



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



DIN: 20220364SW000000F2C7

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/467/2021-APPEAL / 6890592
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-78-2021-22
दिनांक Date : 14-03-2022 जारी करने की तारीख Date of Issue 15.03.2022.
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 52/ADC/2020-21/MLM दिनांक: 09.03.2021, issued by
Additional Commissioner, CGST, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Colgate Palmolive India Limited
SM-02, Sanand-II, GIDC Industrial Estate,
Near Bol Village, Sanand, Ahmedabad - 382170

2. Respondent

The Additional Commissioner, CGST & C.Ex, Ahmedabad North
Custom House, 1st Floor, Navrangpura, Ahmedabad - 380009.

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 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।
- (i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार 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 other 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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.

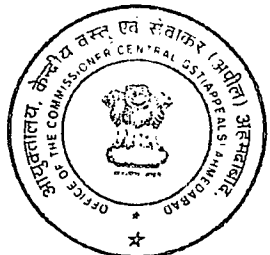
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 not withstanding 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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।

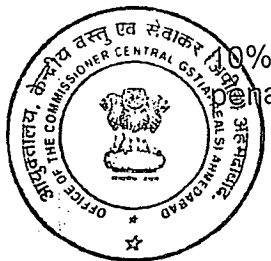
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (iv) amount determined under Section 11 D;
- (v) amount of erroneous Cenvat Credit taken;
- (vi) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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

This appeal has been filed by M/s. Colgate Palmolive India Ltd., SM-02, Sanand-II, GIDC Industrial Estate, Near Bol Village, Sanand, Ahmedabad-382170 (in short '*appellant*') against the OIO No:52/ADC/2020-21/MLM dated 09.03.2021 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that during the course of audit of the records of the appellant by CERA officers, on test check of the central excise records (CENVAT Credit PART-II Accounts, invoices/bills of entry) for the F.Y. 2014-15 to F.Y. 2016-17, the CERA auditors observed that the appellant had availed CENVAT credit on goods falling under CTH-9403 (Furniture & its parts), CTH-8716 (Trolley), CTH-8302 (Automatic Door), which were not specified in the definition of 'capital goods' as defined in Rule 2(a) of the CENVAT Credit Rules (CCR), 2004. It was also observed that in some cases the appellant has wrongly adopted the classification of the goods under Chapter heading 8421, although the goods were falling under Chapter heading 9403, as per correct classification depicted in related invoices. As a result, the appellant had wrongly availed CENVAT credit on capital goods to the tune of Rs.84,25,103/- for the period from June, 2014 to March, 2017.

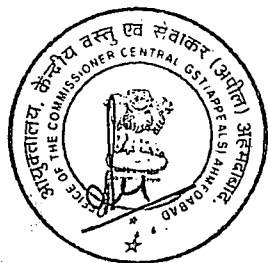
3. In reply to the observation, the appellant, vide letter dated 29.10.2018, submitted details of CENVAT credit taken to the tune of Rs.5,00,130/- on capital goods during April, 2017 to June, 2017. They, vide letter dated 04.04.2018, also submitted details of various capital goods procured during F.Y. 2014-15 to F.Y. 2016-17, which they claimed were directly or indirectly used in manufacture of their final product i.e. Tooth Paste. They also claimed that if the goods do not merit the classification as capital goods, the credit has been rightly availed as these were used directly or indirectly in or in relation to manufacture, hence would fall under the definition of 'input' defined under Rule 2(k) of the CCR, 2004. They also relied on Board's Circular No.943/4/2011-CX dated 29.04.2011 and Hon'ble CESTAT, Bangalore decision in the case of Agarwal Foundries Vs CCE., Cus & ST, Hyderabad [2015(321) ELT 267] to support their argument. Statement of Shri Mudit Agarwal, Commercial Manager & Authorized Signatory of the Appellant, was also recorded u/s 14 of CEA, 1944 on 13.12.2018, wherein he reiterated the above replies.

4. Based on audit observations, a Show Cause Notice (SCN for brevity) No.V.33/15-01/2019 dated 05.07.2019 was issued to the appellant invoking extended period of limitation and proposing recovery of CENVAT credit amount of Rs.89,25,233/- wrongly availed and utilized for the period from June, 2014 to June, 2017, under Section 11A(4) of the CEA, 1944 read with Rules 14(1)(ii) of the CCR, 2004. Interest under Section 11AA & imposition of penalty u/s 11AC of the Act ibid was also proposed. The said SCN was adjudicated by the adjudicating authority vide the impugned order, wherein he allowed CENVAT credit of Rs.2,35,845/- and disallowed the credit of Rs.86,25,233/-. Recovery of interest on the disallowed credit amount was ordered and penalty of Rs.86,25,233/- was also imposed.

