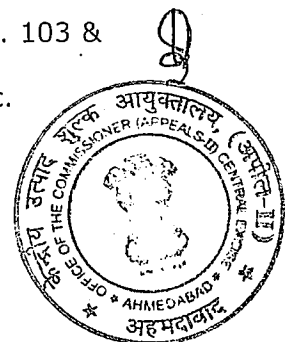
submitted that they have not suppressed any information regarding sell of scrap. Therefore extended period cannot be invoked. They have relied upon Board Circular and various judgments also. Further the appellant has paid Rs 1,35,819/- for the scrap sold previously. Therefore the same should be deducted while computing the duty demand of Rs 19,59,742/-.

4. Personal hearing in the case was granted on 16.03.2017 which was attended by Appellant representative. Written submission was also submitted at the time of personal hearing. I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

5. In the instant case, I observe that the appellant has filed the present appeal on the ground that appellant has not paid Central Excise Duty on scrap sold by them during the period 2006-07 & 2007-08. The descriptions of scrap are Cartoon, Paper Tubes, Jumbo Plastic Bag, M.S Barrels, Aluminium Filters, and Old Machinery Parts & Iron Scrap. The adjudicating authority was of the view that all the goods which are cleared from the factory should be duty paid, after the insertion of Rule 3(5A) in the Cenvat Credit Rules making all the waste and scrap are dutiable. There is no provision in the Act or Rule which exempts clearance of packaging waste from payment of duty.

6. Now issue to be decided is whether all such scrap namely Cartoon, Paper Tubes, Jumbo Plastic Bag, M.S Barrels, Aluminum Filters, and Old Machinery Parts & Iron Scrap on which Cenvat credit taken by the appellant are dutiable or otherwise. The OIO in para 21 states that invoice no. 103 dated 05.09.2006 and invoice no. 80 dated 19.07.2006 pertains to scrap of Capital Goods, on which duty has not been paid and on the basis of these two invoices the adjudicating officer concludes that appellant have cleared such scrap only (Capital Goods Scrap) and requires to pay duty on all such clearances of scrap. He has not discussed anything about other invoices, what they pertains to.

However Appellant have submitted copy of "General Ledger(Simple)" from 01.04.2006 to 31.03.2007, which shows details of every clearances of scrap, including invoice no. 103 & 80. As per that "ledger", except for invoice no. 103 & 80, all other invoices are related to Cartoons, Paper Tubs, Jumbo Bags etc.



In this case appellant have also submitted details of duty payment pertaining to invoice no. 103 & 80. In view of this it appears that remark of Adjudicating Officer in Para 21 of his order is casual and contrary to the fact.

68-07
PROFORMA FOR MONTHLY RETURN UNDER RULE 57AE OF THE CENTRAL EXCISE RULES, 1944.
 Jan-07 2006-2007

SLNO	Type of document	No. & date of Docum.	Name of the supplier	Type of supplier	ECC No. of the supplier	Date of whet. inputs received	Value	DETAILS OF CREDIT TAKEN				For the main item in the documents			Debits	
								CEMAT	AED Imp.	Ed. Coss.	Others HCCD	Description	Sub-Heading	Quantity		
TOTAL																
3202	Invoice	72149/12/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	258214628	21849537		441862	243796				30026862	
3203	Invoice	72136/12/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	1167270	140072		2601					22758507	
3204	Debit	Duty paid against invoice No. 10, 44, 54, 60, 103 menin of April-Sept-03 and Inv. No. 227, 230, 233, 234, 240, 242, 249, 257, 266, 269, 286					15/1/07	678452	81415		1626					21366959
3205	Invoice	72137/12/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	658314	78998							20003	
3206	Invoice	72152/13/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	657512	80101		1550						
3207	Invoice	72152/13/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	677586	81310		1602						
3208	Invoice	72180/13/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	685470	82256		1645						
3209	Invoice	72184/13/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	611448	73374		1467						
3210	Invoice	72182/13/1/07	Indian Petro. Corporation Ltd	Manu.	AAACI4415QXM004	15/1/07	655248	78630		1573						
3211	Invoice	52954/11/1/07	Chirpal Industries Ltd.	Manu.	AAACC8513BXM001	15/1/07	41374	6620		132						
3212	Invoice	52952/10/1/07	Chirpal Industries Ltd.	Manu.	AAACC8513BXM001	15/1/07	142643	22623		456						
3213	Invoice	1371/10/1/07	Nimal Tub. & Cont. Pvt. Ltd.	Manu.	AAACN5166HXM001	15/1/07	88704	14193		284						
3214	Invoice	1372/10/1/07	Nimal Tub. & Cont. Pvt. Ltd.	Manu.	AAACN5166HXM001	15/1/07	24816	3971		79						
3215	Invoice	391/11/1/07	Premier Corrugating Ind.	Manu.	AAFFR0025MXM001	15/1/07	112850	18216		354						
3216	Invoice	205/12/1/07	Saurashtra Packaging	Manu.	AAHF82760GXM001	15/1/07	72520	11603		232						
3217	Inv. ce	228/12/1/07	Akar Packers Pvt. Ltd	Manu.	AABCA6340BXM001	15/1/07	71610	11458		229						
3218	Invoice	589/14/1/07	Care Corupack Ltd.	Manu.	AAACC7720LXM001	15/1/07	72240	11558		231						
3219	Inv. ce	664/10/1/07	Care Corupack Ltd.	Manu.	AAACC7720LXM001	15/1/07	75600	12095		242						
3220	Inv. ce	685/12/1/07	Care Corupack Ltd.	Manu.	AAACC7720LXM001	15/1/07	55000	8950		179						
3221	Invoice	49/14/1/07	Aero Pack Products	Manu.	AAKPP3751DXM001	15/1/07	5120	819		16						
3222	Invoice	146/14/1/07	Albatross Fine Chem. Ltd.	Manu.	AAACA7589HXM001	15/1/07	5525	900		18						
3223	Invoice	104716/13/1/07	Bharat Petro. Corpo. Ltd.	FSD	AAACB2902MXD120	15/1/07	231344	37015		740						
3224	Invoice	154597/12/1/07	Bharat Petro. Corpo. Ltd.	FSD	AAACB2902MXD120	15/1/07	245803	39326		767						
3225	Invoice	104298/9/1/07	Bharat Petro. Corpo. Ltd.	FSD	AAACB2902MXD120	15/1/07	245803	39326		767						
3225	Invoice	104381/10/1/07	Bharat Petro. Corpo. Ltd.	FSD	AAACB2902MXD120	15/1/07	245803	39326		767						

