

केंद्रीय कर आयुक्त (अपील)

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

केन्द्रीय उत्पाद शुल्क भवन,
 सातवीं मंजिल, पॉलिटेक्निक के पास,
 आम्बावाडी, अहमदाबाद-380015

टेलीफोन : 079-26305065 टेलीफैक्स : 079-26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(39)73 /North/Appeals/ 2017-18 / 1879 to 1883
 ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-345-17-18**
 दिनांक (Date): **27-Feb-2018** जारी करने की तारीख (Date of issue): **23/03/18**
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No **13/AC/D/BJM/2017** Dated: **14/11/2017**
 issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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 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।



Cont...2



- (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।

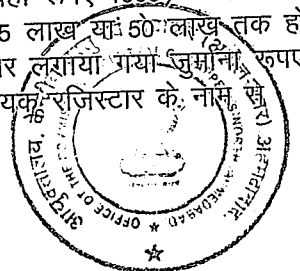
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 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.

- (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."



ORDER IN APPEAL

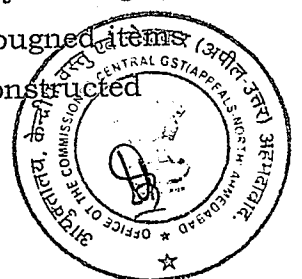
The subject appeal is filed by M/s. Navratan Specialities LLP. Block No. 400, Village -Chharodi, Sanand. Dist-Ahmedabad (hereinafter referred to as 'the appellant') against Order in Original No. 13/AC/D/BJM/2017 (hereinafter referred to as 'the impugned order') passed by the Asstt.Commissioner, Central Excise,Division-III,Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). and engaged in the manufacture of PVC Rigid free Fame Board,/Rolls falling under Chapter 39 of Central Excise Tariff Act,1985 [hereinafter referred as CETA-1985], The appellant avails credit of duty paid on inputs/capital goods and input services as provided in the Cenvat Credit Rules, 2004.(the CCR 2004).

2. Briefly stated facts of the case are that during the course of the Audti for the period from January-March 2015 to 2015-2016. It was observed that the said appellant has availed cenvat credit Rs.92,018/-on metal sheets falling under Chapter head 7210 of the Central Excise Tariff Act, 1985 used in construction of Shed of Coating Machine in factory premises under the head of Capital Goods. It appeared that the CENVAT credit was not admissible on Metal Sheets as they were neither capital goods nor inputs as defined under the Cenvat Credit Rules, 2004. they contravened the provisions of Rule 3(1) read with Rule 2(a)/2(k) of the CER2004 and rule 12 of the CER 2002, Hence, wrongly availed cenvat credit to be recovered along with interest and penalty. The appellant on being pointed out, has reversed cenvat credit on dated 07.11.2016 under protest.It further appeared that the said appellant has not disclosed the material facts to the department in any manner. The appellant had also not declared the same in their Monthly ER-1 returns. Therefore, the appellant deliberately suppressed the material facts from the department with an intention to wrongly avail Cenvat credit. Hence, it appeared that case was fit for invoking extended period.Oflimitation. Further, it appeared that the appellant rendered themselves liable for penalty in terms of the provisions of Rule 15(1) /15 (2) of the Cenvat Credit Rules, 2004.. Therefore, show cause notice was issued, and vide above order confirmed the demand.

3. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following main grounds;

a. Based on the audit objection , the appellant have been issued a Show Cause Notice by the Assistant Commissioner (Circle-II) Central Excise & Service Tax Audit-II, Ahmedabad , for recovery of Cenvat Credit Rs.92018/- wrongly availed f under Rule 14 of Cenvat Credit Rules, 2004, 1944 . The duty paid under protest appropriated against credit .