5. Aggrieved by the impugned order, the appellant preferred the present appeal against the confirmed demand, primarily on following grounds:-



- In the impugned order, the CENVAT credit has been denied on the findings that the said goods do not qualify as 'inputs' whereas the SCN was issued alleging that the disputed goods does not qualify as 'capital goods'. Thus, the order has travelled beyond the scope of SCN and was passed violating principles of natural justice.
- The adjudicating authority has not appreciated the submission that the credit can be rightly determined as 'inputs' defined under Rule 2(k) and that the credit was inadvertently shown as 'capital goods' instead of 'inputs'. All goods like Trolley, Automatic Door, Pallet Location, Material Free Standing Mezzanin & Shelving, Operation Table, Weight Scale Stand. Machine Guard, Tube Box Station, Cabinet for PPE & wheel, Trimling waste drum, Barcode Printer Lables, DIA for Engineering Tool, CP Logo Stickers etc are used in manufacturing process, hence credit is admissible. Reliance is placed on Flex Engineering Ltd.[2012 (276) ELT 153 (SC)], National Co-operative Sugar Mills Ltd. [2016 (344) ELT 832 (Mad)]
- The credit of inputs cannot be denied merely on the grounds that the same was claimed as capital goods. The judgment relied in the case of Sanghvi Forging & Engineering [2014 (302) ELT 136 Tri-Ahmd], Kisan Sahakari Chini Mills Ltd [2010 (261) ELT 308 Tri-Del] , Switch Gear Control Technics Pvt. Ltd. [2009(240)ELT 78 (Tri-Ban)] were not followed by the adjudicating authority, violating the principles of natural justice. Also the judgment passed in the case of M/s. Bharti Airtel Ltd-2014 (3) ECS 25 (HC-Mum) relied by the adjudicating authority has been misplaced.
- Most of the disputed goods are falling under CTH 9403, which covers furniture & parts thereof, hence credit of the same is admissible in terms of Circular No.943/4/2011-CX dated 29.04.2011 and decision of Hon'ble CESTAT, Banglore in the case of Agarwal Foundries Vs CCE., Cus & ST, Hyderabad [2015(321) ELT 267].
- The demand is time barred as for April 2014 to March, 2016, EA-2000 audit was conducted and FAR No.1178/2017-18 dated 02.08.2017 was issued, after verifying all the documents pertaining to irregular availment of CENVAT credit on ineligible input services amounting to Rs.1,96,83,852/- which is being contested by them in another proceedings. Thus, extended period cannot be invoked during subsequent check of the documents. Reliance placed on following decisions:-
 - Southern Structural Ltd- [2008(229) ELT 487 (SC)]
 - Trans Engineeers India Pvt. Ltd. – [2015 (40) STR 490]
 - Nizam Sugar Factory [2006(197) ELT 465 (SC)]
- As all the information was disclosed in ER-1 returns, hence demand upto May, 2017 is to be dropped being hit by limitation.
- Penalty u/s 11AC not sustainable as there was no suppression and cenvat was not fraudulently availed to evade payment of duty. They placed reliance on decision passed in the case of HMM Ltd. -1995 (76) ELT 497 (SC); Coolade Beverages Ltd. – 2004 (172) ELT 451 (All). Also interest is not recoverable as there is no liability to pay duty. They also placed reliance on judgment passed in the case of Pratibha Processors- 196 (88) ELT 12 (SC); Kanoongo Estate Pvt. Ltd- 2008(223) ELT 287 (Tri-Chennai); Sundaram Textiles Ltd -2008(11) STR 608 (Tri-Chennai).



6. Personal hearing in the matter was held on 22.12.2021, through virtual mode. Ms. Kirti Bhoite, Advocate, appeared on behalf of the appellant. She reiterated the submissions made in the appeal memorandum.

7. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as in the submissions made at the time of personal hearing and the records submitted by the appellant. The issue to be decided under the present appeal is, whether the CENVAT credit of capital goods to the tune of Rs.86,25,233/-, availed and utilized by the appellant, is admissible or otherwise? The period involved is June, 2014 to June, 2017.

