



- आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटिकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(29)/75 /Ahd-I/2015-16
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-006-2016-17
दिनांक Date : 28.05.2016 जारी करने की तारीख Date of Issue 22/02/16.

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Supdt., AR-II, Div-II, , केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 01-02/Supdt./AR-II/Div-II/2015
दिनांक: 24.09.2015, से सृजित

Arising out of Order-in-Original No. 01-02/Supdt./AR-II/Div-II/2015
24.09.2015 issued by Supdt., AR-II, Div-II, Central Excise, Ahmedabad-I

दिनांक:

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Bodal Chemicals Ltd. Unit-II
Ahmedabad

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) केंद्रीय 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 :

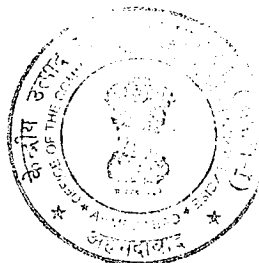
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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.

(b) 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.

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

... 2 ...



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

(b) 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.

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

(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.

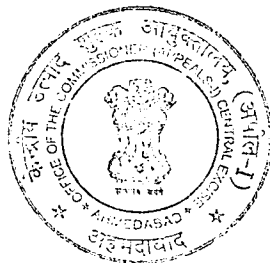
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.



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 पट्टी 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, 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:

- (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 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. Bodal Chemicals Ltd, Unit-III, Plot No. 2102, Phase-III, GIDC, Vatva, Ahmedabad - 382445 (hereinafter referred to as the appellant) against OIO No. 01-02/Supdt./AR-II/DIV-II/2015 dated 24/09/2015, (hereinafter referred to as "the impugned order"), passed by the Superintendent, Central Excise, AR-II, Division-II, Ahmedabad-I. (hereinafter referred to as the "adjudicating authority"). The appellant are registered with Department having Central Excise Registration No. AAACD5352MXM003 and engaged in manufacture of Dyes Intermediates falling under Chapter 32 to the First Schedule of the Central Excise Tariff Act, 1985. The appellant is availing Cenvat Credit as per Cenvat Credit Rules 2004.

2. It was noticed during the course of Audit that, the appellant has wrongly taken Cenvat Credit on goods falling under chapter No.72 & 68 of the Central Excise Tariff Act, 1985, as Capital Goods which are not falling within the purview of the definition of Capital Goods given in Rule 2(a) of the Cenvat Credit Rules, 2004 amounting to ₹.49,266/- during the period May-2014 to March-2015.

3. It was also noticed during the course of Audit that, the appellant had cleared M.S. Scrap without payment of duty amounting to ₹16,833/- during the period December, 2013 to March-2014 and for the period August-2014 to March- 2015, without fulfilling the duty liability.

3. The adjudicating authority has decided the S.C.N. as under:-

(i) Disallowed the Cenvat credit amounting to ₹.49,266/- and ordered for reversal/recovery of the same under the provision of Rules 14 of Cenvat credit Rules read with proviso to Section 11A(1) of the Central Excise Act, 1944. Also drop the demand of ₹.5,82,638/- being the service tax paid on transportation and treatment charges of spent Acid.

(ii) I order to recover an amount equal to the duty amount on transaction value of capital goods cleared as scrap to the tune of ₹.16,833/- in terms of Rule 14 of CCR, 2014.

(iii) Ordered for recovery of interest at the prescribed rate on the amount wrongly availed Cenvat Credit under the provision of Section 11AA of the Central Excise Act, 1944 read with Rules 14 of Cenvat Credit Rules, 2004. Also appropriate the amount of ₹.703/- paid as interest for the demand of interest for the period July-2014 to March-2015.

(iv) Imposed penalty of ₹.10,000/- under Section 11AC of Central Excise Act, 1944 read with rules, 15 of Cenvat Credit Rules, 2004.



4. Being aggrieved with the impugned order appellant preferred the present appeal on 28.10.2015 on the following grounds.

