



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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/118/Ahd-I/2015-16 14159-4163  
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-040-2016-17  
दिनांक 22.12.2016 जारी करने की तारीख Date of Issue \_\_\_\_\_

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

ग DEPUTY Commissioner, Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
MP/21/DC/2015-16 दिनांक: 01-02-2016, से सृजित

Arising out of Order-in-Original No. MP/21/DC/2015-16 दिनांक: 01-02-2016 issued by DEPUTY  
Commissioner, Div-III Central Excise, Ahmedabad-I

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

M/s Kailash Chemicals  
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।

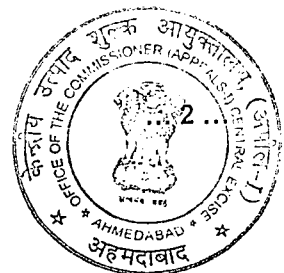
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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।



(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 हैं।

(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.

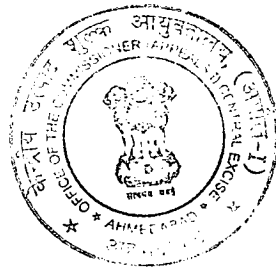
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

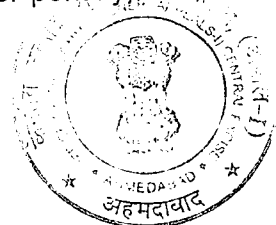
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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. Kailash Chemicals, Plot No. 191, Phase-II, GIDC Vatwa, Ahmedabad (for short 'appellant') has filed this appeal against OIO No. MP/21/DC/2015-16 dated 01.02.2016, passed by the Deputy Commissioner, Central Excise, Division-III, Ahmedabad-I Commissionerate (for short -"adjudicating authority").

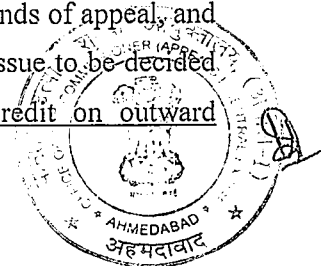
2. Briefly stated, the facts are that a show cause notice dated 05.07.2013, was issued alleging that the appellant had wrongly availed CENVAT credit of Rs. 33,971/- in respect of outward transportation. The notice therefore, *inter-alia*, demanded the CENVAT credit wrongly availed, along with interest and further proposed penalty on the appellant. This notice was adjudicated vide OIO No. MP/11/DC/2014-15 dated 10.12.2014 wherein the adjudicating authority, confirmed the demand along with interest and imposed penalty on the appellant. Feeling aggrieved, the appellant approached the Commissioner(A) who vide his OIA No. AHM-EXCUS-001-APP-019-2015-16 dated 22.9.2015, set aside the original order and remanded the case to the original adjudicating authority for denovo adjudication. The impugned order hence, is a denovo adjudication, consequent to the aforementioned OIA wherein the adjudicating authority has allowed CENVAT credit of Rs. 6,684/-, disallowed the CENVAT credit of Rs. 27,287/-, and imposed penalty of Rs. 7,000/- . In respect of the credit which stands disallowed, the adjudicating authority has also ordered recovery of interest from the appellant.

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

- that the adjudicating authority has not verified the documents and has just relied on the report of the Range Superintendent;
- that the adjudicating authority has without discussing the board circulars concluded that in case of export through merchant exporter, the place of removal is factory gate;
- in the circulars dated 20.10.2014 and 28.2.2015, it has not been stated that in case of export through merchant exporter the place of removal would be the factory gate;
- that the goods in the present case were not sealed in the factory either by the central excise officer or by way of self sealing; the goods were cleared by way of self sealing under Self Removal Procedure;
- that they wish to rely on the case of Oriental Containers Limited [2012(28) STR 397], Bhushan Steel Limited [2015(39) STR 293] and Palco Metals Limited [2012 (26) STR 429];
- appellant availed CENVAT credit under bonafide belief that CENVAT credit was admissible to them and hence the demand is hit by limitation.

4. Personal hearing was granted on 20.12.2016. Shri P.G.Mehta, Advocate, appeared on behalf of the appellant and reiterated the grounds of appeals.

5. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. The primary issue to be decided in this appeal is whether the appellant is eligible for CENVAT Credit on outward transportation, which stands disallowed by the adjudicating authority.



6. As is already mentioned, the impugned order is a *denovo* adjudication order based on my directions issued vide OIA dated 22.9.2015, wherein while remanding, it was held as follows:

- dispute of admissibility in respect of service of transportation of goods outside factory gate is no more *res-integra* and is covered under the definition of input service under Rule 2(1) of CENVAT Credit Rules, 2004;
- appellant is eligible to avail the CENVAT credit of tax paid services when admissibility and receipt of service, was not questioned at all.