8. It is observed that the demand notice proposed demand and recovery of inadmissible CENVAT credit amounting to Rs.89,25,233/-. The adjudicating authority held that the CENVAT credit of Rs.2,35,845/- as admissible on the finding that some of the goods fall under purview of the definition of capital goods, however, he disallowed the credit of Rs.86,25,233/- on the grounds that Trolleys, Automatic Door, Pallet Location, Material Free Standing Mezzanin & Shelving, Operation table, Weight Scale Stand, Machine Guard, Cross over stairs, Tube box Station, Cabinet for PPE & wheel, Trimming waste drums, Temperature Measurement Equipment, Barcode Printer, DFDA Hose etc falling under CTH 87,83,93,94,48,40,& 39 respectively would not qualify as capital goods. He also held that credit taken in guise of capital goods cannot be treated as 'input'.

8.1 The appellant on the other hand have argued that the goods were inadvertently shown as 'capital goods' instead of 'inputs'. They argued that though said goods may not qualify as 'capital goods' but the same can be treated as 'inputs', in terms of Rule 2(k) as they were used in manufacturing process hence credit of such inputs cannot be denied merely because the same were claimed initially as capital goods. They placed reliance on judgment passed in the case of Sanghvi Forging & Engineering [2014 (302) ELT 136 Tri-Ahmd], Kisan Sahakari Chini Mills Ltd [2010 (261) ELT 308 Tri-Del], Switch Gear Control Technics Pvt. Ltd. [2009(240) ELT 78 (Tri-Ban)], which they contend were not followed by the adjudicating authority.

8.2 The SCN alleges that the appellant has availed inadmissible CENVAT credit of capital goods as the goods (namely Trolley, Automatic Door, Pallet Location, Material Free Standing Mezzanin & Shelving, Operation Table, Weight Scale Stand, Machine Guard, Tube Box Station, Cabinet for PPE & wheel, Trimming waste drum, Barcode Printer Lables, DIA for Engineering Tool, CP Logo Stickers etc) do not satisfy the criteria of being capital goods defined under Rule 2(a) of the CCR, 2004. It, therefore, becomes necessary for the adjudicating authority to ascertain whether the said goods fulfill the criteria to be classified under capital goods and whether the same is used in the factory of the manufacturer. But if the appellant claims that the said goods were inadvertently classified as capital goods and wants to avail the cenvat credit in relation to the duty paid on such item by establishing the same as the inputs, even though, initially the claim was on the basis that the same were capital goods, then such claim cannot be ignored. A party can be allowed to shift such claim, which I find was not examined by the adjudicating authority, in the impugned order. There are catena of judgments and the law in this regard is clear that though the items on which credit was availed, would not



become capital goods, but, if the goods are duty paid and have been used in the manufacture of finished goods, then the CENVAT credit of duty paid on such goods cannot be denied merely because initially they were classified as the capital goods.

8.3 The term "input" defined under Rule 2(k) of the Cenvat Credit Rules, 2004, covers all goods which are used in the factory by the manufacturer directly and indirectly in the manufacture of the final products. The relevant definition is reproduced below;

(k) "input" means -

- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
- (iii) all goods used for generation of electricity or steam for captive use; or
- (iv) all goods used for providing any output service;

but excludes -

- (A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
- (B) any goods used for -
 - (a) construction of a building or a civil structure or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;
- (C) capital goods except when used as parts or components in the manufacture of a final product;
- (D) motor vehicles;
- (E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and
- (F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;';

In light of above definition, all goods used in the factory by the manufacturer of the final product are considered as 'inputs' for the purpose of availing the Cenvat benefit. The said definition keeps outside its purview certain goods, on which Cenvat credit is not available to the manufacturer. The excluded items are light diesel oil, High Speed Diesel Oil or motor spirit (commonly known as petrol), construction material, capital goods, motor vehicles, goods used outside the factory and for personal use of the employees. The definition of input also excludes the goods which have no relationship whatsoever with the manufacture of final product. So far as it is not disputed that the goods were not used in the factory by the appellant, the credit of goods used in the factory by the manufacturer of the final product in relation to manufacturing cannot be denied.

8.4 I place my reliance on the judgment of Hon'ble High Court of Madras passed in the case of *NATIONAL CO-OPERATIVE SUGAR MILLS LTD - 2016 (344) E.L.T. 832 (Mad.)* wherein the hon'ble court held that;

"18. As rightly contended by Mr. N. Prasad, learned counsel for the appellant, the term 'inputs', is wide enough to cover all the goods, except the goods specifically mentioned in the definition, inputs used in or in relation to the manufacture of the final product, whether directly or indirectly or whether it contained the final products or not. Judicial pronouncements extracted supra, makes it abundantly clear that welding electrodes used for repair and maintenance of machineries, in relation to manufacture of the final product, namely sugar, is eligible for Cenvat credit."



