

 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b>		
केन्द्रीय उत्पाद शुल्क भवन, 7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, सातवीं मंजिल, पॉलिटेक्निक के पास, Ambavadi, Ahmedabad-380015 आम्बावाडी, अहमदाबाद-380015		
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रजिस्टर डाक ए.डी.द्वारा

2819/102823

क फाइल संख्या (File No.): V2(STC)72 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-403-17-18

दिनांक (Date): 23-Mar-2018 जारी करने की तारीख (Date of issue): 24/4/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No 16/AC/D/2017/AKJ Dated: 31/10/2017

issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad North

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

**M/s Terratech Chemicals (India) Pvt 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 मेटल 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 न्यायाधिकरण 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 Appellate 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."

## ORDER IN APPEAL

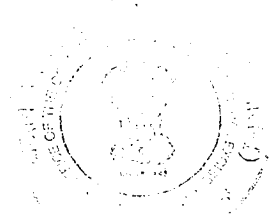
The subject appeal is filed by M/s. Terratech Chemicals (India) P. Ltd. (formerly known as CABB Chemicals(I)P.Ltd) Block No. 459/470, Bavala-Highway, Changodar, Dist. Ahmedabad (hereinafter referred to as 'the appellant') against OI No. 16/AC/D/2017/AKJ (hereinafter referred to as 'the impugned order') by The Asstt. Commissioner, Central Excise, Division-IV, Ahmedabad (hereinafter referred to as 'the adjudicating authority') is engaged in the manufacture of excisable goods falling under ch. 29 of the First Schedule to the Central Excise Tariff Act, 1985 [hereinafter referred to as CETA-1985].

2. Briefly stated facts of the case are, the appellant has its registered office at A-405, Shapath IV, Opp. Karnavati Club, SG Highway, Ahmedabad, and engaged in manufacturing of excisable goods and also providing taxable services, having Service Tax registration No. AABCK9371JST002. During the course of Audit, it was noticed that they had received income of Rs. 30,28,005/- during the year 2014-15 and Rs. 1,02,308/- during the year 2015-16, which pertains to charges recovered from different manufacturers whose by-product is Chlorine. The said manufacturers paid some amount to the appellant for lifting of chlorine, which is recorded in the books of accounts of the appellant as "Chlorine Lifting Charges." The said amount is being reimbursed to the appellant by the manufacturer by way of credit notes. The appellant issues debit notes for the pre-decided amount to the manufacturers for lifting of chlorine and the same is recovered from them. The said activity of lifting of chlorine falls within the definition of service as given in Section 65B(44) of the Finance Act, 1994, and said income received is liable to Service Tax. They have deliberately suppressed value of taxable service and not paying service tax, thus, violation of the provisions rendered them liable for penal action under the Section 77 & 78 of the Finance Act, 1994. Service Tax Rs. 3,89,096/- was demanded with interest, by invoking extended period. Show cause notice was issued. Vide above order same was confirmed.

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

I. They had issued purchase order to the supplier manufacturing units for the purchase of chlorine. The supplier manufacturer issues an excise invoice. That after receiving the chlorine from the manufacturer, on the basis of PO, a debit note issued by the appellant. The amount shown in debit note is higher than the amount payable for purchasing chlorine, the supplier pays differential amount to the appellant. This entire transaction is trading transaction i.e. Purchase and sale of goods transaction, and no service is involved.





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II. That the trading activity falling in the list of negative services mentioned in Section 66D of the Finance Act, 1994 and hence, no service tax is to be paid. They have further contented that the manufacturer had charged VAT on the said trading transaction, and VAT and Service Tax are mutually exclusive. They submitted copy of sample purchase order, invoice, etc. They are manufacturers and use chlorine as one of their raw materials, the supplier has been issuing credit notes for such discount to the appellant along with a tax cum excise invoice for sale. In the said excise invoices, VAT @4% and additional VAT / @1% are charged, and the supplier have paid Vat on the total price charged from the appellant.

iii. As amended from July,2012, "trading of goods" is listed at clause (e) as a negative list activity, and therefore, trading of goods would not attract levy of service tax. Supplier manufacturing units, and the appellant are not related and independent entitles, and discount is allowed by the supplier manufacturing units is because of commercial reasons. Selling the goods at a discounted price is not a 'service', but it is trading of goods. The buyers take delivery of goods because he has purchased the goods from the supplier on an excise invoice, and therefore, there is nothing like chlorine lifting charges in such transaction.

iv. That the supplier manufacturer is a dealer in terms of sales tax provisions, and are undertaking trading by selling of goods, which is in negative list of Section 66D of the said Finance Act. Therefore, no service tax liability is attracted in the transaction undertaken by the appellant.

4. Personal hearing was accorded on dated 13.2.2018, Shri R. Subramanya, Advocate, appeared on behalf of the appellant and reiterated the submissions made vide their appeal memorandum. He Submitted that, birla paying C.Ex and Vat,it is sale and purchase of goods.ST not liable. Also submitted few invoices. I have carefully gone through the case records, GOA, and submission made by the appellant at the time of personal hearing. The issue to be decided is whether the consideration received under 'chlorine lifting charges' is taxable or not.

