



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.) : V2(39)173 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-184-18-19

दिनांक (Date): 19/02/2019 जारी करने की तारीख (Date of issue): 25/3/2019

श्री उमा शंकर, आयुक्त (अपील) 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 10/AC/D/NKS/18-19 Dated: 10/09/2018

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

ध 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 दिनोंक 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- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 परिषद क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 नागित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 यथारिथति 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 यथारिथति 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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, 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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

This appeal has been filed by M/s. Navratan Speciality Chemicals LLP, Block No. 400, Sanand Viramgam Road, Village Chharodi Taluka, Sanand, Dist. Ahmedabad [for short – ‘appellant’] against OIO No. 10/AC/D/NKS/18-19 dated 9.10.2018 passed by Assistant Commissioner, Division III, Ahmedabad North Commissionerate [for short –adjudicating authority].

2. Briefly, the facts are that during the course of internal audit of the appellant, for the period covering January 2015 to March 2016, it was observed that they had availed CENVAT credit of Rs. 92,018/- on metal sheets, falling under chapter head 7210 of the CETA '85 under the head capital goods. The appellant had used these metal sheets in the construction of shed of coating machine in the factory premises. Hence, a show cause notice dated 16.5.2017, was issued to the appellant *inter alia* alleging that the said goods were neither *capital goods* nor *inputs* and since it was used for construction of shed the CENVAT credit availed was not correct. The notice therefore demanded the CENVAT credit wrongly availed along with interest and further proposed penalty on the appellant under Rule 15(1)/15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1994.

3. This notice was adjudicated vide OIO No. 13/AC/D/BJM/2017 dated 14.11.2017 and the appellant feeling aggrieved had approached the appellate authority wherein vide my OIA No. AHM-EXCUS-002-APP-345-17-18 dated 27.2.2018, I had remanded the matter to the adjudicating authority with the direction that it be decided afresh after granting personal hearing. Consequently, the show cause notice dated 16.5.2017 was decided vide the impugned OIO dated 9.10.2018, wherein the adjudicating authority disallowed the CENVAT credit wrongly availed along with interest and further imposed penalty of the amount equivalent to the CENVAT credit wrongly availed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

4. Aggrieved, the appellant has filed the appeal raising the following grounds:

- that the impugned item was used to create a layer between the coating machine and the factory building to control the temperature and to minimize the waste of coating material which unless metal sheets were used got struck to construction portion of the building resulting in higher consumption of coating material and consequently increasing the cost of the product;
- that the adjudicating authority with pre conceived notion held that the impugned product fell under chapter 72 of CETA '85 and therefore does not fall under the definition of capital goods as defined under CENVAT Credit Rules, 2004;
- that the definition of capital goods includes components spares and accessories of the goods specified at (i) & (ii) and the said components spares & accessories need not necessarily be under the same chapter heading of the capital goods specified under sub clause(i) & (ii) of the said rule;
- that vide circular no. 276/110/96-TRU dtd 2.12.1996, it is clarified that the separate entry for components and spares has no reference to their classification and hence scope of this entry is not restricted only to the components and spares & accessories falling under chapter 82, 84, 85 and 90;



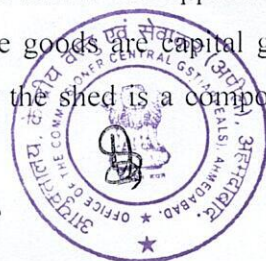
- that though the disputed goods fell under chapter 72, since they were used in furtherance of and for capital goods classified in chapters 82, 84, 84 & 90 of CETA '85;
- that the input definition also include raw materials used in making capital goods used in the factory of manufacture of capital goods and also include part/components;
- that they would like to rely on the case of Rajasthan Spinning & Weaving Mills [2010(255) ELT 481], Metrochem Industries Ltd [2013(292) ELT 578], Ravasco Transmission & Packaging P Ltd [2013(292) ELT 441], Surya Alloy Industries [2014(305) ELT 47], Monnet Ispat Ltd [2003(159) ELT 471], Divi Laboratories [2006(196) ELT 285]; Hindustan Zinc Limited [2005(188) ELT 313].
- that credit of items is not deniable if they are used for the purpose other than in exclusion category;
- that extended period is not invocable;
- that the adjudicating authority cannot levy penalty as the transaction were recorded in the specified records and they had paid duty before issuance of show cause notice in terms of explanation 1 to Section 11AC of the Central Excise Act, 1944.

5. Personal hearing in the matter was held on 29.1.2019, wherein Shri Manohar Maheshwari, Senior General Manager, of the appellant appeared before me. He reiterated the grounds of appeal and also promised to submit the catalogue of the product in dispute. Thereafter vide his letter dated 6.1.2019 [*sic*], received on 7.2.2019, while referring to the personal hearing held on 29.1.2019, submitted the specification, drawing and the photo of the shed of the coating machine.

6. I have gone through the facts of the case, the grounds of appeal, the oral averments raised during the course of personal hearing and the arguments made in the letter received on 7.2.2019. The question to be decided by me is whether the appellant is eligible for availment of CENVAT credit on the disputed item or otherwise.