8.5 Further, Hon'ble High Court of Rajasthan (Jodhpur) in the case of *HINDUSTAN ZINC LTD- 2019 (367) E.L.T. 616 (Raj.)* held that;

8. In the opinion of this Court, the interpretation of the CESTAT of the expression "input" as covering all goods used in a factory by a manufacturer of any final product - as evident from the words "final product", re-enforces the intention of rule making authority to expand the definition and provide the benefit of input credit even to the processes which are not intrinsically covered or do not have a direct link with the manufacture of the final product. This aspect assumes significance in the present case since the input is used to stabilize a by-product, a hazardous waste, which is not permitted to be handled and transported without stabilizing, under the other laws."

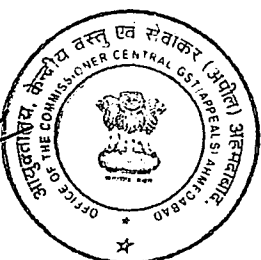
8.6 Similarly, Hon'ble Principal Bench, New Delhi (LB) in the case of *Manglam Cement Ltd- 2018 (360) E.L.T. 737 (Tri. - LB)*, while answering a reference as to "*Whether on Cement and Steel items used for foundation for installation of machinery, which is embedded to earth, the assessee is entitled to avail Cenvat Credit on steel items in terms of Rule 2(k)/2(a) of the Cenvat Credit Rules, 2004, or not?*" held that;

9. On perusal of definition of 'input' extracted above, it would reveal that all the goods (excepting light diesel oil/high speed diesel oil and motor spirit) are considered to fall under such definition, when 'used in or in relation to manufacture of final products', whether directly or indirectly, and whether contained in the final product or not. The only condition required to be fulfilled is that the goods must be used within the factory of production. Further, Explanation 2 appended to such definition clause provides that 'input' includes goods, which are used in the manufacture of capital goods for further use in the factory of the manufacturer. On a conjoined reading of the definition of input and Explanation 2 appended thereto, it makes the position clear that inputs are not only goods, which are used in the manufacture of final products, but also those which are 'used in or in relation to' the manufacture of the final product. The relationship between those goods and the final product could be either direct or indirect and may include or may not include their presence in the final products. Goods used in the manufacture of capital goods, which are installed for manufacture of the capital goods should also be considered for availment of Cenvat credit. In the case in hand, the cement and steel bars used to erect foundations for installing different machines in the power plant should also merit consideration as 'input' for the purpose of cenvat benefit. .."

9. XXX

10. In view of above analysis, we are of the considered opinion that the eligibility to duty credit of the disputed goods cannot be denied. Such eligibility either as 'capital goods' (accessories) or as 'inputs' has been examined and upheld by various decisions of the Hon'ble Apex Court and the Hon'ble High Courts as above. Accordingly, we answer the reference in favour of the appellant. The appeal file is returned to the referral Bench for a decision on merit."

8.7 Further, I have also gone through the decision of Hon'ble Tribunal passed in the case of *Sanghvi Forging & Engineering [2014 (302) ELT 136 Tri-Ahmd]*, relied upon by the appellant, wherein it is held that;



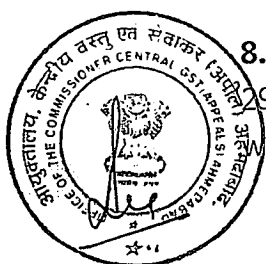
5.3 It can be seen from the above reproduced rule that Explanation 2 categorically talks about extending of Cenvat credit of the duty paid on input which includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. **In my view, though the inputs on which Cenvat credit was taken, may not qualify to be capital goods, in strict sense, but can be qualified as input for manufacturing of excisable goods under the provisions of Rule 2(k) of Cenvat Credit Rules, 2004. I find that the Division Bench of this Tribunal in the case of Kisan Sahkari Chini Mills Ltd. (supra) was considering an identical issue, wherein in Para 19, it has been held as under :**

"19. Undoubtedly, it cannot be disputed that in case a party is entitled to avail the Cenvat credit in relation to the duty paid on an item by establishing the same as the inputs, even though, initially the claim was on the basis that the same was the capital goods. A party can be allowed to shift such claim. However, in the case in hand, the fact remains that there has been already final adjudication on the point as to whether welding electrode used in the process of maintenance and repairs could be input or not and decision in that regard is clearly against such claim by the assessee in the Vikram Cement case. Being so, the appellants would not be entitled to claim the welding electrodes as the inputs to avail Cenvat credit. The law in that regard stands clearly pronounced by this Tribunal in the said case. In the facts and circumstances of the case, it is not necessary to consider various decisions sought to be relied upon at this stage....."