(I) The adjudicating authority has not given any reason for not considering the submissions made by the appellant, orders of the higher appellate forum, is thus violative of principal of natural justice. The impugned order having been passed in violation of principles of natural justice is required to be quashed and set aside.

(II) The onus of the department to prove that the Cenvat Credit taken on the above products were not to put to use as claimed. No effort at any stage made by the department to ascertain the use of the product on which Cenvat credit was taken.

5. The appellant had referred and relied on the decision of (1) the Hon'ble Tribunal in the case of Hindustan Steel Ltd, Vs. State of Orissa reported in AIR 1970 SC (253) (1979 ELT(j) 402), (2) Indian Plastics Ltd. Vs CCE reported at 1988 (35) ELT 434 and (3) Swastik Tin Works Vs. CCE, Kanpur reported at 1986 (25) ELT 198 (Tri.)

6. Personal hearing in the matter was held on 23.05.2016 wherein Shri N.K. Tiwari Consultant, appeared on behalf of the appellant and reiterated the submissions made in their memorandum of appeal.

7. I have carefully gone through the impugned order, appeal memorandum and submission made by the appellant. I find that the appellant has availed Cenvat Credit amounting to ₹.49,266/- on M.S. Channel, M.S. Beam, Bars, Plate and Angles etc. They argued that the Cenvat credit on the above goods was not taken by them under the category of capital goods but taken under the category of inputs; the said inputs were put to use in the manufacture of capital goods or in the maintenance and repairs of the capital goods installed in the factory. In support they have relied upon the decision of various case laws. However, I find that they have argued that the said inputs were put to use in the manufacture of capital goods or in the maintenance and repairs of the capital goods installed in the factory without giving any evidence in support of their contention. I find that, vide Notification No. 16/2009-C.E.(N.T.) dated 07.07.2009, an explanation had been inserted in Rule 2 of the Cenvat Credit Rules, 2004 so as to clarify that "Inputs" which are eligible for Cenvat credit shall not include cement, angles, channels, CTD or TMT bar.

8. As regards, recovery of central excise duty amounting to ₹.16,833/- on the MS Scrap sold by the appellant during the period December 2013 to March-2014 and for the period from July-2014 to March-2015. On appellant has availing Cenvat Credit as per the provisions of Rule 3 (5A) of the Cenvat Credit Rules 2004, if the capital goods on which Cenvat credit was taken, if removed as scrap or as waste, the manufacturer shall pay an amount equal to the duty leviable on transaction value. In present case, no evidence brought on record which suggests that the scrap sold by the appellant was generated from the capital goods on which the Cenvat credit was taken by the appellant. Therefore I find that appellant were required to pay an amount equal to the duty leviable

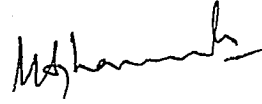


on transaction value works out to ₹ 1,36,195/- in terms of Rules 14 read with Rule 3(5A) of the cenvat credit Rules 2004.

9. In view of the above, I pass the following order:

ORDER

I reject the appeal filed by the appellant and upheld the order.



(UMA SHANKER)
COMMISSIONER (APPEAL-I),
CENTRAL EXCISE,
AHMEDABAD.

Date: 28/15/2015

ATTESTED



(N.I.SOLANKI)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

By Regd. Post A.D.

To,
M/s. Bodal Chemicals Ltd, Unit -III,
Plot No. 2102,
Phase-III, GIDC,
Vatva,
Ahmedabad - 382 445

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-I,
3. The Deputy/Asstt. Commr. Of Central Excise, Div-II, Ahmedabad-I
4. The Superintendent, Central Excise, AR-II, Div-II, Ahmedabad-I
5. The Superintendent (System), Central Excise, H.Q., Ahmedabad-I for uploading the order on web site.
6. PA to Commissioner (Appeals-I)
7. Guard File.

