



	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
	079-26305065	टेलीफोन : 079-26305136

रजिस्टर डाक ए .डी .द्वारा

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क फाइल संख्या (File No.): V2(29)50 /Ahd-II/Appeals-II/ 2016-17

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 62-17-18

दिनांक (Date): 8/28/2017 जारी करने की तारीख (Date of issue): 2019117

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 . \_03/AC/D/2016/UKG\_ Dated: 04/21/16 issued by:  
Assistant Commissioner Central Excise (Div-IV), Ahmedabad-II

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

**M/s Integrated Coating & Seeds Technology 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 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 ।

- (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 :-

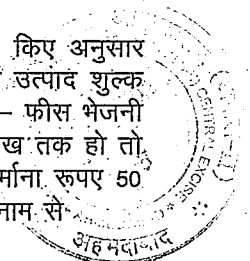
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 रूपरुप 5 लाख या उससे कम है वहाँ रूपरुप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 5 लाख या 50 लाख तक हो तो रूपरुप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 50 लाख या उससे ज्यादा है वहाँ रूपरुप 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।

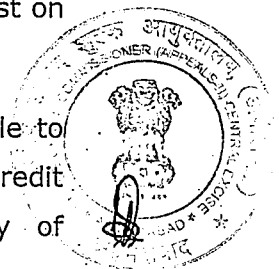
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty, or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

## ORDER IN APPEAL

M/s. Integrated Coating and Seed Technology India Pvt. Ltd., 46 & 47, Mahagujarat Industrial Estate, Moraiya, Dist. Ahmedabad (*hereinafter referred to as the 'appellant'*) holding Service Tax Registration No. AABCI1946HXM001, have filed the present appeal on 121.03.2016, against the Order-in-Original number 3/AC/D/2016/UKG dated 21.04.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-II (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that during the course of scrutiny of ER-1 records for the month of December, 2014, of the appellant, it was observed that they had shown the production and clearance of goods viz. Carbonpower Humic - FBS 1065 (herein after mentioned as the 'said goods'). On being enquired, the appellant informed that the said goods are cleared in as such form and they have not manufactured the same or done any kind of process on the said goods. The appellant informed that the said goods were imported for trading purpose. The said goods were not an input for the appellant. The appellant had availed Cenvat Credit of CVD on the said goods amounting to Rs.1,27,257/-, and Additional Duty amounting to Rs. 47,751/-, total amounting to Rs. 1,75,008/-, in their Cenvat Account on the strength of Bill of Entry No. 7634086 dtd.8.12.2014. As the said goods have not been used in the manufacture of finished goods and hence would not fall under the definition of "input" under Rule 2(k) of CCR, 2004, it appeared that the appellant had wrongly availed Cenvat Credit of Rs.1,75,008/-, and had therefore contravened the provisions of Rule 2(k), Rule 3 & 4 of the Cenvat Credit Rules, 2004. Besides, the appellant cleared the said goods assessing its value at Rs.21,02,086/-, and paid Central Excise Duty including Education Cess to the tune of Rs.2,59,817/-. The Appellant was not eligible for availing the Cenvat Credit and was also not required to pay Central Excise duty on traded goods. As a result of the payment of Central Excise duty on such traded goods, through the Cenvat Account, the appellant had collected an amount representing duty of Central Excise on such excisable goods. Thus, the amount of Rs.2,59,817/-, paid by the appellant representing Central Excise duty and collected from the buyer was required to be paid by them to the credit of the Central Government in terms of Section 11D(1) of the Central Excise Act, 1944, alongwith interest under Section 11 DD of the Central Excise Act, 1944. Therefore, a Show Cause Notice was issued to the appellant on 9.12.2015, (i) disallowing Cenvat credit to the tune of Rs. 1,75,008/-; (ii) seeking Interest at the applicable rate on such disallowed Cenvat credit; (iii) Imposition of Penalty; (iv) demanding duty amount of Rs.2,59,817/-, and (v) seeking Interest on the wrongly collected amount of Central excise duty.

3. The Adjudicating Authority found that the appellant is not eligible to avail cenvat credit on the said goods and accordingly disallowed the Cenvat credit of Rs. 1,75,008/-, alongwith interest at the applicable rate & penalty of



Rs.1,75,008/-, under rule 15(1) of the Cenvat Credit Rules, 2004, and also demanding excise duty of Rs.2,59,817/-, in terms of Section 11D(1) of the Central Excise Act, 1944, vide O-I-O No. 03/AC/D/2016/UKG dt.21.04.2016.

4. The Appellant aggrieved by the said OIO, filed an appeal before me on 21.06.2016, on the grounds that the Adjudicating authority had erred in (i) confirming the demand and seeking reversal of Cenvat credit based on the wrong assumption that the goods on which credit is taken, is not an input for the appellant; (ii) confirming the reversal of the Cenvat credit taken despite the fact that on removal of such goods, excise duty is already paid by the appellant; (iii) confirming the demand based on the wrong assumption that Carbon Power Humic FBS 1065 was imported by the appellant for trading purpose; and (iv) imposing the exorbitant penalty of Rs.1,75,008/-, as there was no intention to evade the duty.

#### DISCUSSION AND FINDINGS :

5. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. The question to be decided is as to whether (i) the said goods on which Cenvat is availed by the appellant are inputs as per the Cenvat Credit Rules, 2004; (ii) the adjudicating authority had erred in concluding that the said goods were imported by the appellant for trading purpose and (iii) Whether the penalty imposed on the appellant is very severe based on the circumstances of the case.

6. I find that the appellant's contention that the said goods are used by them as raw material and can be used by them in their final product, is worth its weight. So, the said goods cannot be denied the benefit of being input under the Cenvat Credit Rules, 2004, merely on the basis of the interpretation of a letter written by the appellant. The appellant has categorically stated that the said goods are their raw material and also the circumstances based on which the said goods had to be cleared as such to their customers. Rule 2(k) of the Cenvat Credit Rules, 2004, defines 'Input' as :

“(k) ‘input’ means-

*(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;*

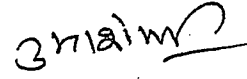
*(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service”.*

From the above definition it appeared that all the goods which are used in the factory for or in relation to the manufacture of final product can be treated as input. Whereas, though the said goods were cleared as such by the appellant, they have reiterated in their defence that the said goods is their input for the production of their final product. The Department has not provided any corroborative evidence to establish that the said goods are not a raw material of the appellant and that it is normally not used in the manufacture of their final products. As such, I have no reason to disbelieve the appellant and therefore I conclude, that the said goods are inputs and the appellant had acted well within the Cenvat Credit Rules, 2004, to clear such input as such to their customers, by reversing the applicable duty. Based on the clearance data of finished goods and raw material cleared as such, I feel that the appellant is not a regular supplier of raw materials and such transactions are random in nature. I therefore, allow the Cenvat credit on the said goods.

7. In view of above, I allow the appellants appeal and set aside the impugned order.

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

8. The appeal filed by the appellant, stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED



(R.R. NATHAN)

SUPERINTENDENT,

CENTRAL TAX APPEALS, AHMEDABAD.

To,

M/s. Integrated Coating & Seeds Technology India Pvt. Ltd.,

46 & 47, Mahagujarat Industrial Estate,

Moraiya,

Dist. Ahmedabad.

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, GST, Ahmedabad (North).
- 3) The Dy./Asst. Commissioner, Div-Changodar, Central Tax, GST, Ahmedabad (North).
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., GST, Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.