8.8 Thus, applying the ratio of the judgments and decisions, reproduced above, I find that the credit of goods in question can be considered as inputs and credit of such inputs cannot be denied merely because the credit was initially claimed under capital goods. The appellant is eligible for cenvat credit of the disputed items under input though these goods were inadvertently classified as capital goods. The adjudicating authority has conveniently ignored the submissions made by the appellant detailing how each goods were used directly and indirectly in relation to the manufacturing process and rejected the credit merely on the argument that every product under the sun cannot be accepted as input, which I find is an absurd argument.

8.9 I have also examined the case law relied upon by the adjudicating authority passed in the case of M/s. Bharti Airtel Ltd.- 2014 (35) S.T.R. 865 (Bom.) wherein the Hon'ble Bombay High Court in its impugned order had held that towers/pre-fabricated building cannot be said to be goods but immovable structures, non-marketable and non-excisable. They are not capital goods as they were neither components, spares and accessories of goods covered in definition of capital goods in Rule 2(a)(A) of Cenvat Credit Rules, 2004. These goods also do not qualify as inputs under Rule 2(k) ibid, as they were not directly used for output services viz. telecommunication services; they were immovable, fixed to earth and not excisable; and they could not be regarded as essential inputs. I find that the said judgment has no application to the facts of the present appeal for the reasons the facts are distinguishable. Moreover, the adjudicating authority has not given any specific findings for not treating the disputed goods as inputs, therefore, in my considered view the ratio of the above judgment is not squarely applicable to the instant case.

8.10 Further, as regards furniture, the Board vide Circular No. 943/4/2011-CX., dated 19-4-2011, has clarified that 'goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the



manufacturing business and hence the credit of same is allowed'. When there is no denial of the fact that furniture had been used within the factory, credit of furniture also cannot be denied in light of the decision of Hon'ble Bangalore Tribunal passed by in the case of *Agarwal Foundries Vs CCE., Cus & ST [2015 (321) ELT 267]*.

9. Therefore, from the discussion held above, I find that in the instant case, though the appellant appears to have inadvertently took credit of goods namely Trolley, Automatic Door, Pallet Location, Material Free Standing Mezzanin & Shelving, Operation Table, Weight Scale Stand, Machine Guard, Tube Box Station, Cabinet for PPE & wheel, Trimling waste drum, Barcode Printer Lables, DIA for Engineering Tool, CP Logo Stickers etc, by classifying them as 'capital goods', defined under Rule 2(a) of the CCR, 2004, but the fact that these goods were actually used directly or indirectly in the factory by the manufacturer of final product, cannot be denied. The expression "input" covers all goods used in a factory by a manufacturer of any final product and provide the benefit of input credit even to the processes which are not intrinsically covered or do not have a direct link with the manufacture of the final product. Hence, I find that the goods in question can be treated as input and therefore, the CENVAT credit of said goods is eligible to the appellant in terms of Rule 2(k) of the CCR, 2014.

10. As long as the department has not disputed the receipt of the said goods and that their use either directly or indirectly in the factory of the appellant, I find, the decision of Hon'ble Tribunal, Ahmedabad passed in the case of *Sanghvi Forging & Engineering [2014 (302) ELT 136 Tri-Ahmd]*, shall prevail and cenvat credit of such inputs would be admissible to the appellant.

11. In view of the judicial pronouncement and above discussion, I find that the demand is not sustainable. When the demand is not legally sustainable, question of interest and penalty does not arise.

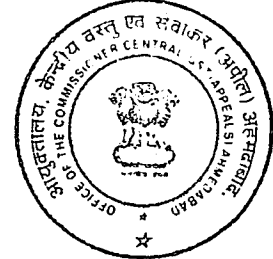
12. In view of the above, I set-aside the impugned order and allow the appeal filed by the appellant.

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

Akhil
(Akhilish Kumar) 14th March, 2022.

Commissioner (Appeals)

Date: .3.2022



Attested

Rekha A. Nair

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Colgate Palmolive India Ltd.,
SM-02, Sanand-II, GIDC Industrial Estate,
Near Bol Village, Sanand,
Ahmedabad-382170

- **Appellant**

The Additional Commissioner,
Central GST,
Ahmedabad North

- **Respondent**

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
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