b. The appellant had filed their reply dated 18.07.2017 which was Acknowledged on 09.008.2017 by The jurisdictional Assistant Commissioner, The appellant deny the allegations made in the show cause notice and explaining therein that they are eligible and rightly taken the credit on impugned items. They stated that the impugned items are used to create layer/separator between the coating machine and the constructed



building ceiling. The appellant further submitted that there was no suppression of facts and intent to evade payment of duty, filing of all the statutory returns in time and therefore extended period can not be invoked and no penalty can be levied. no disallowance of the credit taken and demand of interest can not be made.

c. The letter of personal hearing dated 02.08.2017 giving opportunity of PH for 22.08.2017/24.08./28.08.2017 in one time and letter dated 25.09.2017 giving PH on 06.10.2016 ,was received by the appellant on 04.10.2017 after noon. an adjournment was sought by mail sent to adjudicating authority on 05.10.2017. The copy of the said letters, their receipt dated envelope and copy of mail sent, collectively is enclosed herewith.

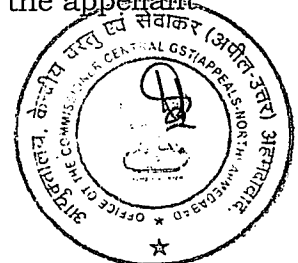
d. The adjudicating authority, without considering our adjournment request and without acknowledging and considering reply to show cause notice, decided the matter ex- parte, vide the impugned Order dated 14.11.2017 ,whereby disallowing the credit and appropriated the under protest payment .

e. The act of the adjudicating authority in deciding the matter ex-parte is based on the misstatement of the facts, hence against the principle of equitable and natural justice. the appellant submits that the letter of personal hearing giving three dates of 22.08.27/24.08.2017 & 28.08.2017 in a single letter dated 02.08.2017 which was received by the appellant on 04.10.2017 and another letter dated 25.09.2017 giving the PH of 06.10.2017 which was also received by the appellant only on 04.10.2017 after noon . The appellant on next morning sent an email seeking the adjournment of the personal hearing as the concerned person was not available which was confirmed by the sub-ordinate officers as well. However the adjudicating authority have not given an adjournment as sought by the appellant

f. The appellant further submit that the adjudicating authority has mis-stated the facts with respect to personal hearing and defense reply . The show cause notice was duly replied by them vide their reply dated 18.07.2017 which was duly acknowledged by his office on 09.08.2017 ,still he ignored and not considered the same while deciding the matter ex-parte. Therefore, the finding of the adjudicating authority of not availing four opportunities of personal hearing and non submission of defense reply is misrepresentation of the facts,

g. That since, the adjudicating authority had not acted upon with equity and failed to consider the show cause notice reply, it failed to understand the view point of the appellant.since the impugned order is decided ex-parte ,it had done injustice to the appellant and hence deserved to be set aside in the interest of natural justice.

4. Personal hearing was accorded on dated 06.2.2018, Shri Manohar Maheswari Sr. GM (Comm.) appeared on behalf of the appellant and reiterated the submissions made vide their appeal memorandum. NO P.H. GIVEN IN ONE LETTER 3 DATES GIVEN. 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.



5.- I find that during the course of the Audit for the relevant period, it was observed that the appellant has availed cenvat credit Rs.92,018/-on metal sheets falling under Chapter 7210 of the Central Excise Tariff Act, 1985 used in construction of Shed of Coating Machine in factory premises. that CENVAT credit was not admissible as same were neither capital goods nor inputs as defined under the Cenvat Credit Rules, 2004. Hence, wrongly availed cenvat credit to be recovered along with interest and penalty. The appellant on being pointed out has reversed cenvat credit on dated 07.11.2016 under protest. That the appellant has not disclosed the material facts to the department in any manner. Therefore, the appellant deliberately suppressed the material facts from the department with an intention to wrongly avail Cenvat credit and invoked extended period of limitation. They were liable for penalty. I find that, Based on the audit objection, they have been issued Show Cause Notice, for recovery of Cenvat Credit Rs.92018/- wrongly availed. Vide above order confirmed the demand.

