



- आयुक्तालय (अपील-1) 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)/1/Ahd-I/2016-17 & V2(32)/11/Ahd-I/16-17
Stay Appl.No. NA/2016-17 प२४९ क५२९५
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-045&046-2016-17
दिनांक 23-12-2016 जारी करने की तारीख Date of Issue 31/12
- श्री उमा शंकर आयुक्त (अपील-1) 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/24/DC/2015-16 दिनांक: 2/25/2016, से सृजित
- Arising out of Order-in-Original No. MP/24/DC/2015-16 दिनांक: 2/25/2016 issued by Deputy
Commissioner, Div-III Central Excise, Ahmedabad-I
- &
- Superintendent, AR-III, Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/AR-III/Divison-III/Superintendent/11/2015-16 दिनांक: 3/15/2016, से सृजित
- Arising out of Order-in-Original No. MP/AR-III/Divison-III/Superintendent/11/2015-16 दिनांक:
3/15/2016 issued by Supdt. Commissioner, Div-III Central Excise, Ahmedabad-I
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Chokshi Organics Pvt Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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।

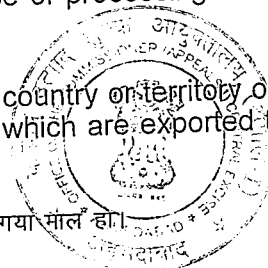
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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 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 दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

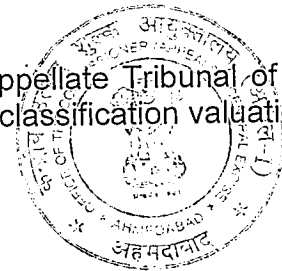
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-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।

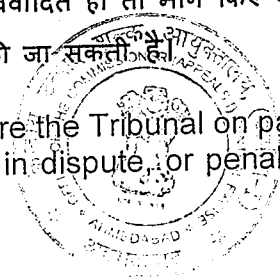
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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. Choksi Organics Private Limited [an 100% EOU], 320/1, Phase-II, GIDC, Vatwa, Ahmedabad 382 445 (for short – ‘appellant’) has filed the below mentioned two appeals, the details of which are as follows:

Sr. No.	Period involved	OIO No. and date	Amount involved/ CENVAT credit availed	OIO issued by	Appeal No.
1	April 2010 to November 2014	MP/24/DC/15-16 dated 25.2.2016	Rs. 1,13,759/-	Deputy Commissioner, Division III, Ahmedabad-I.	1/Ahd-I/16-17
2	December 2014 to June 2015	MP/AR- III/Div III/ Supdt/ 11/15-16 dated 15.3.2016	Rs. 35,704/-	Superintendent, AR-III, Central Excise, Div III, Ahmedabad-I.	11/Ahd-I/16-17

The aforementioned two appeals are being dealt with as all of these relate to the same issue.

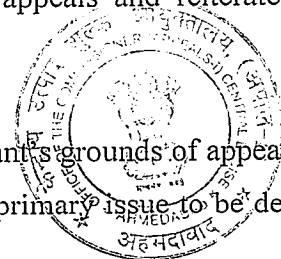
2. Briefly stated, the facts are that two show cause notices dated 14.5.2015 and 9.12.2015 were issued to the appellant alleging that they had wrongly availed CENVAT credit, as detailed above, on spares and parts used in the repairs and maintenance of capital goods, during the aforementioned period. These notices were adjudicated vide the impugned OIOs, wherein in respect of the OIO mentioned at Sr. No. 1 above, the adjudicating authority allowed CENVAT credit of Rs. 1,898/-; disallowed CENVAT credit of the rest of the amount; ordered payment of interest on the CENVAT credit wrongly availed and further imposed penalty on the appellant. In respect of OIO mentioned at Sr. No. 2 supra, he disallowed the CENVAT Credit and also imposed penalty on the appellant.

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

- since the issue involved is not regarding admissibility of CENVAT credit on welding electrodes, the decision of M/s. Vandana Global is not relevant to the present dispute;
- adjudicating authority ignored para 3 of the circular dated 8.7.2010 which clearly states that the credit of inputs used in the manufacture of capital goods which are further used in the factory of manufacturer will also be available;
- that they wish to rely on the case laws of J K Sugar [2011(270) ELT 225], Birla Corporation [2012(276) ELT 376], wherein the Hon'ble Tribunal has held that HR Plate/coil used for maintenance and repair of plant and machinery is entitled for CENVAT credit;
- that extended period is not invocable since there is no suppression of fact, wilful misstatement or fraud on the part of the appellants;
- imposition of penalty is not justified.

4. Personal hearing was granted on 20.12.2016. Shri N.K.Tiwari, Consultant, appeared on behalf of the appellant, in respect of both the appeals and reiterated the grounds of appeal.

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



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in this appeal is whether the appellant is eligible to avail CENVAT credit on spares and parts used in the repairs and maintenance of capital goods.

