



• आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातवाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, अम्बाबाडी,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)88/ Ahd-I/2015-16

2840 Jo 2844

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-024-2016-17
दिनांक Date : 28.10.2016 जारी करने की तारीख Date of Issue 9.11.2016

श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri Uma Shanker, Commissioner (Appeal-I)

ग Assistant Commissioner, केंद्रीय उत्पाद शुल्क, A'bad-I द्वारा जारी मूल आदेश सं 08/CX-I
Ahmd/AC/PS/2015 दिनांक: 05.11.2015 से सृजित

Arising out of Order-in-Original No. 08/CX-I Ahmd/AC/PS/2015 dated 05.11.2015 issued by
Assistant Commissioner, Central Excise, Div-I, Ahmedabad-I

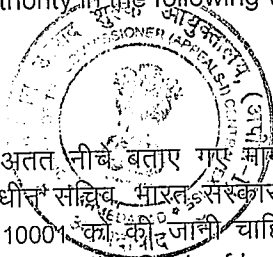
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Creative Printers Pvt.Ltd., 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को
उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन संश्लेषित, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग,
चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को देना 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।

(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.

(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 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 मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

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

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



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

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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

Order-in-Appeal

M/s. Creative Printers, Kalidas Mill Compound, Gomtipur, Ahmedabad (for short –“*appellant*”) has filed this appeal against Order-in-Original No. 08/CX-I/Ahmd/AC/PS/2015 dated 5.11.2015, passed by the Assistant Commissioner, Central Excise, Division-I, Ahmedabad-I Commissionerate(for short - “*adjudicating authority*”).

2. Briefly stated, a show cause notice dated 18.3.2015, was issued to the appellant, alleging that they had wrongly availed CENVAT credit on ‘Aluminum Litho Plates’, as capital goods under CENVAT Credit Rules, 2004 [for short – “CCR ‘04”]. The notice, inter alia, proposed recovery of the CENVAT credit wrongly availed amounting to Rs. 1,11,478/- along with interest and proposed penalty under Rule 15(2) of the CCR ‘04. The adjudicating authority, vide his impugned order, confirmed the demand along with interest and also imposed penalty on the appellants.

3. Feeling aggrieved, the appellant has filed this appeal, on the following grounds:

- that there is no relevance of accounting treatment given to any cost or expenses in the definition of “Capital goods” under Rule 2(a) of CCR ‘04;
- that as per Rule 2(a) of the CCR ‘04, all goods falling under Chapter 84 and used in the factory, are capital goods and therefore, Aluminum Litho Plates, falling under Chapter 84 are capital goods;
- that as there is no dispute on classification of the said goods and the fact that they were used in the factory, the credit availed is valid;
- the credit was entered in the CENVAT register and details mentioned in the returns, which was never objected and therefore, there is no suppression on the part of the appellant; that they wish to rely on the following case laws:
 - India Tin Industries [1994(70)ELT 731 (Trib.)]
 - Bony Rubber Co.Pvt.Ltd. [1996(84)ELT 58]
 - D.J.Vora, Batliboi & Co. Ltd. [1999(30) RLT 223]
- that credit is denied on the ground that they had not claimed depreciation; Rule 4 provides that the assessee was not entitled to avail CENVAT Credit, if depreciation was claimed;
- that if the lithographic plates do not merit consideration as capital goods, then it would merit consideration as inputs and credit of the same would be admissible as input; that they wish to rely on the following judgements:
 - Pattabi Enterprises [2013 (292) ELT 78]
 - Sanghvi Forging and Engineering [2014(302) ELT 136]
 - Modi Rubber [2000(119) ELT 197]
- that extended period cannot be invoked; that they wish to rely on the following cases:
 - Continental Foundation [2007(216) ELT 177 (SC)]
 - M/s. Jaiprakash Industries Ltd. [2002(146) ELT 481 (SC)]

4. Personal hearing in the matter was held on 18.10.2016. Smt. Shilpa P., Dave , Advocate, appeared on behalf of the appellant and reiterated the grounds mentioned in the appeal memorandum. She also submitted copies of certain citations which they wished to rely on.