7. The adjudicating authority vide his impugned OIO dated 9.10.2018, has held that the metal sheets used for making shed for coating machine, was neither a component, spare or accessories of the machine and was not essential for running the machine and hence cannot be termed as a capital goods as defined under the CENVAT Credit Rules, 2004. He has further held that in terms of explanation 2 to Rule 2(k) of the definition of inputs under the CENVAT Credit Rules, specifically excludes cement, angles, channels, CTD or TMT and other items used for construction of factory shed and therefore, the availment of credit on metal sheet falling under chapter 72 for making shed for coating machine cannot be held to be inputs under the Rules, *ibid*.

8. The appellants contention is that the impugned item was used to create a layer between the coating machine and the factory building to control the temperature and to minimize the waste of coating material which unless metal sheets were used got struck to construction portion of the building resulting in higher consumption of coating material and consequently increasing the cost of the product. He has also submitted a photo of the same. The appellant has also vehemently stated that components spares and accessories of the goods are capital goods and credit cannot be denied. However, what is not stated is whether the shed is a component,



spare or accessories. The appellant has left to the wisdom of the appellate authority to determine as to whether the shed for coating machine is a component, spare or an accessory.

9. The appellant has also relied upon the case of Meghmani Dyes and Intermediates [Final Order No. A/12093/2017 dated 28.8.2017, wherein the Hon'ble Tribunal relying on the case of Singhal Enterprise [2016(341) ELT 372, allowed the CENVAT credit on items used in the fabrication of structure. The Hon'ble Tribunal relied upon [a]judgement of High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Ltd., [2015 (39) STR 726 (Guj.)] and Rajasthan Spinning & Weaving Mills Ltd., [2010 (255) ELT 481 (S.C.)], while allowing the CENVAT Credit.

10. Now, while disallowing the CENVAT credit on the disputed item as an input, the adjudicating authority has also relied upon explanation 2, [para 14.1] which states as follows:

wef. 7-7-2009, the Explanation 2 was amended to include as follows :-

but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods;

What is not allowed, as is evident is the items used for construction of **factory shed**. Here the appellant states that the metal sheets were used for making **shed for coating machine**, not for construction of factory shed. The reasoning for making such a shed for coating machine is also clearly mentioned in the grounds of appeal which I have reproduced *supra*. In the case of Jawahar Mills Ltd [2001(132) ELT 3(SC)], the Hon'ble Supreme Court had applied the *user test* while deciding the CENVAT credit availment. On applying the user test, and going by the usage as spelt out by the appellant, I find that the shed for coating machine would

- [a] control the temperature;
- [b] minimize the waste; and
- [c] reduce consumption of coating material.

I therefore, have no hesitation in holding that the metal sheets used for making shed for coating machine are eligible for CENVAT Credit under capital goods in terms of the CENVAT Credit Rules, 2004. At best it can be held as an accessory of the coating machine.

11. I also rely on the case of Hyundai Motor India Ltd. [2017 (346) E.L.T. 431 (Tri. - Chennai)], wherein the Hon'ble Tribunal on the issue of availment of CENVAT Credit on the structurals used in fabricated paint complex, held as follows:

29. Issue on - Availment of Cenvat credit on the structurals used in fabricated paint complex.

As regards the last issue of denial of Cenvat credit on the capital goods viz. steel structurals used in the fabricated shops, we find that there is no dispute on the fact that the structurals are used in paint complex which is capital goods used in the manufacture of motor vehicles. We find that this issue stands settled in favour of the assessee by various High Courts' orders in the following cases :-

- (i) *CCE, Trichy v. India Cements* - 2014 (305) E.L.T. 558 (Mad.) [decided on 13-12-2012]
- (ii) *CCE & ST v. India Cements Ltd.* - 2014 (310) E.L.T. 636 (Mad.) [decided on 10-7-2014]
- (iii) *CCE, Mysore v. ICL Sugars Ltd.* - 2011 (271) E.L.T. 360 (Kar.)
- (iv) *CCE, Belgaum v. Hindalco Industries Ltd.* - 2012 (286) E.L.T. 503 (Kar.).

This Tribunal vide Final Order No. 40890/2014, dated 16-9-2014 in the case of *Dalmia Cements (Bharat) Ltd. v. CCE, Trichy* allowed Cenvat credit on the capital goods viz. structurals used in the process of manufacture of



cement. By respectfully following the High Court's decision (supra), we hold that assessee is eligible for capital goods credit on the structural used in paint complex. The Revenue relying on the LB decision in the case of *Vandana Global Ltd.* (supra) and Apex Court decision in the case of *Triveni Engineering & Industries Ltd.* (supra) is not relevant in view of the jurisdictional High Court of Madras decision and other High Court orders discussed above. Therefore, we do not find any infirmity in the order of the LAA and uphold the same.

11.1. Accordingly, the impugned OIO is set aside and the appeal is allowed.

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

12. The appeal filed by the appellants stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 19.2.2019

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,
M/s. Navratan Speciality Chemicals LLP,
Block No. 400, Sanand Viramgam Road,
Village Chharodi Taluka,
Sanand,
Dist. Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad North Commissionerate.
3. The Assistant Commissioner, Central Tax Division- III, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
5. Guard File.
6. P.A.





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