6. The adjudicating authority in his impugned OIO has held that:

- the appellant is not eligible for CENVAT credit in respect of goods, used in repair and maintenance of capital goods;
- CBEC vide its circular dated 8.7.2010 has clarified on the issue of inputs used in the repairs and maintenance of capital goods; that CENVAT credit is not admissible on inputs used for repairs and maintenance of capital goods;
- CENVAT credit is not admissible since these goods are not falling under the definition of CENVAT Credit Rules, 2004.

7. The issue, as to whether CENVAT credit can be availed on goods, used in the repairs and maintenance of capital goods, is no longer *res integra*. The Hon'ble High Court of Andhra Pradesh in the case of Sree Rayalseema Hi Strength Hypo Limited [2012 (278) ELT 167 (AP)], on a similar question, has held as follows:

6. Dealing with the corresponding definition of 'input' in Rule 2(g) of the Rules of 2002, the Supreme Court in M/s. Maruti Suzuki Ltd. held that the crucial requirement is that the goods must be used in or in relation to the manufacture of the final product to qualify as an input and that this presupposes that the element of manufacture must be present. The second explanation to the definition in Rule 2(k) makes it clear that only goods used in manufacture of capital goods which are further used in the factory of the manufacturer would qualify as input. Though the assessee used the terms 'manufacture', 'repair' and 'maintenance' interchangeably in its reply, it is manifest that manufacture and repair/maintenance are not the same and cannot be equated. Goods used for repair or maintenance of the machinery are not constituents in its actual manufacture and therefore would not qualify under the second explanation to the definition.

7. The decision of the Bench of the Tribunal at Kolkata in SAIL proceeded on this premise and followed the decision of the Larger Bench of the Tribunal in Jaypee Rewa Plant v. Commissioner of Central Excise, Raipur [2003 (159) ELT 553 (Tri. - LB)] wherein it was held that welding electrodes used for repair and maintenance of plant and machinery cannot be said to be used coextensively in the process of manufacture of the final product and hence, they are not integrally connected with the manufacture. Pertinent to note, the decision of the Kolkata Bench of the Tribunal was affirmed by the Supreme Court in SAIL v. Commissioner of Central Excise [2008 (229) E.L.T. A127].

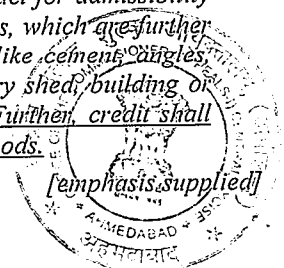
8. In that view of the matter, we are not inclined to agree with the submission of the learned counsel for the assessee. The second explanation to the definition of 'input' under Rule 2(k) of the Rules of 2004 puts it beyond doubt that unless the goods are used in the manufacture of capital goods, which are thereafter used in the factory, they do not qualify as inputs. Repair and maintenance being distinct from manufacture, CENVAT credit cannot be claimed under Rule 2(k) of the Rules of 2004 on the duty paid on welding electrodes used for repairs

[emphasis supplied]

8. Further, CBEC vide its circular no. 267/11/2010-CX dated 8.7.2010, has already clarified, as follows:

3. It thus follows from the above judgments that credit on capital goods is available only on items, which are excisable goods covered under the definition of 'capital goods' under CENVAT Credit Rules, 2004 and used in the factory of the manufacturer. As regards 'inputs', they have to be covered under the definition of 'input' under the CENVAT Credit Rules, 2004 and used in or integrally connected with the process of actual manufacture of the final product for admissibility of cenvat credit. The credit on inputs used in the manufacture of capital goods, which are further used in the factory of the manufacturer is also available, except for items like cement, angles, channels, CTD or TMT bars and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. Further, credit shall also not be admissible on inputs used for repair and maintenance of capital goods.

[emphasis supplied]

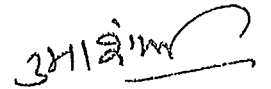


9. Thus, following the order of the High Court of Andhra Pradesh and the clarification issued by CBEC, I hold that the appellant is **not** eligible to avail CENVAT credit, in respect of spares and parts used in the repairs and maintenance of capital goods.

10. As far as the contention of the appellant that extended period is not invocable is concerned, I find that the issue of wrong availment was brought to light only after audit pointed it out. I find that there was suppression of fact and the CENVAT credit was availed in contravention of the provisions of the rules with the intent to evade payment of duty. Hence, I find that the extended period and penalty has been correctly invoked.

11. In view of the foregoing, both the impugned OIOs dated 25.2.2016 and 15.3.2016, is upheld and the appeals are rejected.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeals filed by the appellant stand disposed of in above terms.




(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 23/12/2016

Attested



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

BY RPAD.

To,

M/s. Choksi Organics Private Limited [100% EOU],
320/1, Phase-II,
GIDC, Vatwa,
Ahmedabad 382 445.

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. The Superintendent, AR-III, Central Excise, Division-III, Ahmedabad-I.
6. Guard file.
7. P.A.