5. I have carefully gone through the facts of the case, submissions made by the appellant in the grounds of appeal and averments raised during the personal hearing.

6. The issue to be decided in the present appeal is whether the credit availed on *Aluminum Litho Plates* is admissible under the CENVAT Credit Rules, 2004 or otherwise.

7. Aluminum Litho Plates, falling under chapter heading 8422 of Central Excise Tariff Act, 1985, are basically engraved plates on which the material for printing of the customer, is engraved. The utilization of such plates generally will not be a onetime affair. If the matter and the material required are the same, Lithographic plate, which has a particular life span, can be repeatedly used for printing. The appellant, it is alleged has availed and utilised the CENVAT Credit on such plates, as capital goods during the period from 14.9.2010 to 30.11.2014. The adjudicating authority has sought to deny the credit, as capital goods on the grounds that [a] the appellant had charged from their customer the total cost of such plates; [b] that these are consumables and are inputs; [c] that they had not capitalized the goods and it was shown as an expenditure during the financial year; and that they had not claimed depreciation on such goods.

8. Since the dispute revolves around capital goods, the relevant portion of the definition of capital goods, as defined under Rule 2(a) of CCR '04, is reproduced below, for ease of reference;

a) "capital goods" means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;

(ii) to (viii)

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

[(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or]

(2) for providing output service;

9. On going through the definition, one thing that is evident is that all goods falling under chapter 84 are capital goods. Incidentally, Aluminum Litho Plates, fall under chapter heading 8422. Further, it is abundantly clear, that none of the first three objections [mentioned in para 7 *supra*] raised by the adjudicating authority for denying the credit, find any mention in the definition of capital goods. Further in respect of depreciation, Rule 4(4) of CCR '04 states that CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer claims depreciation under section 32 of the Income Tax Act, 1961. There is however, no condition that CENVAT credit under capital goods cannot be availed if the goods are not capitalized. In-fact, the adjudicating authority has not pinpointed as to under which rule of the CCR'04, these four restrictions are imposed for availing CENVAT credit in respect of any item as capital goods. The OIO, fails in this regard.

10. I find that the adjudicating authority has relied upon the case of Pattabi Enterprises [2013(292)ELT78], for holding that these are goods are in-fact, inputs. However, if one goes through the judgement, it becomes clear that in the said case, the assessee was availing credit of the plates as input and it was the department which was insisting that it was a capital good. Surprisingly, in the case of the appellant, the Revenue has taken an entirely divergent view.

7. There is no dispute that the goods merit classification under chapter 84. Further, the grounds taken for rejecting the availment of CENVAT credit by the adjudicating authority is also not sustainable. However, even if the goods were not capital goods, as is being claimed by the adjudicating authority, on the basis of the judgement in the case of Pattabi Enterprises [2013(292)ELT78], even then CENVAT credit, cannot be denied under the head inputs, in view of the judgement of the Hon'ble Tribunal in the case of M/s. Sanghvi Forging and Engineering Ltd [2014(302)ELT 136], wherein under para 5.4, it is held as follows:

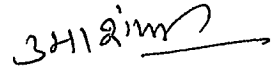
5.4As per the ratio as reproduced above, an assessee is eligible to avail Cenvat credit of the same items under input category, the same cannot be denied on the ground that the credit was claimed as capital goods.

8 In view of the foregoing, if the goods on which credit is availed as capital goods are subsequently, considered as consumable goods i.e. inputs and not capital goods, even then the appellant is eligible to avail credit in respect of the said goods as inputs. Credit cannot be denied on the ground that it was claimed wrongly under 'capital goods'. The judgement in the case M/s. Modi Rubber Ltd. [2000(119) E.L.T.197 (Tri.LB)], relied by the appellant, is squarely applicable to the present dispute.

9. In view of the above, I set aside the impugned OIO dated 5.11.2015 and allow the appeal filed by the appellant , with consequential relief, if any.

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

10. The appeal filed by the appellant stands disposed of in above terms.

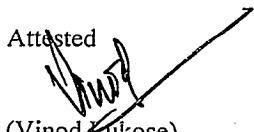


(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/10/2016

Attested


(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

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6. P.A