7. The adjudicating authority, in the impugned OIO has held as follows:

- the appellant has not produced copies of shipping bill and ARE-1 to correlate with export;
- that Superintendent, AR-II has reported that the exports were through merchant exporter; that in respect of local transportation, in two invoices, it was not mentioned that the terms of delivery were "door delivery"; that in case of rest of the invoices, it was mentioned that the terms of delivery were "door delivery";
- that since place of delivery in case of merchant export is factory gate, the appellant is not eligible to take/avail CENVAT credit on service tax paid on GTA;
- CENVAT credit in respect of Rs. 6684/- was allowed .

8. I find that the adjudicating authority in his *denovo* adjudication has [a] disallowed the CENVAT credit of Rs. 27,092/- on the grounds that the exports were through merchant exporters in which case the place of removal was the factory gate; and [b] disallowed the CENVAT credit of Rs. 195/- on the grounds that the invoices did not mention 'door delivery' under the terms of delivery. He however allowed CENVAT credit of Rs. 6,684/-.

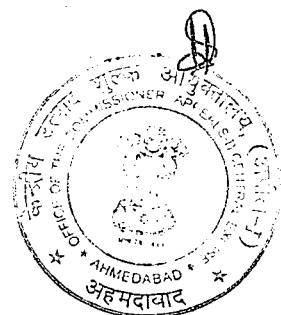
9. Since, the dispute primarily hinges on export clearances through merchant exporter, relevant extracts of CBEC's circular No. 999/6/2015-Cx dated 28.2.2015, is reproduced, for ease of reference:

4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to be determined.

5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant-exporter.

6. In the case of clearance of goods for export by manufacturer exporter, .....

7. In the case of export through merchant exporters, however, two transactions are involved. First is the transaction between the manufacturer and the merchant exporter. The second transaction is that between the merchant exporter and the foreign buyer. As far as Central Excise provisions are concerned, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter. As explained in paragraph 4 *supra*, in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of Notification No. 19/2004- Central Excise (N.T.), dated 6-9-2004, etc.



8. However, in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ICD/CFS where shipping bill is filed by the merchant exporter. The eligibility to CENVAT Credit shall be determined accordingly.

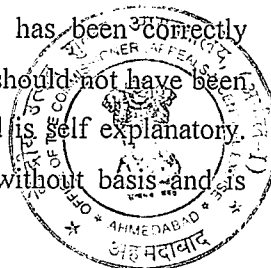
[emphasis applied]

10. In case of exports, be it either by a manufacturer-exporter or by merchant exporter, - they can either opt for the exports, to be cleared [a]under supervision of excise Superintendent or Inspector; or [b]through Self Removal Procedure. In either case, the goods are sealed at the premises of the manufacturer either by the Superintendent or Inspector or by the manufacturer himself. It is precisely therefore, that CBEC has clarified, that in case of a manufacturer-exporter, *the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter; that in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of Notification No. 19/2004- Central Excise (N.T.), dated 6-9-2004, etc.* The appellant has clearly stated that the goods were cleared under Self Removal Procedure. He has however, claimed that the goods were not sealed in the factory, which does not appear to be correct. In-fact, the sample ARE-1s attached with the appeal papers clearly depict that the goods were cleared under SRP from the factory of the appellant.

11. In view of the foregoing, it is evident that the adjudicating authority has correctly held that CENVAT credit was wrongly availed by the appellant on outward transportation as far as it concerned the transportation charges paid in respect of exports through merchant exporter.

12. The appellant has relied three case laws viz Oriental containers Limited [2012(28) STR 397], Bhushan Steel Limited [2015(39) STR 293] and Palco Metals Limited [2012 (26) STR 429], to put forth his claim that they were eligible for CENVAT Credit. However, on going through the said judgements, it is clear that in none of the case, the consignments were cleared through a merchant exporter. Therefore, reliance on the said judgements by the appellant is misplaced.

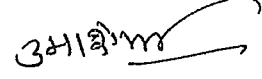
13. The appellant has also questioned [a] invocation of extended period; and [b] imposition of penalty. I find that the show cause notice was issued on 5.7.2013 based on the data provided by the appellant on 1.7.2013. Therefore, the averment that extended period cannot be invoked, is not legally tenable. Further, as far as imposition of penalty under Rule 15(2) and 15(3) is concerned, I find that the penalty has been correctly imposed. The appellant has not given any reason as to why penalty should not have been imposed. Even otherwise, the Rule under which penalty is imposed is self explanatory. The averment of the appellant, as far as penalty is concerned, is without basis and is therefore, rejected.



14. In view of the foregoing, the OIO is upheld and the appeal is rejected.

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

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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 22/12/2016

Attested



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

BY RPAD.

To,

M/s. Kailash Chemicals,  
Plot No. 191, Phase-II,  
GIDC Vatwa,  
Ahmedabad

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I
3. The Additional Commissioner (System), Central Excise, Ahmedabad-I
4. The Deputy/Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I
- ✓ 5. Guard file.
6. P.A