6. I find that, the appellant has filed their defence reply dated 18.07.2017 which was Acknowledged on 09. 8.2017 by The jurisdictional Assistant Commissioner.

The appellant has denied the allegations made in the show cause notice and explained therein that they are eligible and rightly taken the credit on impugned items. The applicant have stated that the impugned items are used to create layer/separator between the coating machine and the constructed building ceiling. The appellant further submitted that there is no dispute with regard to receipt and usage of the goods in the factory of production and with capital goods. The appellant further submitted that there was no suppression of facts and intent to evade payment of duty. filing of all the statutory returns in time and therefore extended period can not be invoked and no penalty can be levied. Demand of interest can not be made.

7. I find that, the letter of personal hearing dated 02.08.2017 giving opportunity of PH for 22.08.2017/24.08./28.08.2017 in one time and letter dated 25.09.2017 giving PH on 06.10.2016, was received by the appellant on 04.10.2017 after noon. Since the concerned person was not available on 06.10.2017, an adjournment was sought by mail sent to adjudicating authority on 05.10.2017. I have perused The copy of the said letters, their receipt dated envelope and copy of mail sent, submitted by the appellant. I find that, the jurisdictional Assistant Commissioner, without considering appellant's adjournment request and without acknowledging and considering our reply to show cause notice, decided the matter ex- parte, vide the impugned Order dated 14.11.2017, whereby he has disallowing the credit of Rs. 92018/- and appropriated the under protest payment against the credit.

8. I find that, the act of the adjudicating authority in deciding the matter ex-parte is based on the misstatement of the facts, hence against the principle of equitable and natural justice. that the letter of personal hearing giving three dates of 22.08.27/24.08.2017 & 28.08.2017 in a single letter dated 02.08.2017 which was received by the appellant on 04.10.2017 and another letter dated 25.09.2017 giving the PH of 06.10.2017 which was also received by the appellant only on 04.10.2017 after



noon. The appellant on next morning had sent an email seeking the adjournment of the personal hearing as the concerned person was not available which was confirmed by the sub-ordinate officers as well. I find that, the adjudicating authority have not given an adjournment as sought by the appellant.

9.. I find that, the adjudicating authority has mis-stated the facts with respect to personal hearing and defense reply . The show cause notice was duly replied by them vide their reply dated 18.07.2017 which was duly acknowledged by his office on 09.08.2017, still he ignored and not considered the same while deciding the matter ex-parte. Therefore, the finding of the adjudicating authority of not availing four opportunities of personal hearing and non submission of defense reply is misrepresentation of the facts. from the O-I-O, I find that effective 3 P.H opportunities have not been given to the appellant. This is clear violation of natural justice. In view of this, I remand the matter back to original authority to decide the case afresh after allowing the opportunity of P.H. to the appellant.

10. In view of the foregoing discussion and findings, I remand the matter back to original authority to decide the case afresh after allowing the opportunity of P.H. to the appellant.

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

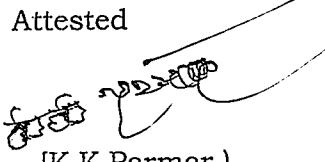
The appeal filed by the appellant stand disposed off in above terms.

31/12/18

(उमा शंकर)

आयुक्त (अपील्स)

Attested



[K.K.Parmar)

Superintendent (Appeals)
Central tax, Ahmedabad.

Date- /2/18

By Regd. Post A. D

M/s. Navratan Specialities LLP.

Block No. 400,

Village : Chharodi,

Sanand.

Ahmedabad- 382170.

Copy to :

1. The Chief Commissioner, CGST Central Excise, Ahmedabad.
2. The Commissioner, CGST Central Excise, Ahmedabad-north
3. The Asstt. Commissioner, CGST Central Ex. Div-IV, Ahmedabad-north
4. The Asstt. Commissioner (Systems), CGST Central Ex. Ahmedabad-north
5. Guard file.
5. PA file.