5. I find that the appellant has received an amount of Rs. 30,28,005/- during the year 2014-15 and Rs,1,02,308/- during the year 2015-16 as 'chlorine lifting charges' from various parties including M/s Adita Birla Nuvo Limited. There is no dispute on the receipt of the said amount. The SCN alleged that the charges are for lifting chlorine from the premises of the manufacturers and the activity falls under the taxable service as provided under Section 66(e) of the Finance Act, 1994. Hence, the appellant is required to pay service tax on said income. However, they contended that the entire transaction is simply trading transaction and no service is involved. The trading activity is falling in the negative list of service under

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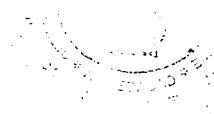
Section 66D of the Finance Act, 1994 and no service tax is payable. They further contended that the manufacturer had charged VAT on the said trading transaction and as per the settled view VAT and Service Tax is mutually exclusive.

6. I have perused the copy of Purchase Order No. CABB/RM/14-15/010 dated 24.04.2014 issued by the appellant to M/s Aditya Birla Nuvo Limited. As per the PO the rate was mentioned as 'Rs.(-) 1300 per Metric Ton + Vat' for an order of 1400 MT of Liquid Chlorine. From the relevant Cen. Excise invoice No. 0000424089 (Invoice No. 121134421) dated 06.06.2014 issued by the supplier, M/s Aditya Birla Nuvo Limited, with reference to the P.O., to the appellant, it is noticed that the unit rate of chlorine was Rs. 100/- per Metric Ton and the said invoice they had supplied 6.300 MT of chlorine for which the total value come to Rs. 14,027/- including excise duty and freight charges (Rs. 79/- duty + Rs.13,318/- freight). It is also noticed that the said assessee has issued two Debit notes viz. Debit Note No. 26 dated 30.06.2014 for Rs. 66,950/- (which also includes the particulars of invoice No. 121134421 dated 06.06.2014) for rate difference and Debit Note No. 27 dated 30.06.2014 amounting to Rs. 37,440/- for chlorine lifting charges with reference to the said P.O. I noticed that for rate difference, they have charged VAT at a rate of 4% + 1% (Addl. Vat), and for chlorine lifting charges, they did not charge any VAT. , in case of Debit note No. 27 dated 30.06.2014 amounting to Rs. 37,440/-, which was issued for lifting charges for which they have not charged any VAT, the same is an extra consideration received for the service provided of lifting of chlorine from the factory of the supplier.

7. I find that, the goods chlorine is a by-product of manufacturer supplier, M/s Aditya Birla Nuvo Ltd. as per the condition of the P.O., the goods are to be supplied, at the plant of the appellant by the supplier for the agreed rate. The supply of chlorine upto the plant of the appellant by the supplier is an indispensable part of the purchase order. Accordingly, for the supply portion of the goods, the supplier had issued separate tax invoice. Therefore, I find that the charges received by them for lifting of chlorine is for the services provided by them to the supplier in lifting or clearing the by-product chlorine from their factory. The activity falls within the purview of declared service under Section 66E(e) of the Finance Act, 1994. I find that, section 68(1) of the Finance Act, 1994 as amended, is as under;

"every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed."

Accordingly, appellant is required to pay the said service tax under section 68 (2) of the Finance Act, 1994 read with Rule 6 of the Finance Act 1994 for the taxable services provided by them.



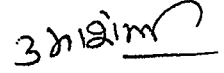
8. I find that in terms of Section 75 of the Finance Act, 1994, the appellant is liable to pay interest as prescribed for the period by which such crediting of the tax or any part thereof is delayed. Also as per Section 70 of the Finance Act, 1994, in the instant case, the appellant has failed to pay service tax and failed to file the returns. Therefore, liable for penalty under Section 77 of the Finance Act, 1994.

9. Further, I find that non-payment of service tax by the appellant is detected during the course of audit. They had not disclosed the material facts to the department in any manner. I find that the appellant has deliberately suppressed facts from the department with an intention to evade payment of Service Tax. The appellant knowingly did not show the said amount in their ST-3 returns. Hence, I hold that invoking the extended period in terms of Section 73(1) of the Finance Act, 1994 is justified. Further, I find that, in the instant case the evasion of service tax is due to suppression of facts, penalty imposed under Section 78 of the Finance Act 1994 is correct and legal. Thus, I find no reason to interfere in the impugned order.

10. In view of above, I uphold the impugned order and disallow the appeal.

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

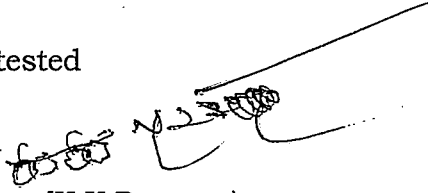
The appeal filed by the appellant stand disposed off in above terms.



[उमा शंकर]

आयुक्त (अपील्स)

Attested



[K.K.Parmar]

Superintendent (Appeals)  
Central tax, Ahmedabad.

Date- /3/18

By Regd. Post A. D

M/s. Terratech Chemicals (India) P. Ltd.  
(formerly -CABB Chemicals (I)P.Ltd.)  
Block No.459-470,  
Changodar, Ta-Sanand,  
Dist-Ahmedabad.

Copy to-

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