For all other clearance of Cartoon, Paper Tubes, Jumbo Plastic Bag, M.S Barrels appellant have relied upon the Judgment of Hon'ble Supreme Court of India in the matter of Commissioner of Central Excise Vs West Coast Industrial Gases Ltd reported in 2003(155)ELT 11(S.C). I hereby reproduce the relevant para:-



2. On these aspects, the CEGAT relied upon an earlier judgment rendered in *IOL v. Collector of Central Excise* [1993 (68) E.L.T. 624] in which the CEGAT, West Regional Bench at Mumbai negated the contention of the Revenue that under the Modvat Rules, the assessee is required to pay duty on such drums or barrels, on pro-rata basis of Modvat credit availed of by the assessee, by holding that these drums/barrels could not be treated to be a waste arising out of processing of the inputs for which credit has been taken. Rule 57F, in terms, provides for taxing of the waste arising out of manufacturing process. The drums/barrels cannot be terms as waste arising out of manufacturing process.

3. In our view, the said reasoning cannot be said to be, in any way, erroneous. There is no specific rule levying duty on such drums/barrels/ containers.

4. On this aspect, learned counsel for the assessee pointed out that the Government of India, Ministry of Finance (Department of Revenue), has specifically issued a circular dated 5th September, 1996, inter alia, stating as under :-

The matter has been examined; container cannot be treated as inputs. Credit taken under Modvat is with reference to the duty on inputs and not on the containers, notwithstanding the fact that the value of the inputs may include the value of containers and the duty on the inputs may be on ad valorem basis. It is, therefore, clarified that no duty would be payable when such empty containers are cleared from the factory."

5. Thereafter, on the basis of the decision rendered by the CEGAT, a circular was issued on 23rd March, 1999, wherein it has also been observed as under :-

"The matter has been examined by the Board. In view of the above CEGAT judgment, it has been decided not to demand duty on waste packages/containers used for packaging modvatable inputs when cleared from the factory of the manufacturer availing of Modvat credit and to follow the CEGAT decisions."

6. It is true that after the issuance of the aforesaid circular as appeal was filed before this Court, the third circular was issued on



19th July, 1999 to the effect that as the Department has filed an appeal against the order of the CEGAT and as it is admitted by this Court, it has been decided by the Board to withdraw the Circular dated 23rd July, 1999. It appears that while issuing the circular dated 19th July, 1999, the concerned authority has not applied its mind to the ratio laid down by the CEGAT in OIL's case (supra) wherein it has been pointed out that there is no specific provision under the Rules considering such barrels/drums as a waste arising out of manufacturing process. In this view of the matter, this appeal is dismissed. There shall be no order as to costs.

On the basis of Hon'ble Apex Court order, department issued the Circular No.721/37/2003-CX dated 06.06.2003 in which it was decided that no duty shall be payable and no reversal of credit is also warranted on waste package /containers used for packing inputs, on which credit has been taken, when cleared from the factory of the manufacturer availing Modvat/ CENVAT credit.

Respectfully following the order of Hon'ble Apex Court and as per the Board Circular, I hereby allow the appeal filed by the appellant. The OIO is rejected. The appeal stands disposed of in above terms.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
7. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

SS Chowhan
(S S Chowhan)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s Nova Petrochemicals Ltd,
Survey No 396/403,
Village-Moraiya, Sarkej-Bavla Highway,
Dist-Ahmedabad, Gujarat.

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II, Ahmedabad.
3. The Dy. /Assistant Commissioner, Central Excise Division-IV, Ahmedabad-II, Ahmedabad.
4. The Assistant Commissioner(Systems), Central Excise, Ahmedabad-II, Ahmedabad
5. Guard File.
6. P.A. File.

