• 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)/28/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-064-2016-17**
दिनाँक 27.02.2017जारी करने की तारीख Date of Issue 28.02.2017

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

ग Asst. Commissioner, Div-II केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं **AC/15/Div-II/2015-16** दिनाँक: **29/02/2016,** से सृजित

Arising out of Order-in-Original No. **AC/15/Div-II/2015-16** दिनाँक: **29/02/2016** issued by Asst. Commissioner,Div-II Central Excise, Ahmedabad-I

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

M/s Bodal Chemicals 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 a 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 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश 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 हैं।

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 रू.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 in 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 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:

(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. Bodal Chemical Ltd (Unit II) Plot No.123 & 124, Phase-1, GIDC, Vatva, Ahmedabad, Gujarat, (for short - '*appellant*") has filed this appeal against AC/15/Div-II/2015-16 dated 29.02.2016 (for short –*impugned order*), passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad–I (for short - '*adjudicating authority*").

2. Briefly, the facts are that a show cause notice dated 01.07.2015 was issued to the appellant, alleging that they had availed CENVAT credit in respect of common taxable services but had failed to maintain separate accounts as stipulated in Rule 6 of the CENAT Credit Rules, 2004. The notice further alleged that the appellant was engaged in trading activity in addition to manufacturing goods falling under chapter 29 of Central Excise Tariff Act, 1985. This notice was issued based on Revenue para of CERA Audit for the period from 2010-11 to 2013-14.

3. Vide the impugned order, the adjudicating authority decided the aforementioned show cause notice wherein he confirmed the demand of Rs. 1,61,730/- along with interest and also imposed penalty under Rule 15(2) read with Section 11AC (1)(e) of the Central Excise Act, 1944.

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

- The amendment carried out in Cenvat Credit Rules 2004, vide notification No.3/2011-CE (NT) has prospective in nature with effect from 01.04.2011 and the adjudicating authority has missed the said clause of the notification.
- The board's circular holding that trading was an exempted service even prior to 01.104.2008 does not have any legal sanctity.
- The traded goods were never brought to the premises of the appellant and the traded goods are supplied mainly for exports from the place of manufacture without bringing the same to its premises; that no input service on such traded goods was used and therefore, it was incorrect to suggest that common input service credit was taken by them.
- The balance sheet and the ledgers of the appellant are not maintained unit wise but are maintained by their head office and common balance sheet is prepared for all the units of the appellant. Since the adjudicating authority has failed to verify as to whether the appellant had taken any input service credit of the services utilized in trading activity or both in trading as well as manufacturing activity, hence the demand confirmed is merely on presumption basis.
- that extended period is not invocable;
- that no penalty is imposable.

5. Personal hearing in the matter was held on 24.01.2017. Shri N.K.Tiwari, Consultant, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He further stated that a third party (manufacturer) product does not come to their premises.

6. 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 issue to be decided is whether the demand confirmed in terms of Rule 6 of the CENVAT Credit Rules, 2004 [for short – 'CCR '04'] along with interest and penalty, is correct or otherwise.

7. The dispute as is evident revolves around Rule 6 of the CCR '04, which is extensively quoted in the show cause notice and the OIO dated 29.10.2015. The text of the rule is therefore, not re-produced. The adjudicating authority while confirming the demand has held that the appellant is involved in manufacture of excisable goods falling under chapter 29; that the appellant is also engaged in trading of the said goods and not maintained separate accounts for availing CENVAT credit in respect of common services for manufacturing and trading; that the appellant has not followed the conditions and limitation laid down in the provisions of Rule 6(3) and 6(3A) of CCR '04 which came to the knowledge of the department during the course of audit of the records..

8. Rule 6(1) of CCR '04, clearly states that CENVAT credit shall not be allowed on input service used in manufacture of exempted goods or provision of exempted services except in the circumstances mentioned in sub-rule(2). Rule 6(2), *ibid*, puts an obligation on a manufacturer who avails CENVAT credit in respect of inputs and input services, used in both dutiable and exempted final products, to maintain separate records. Rule 6(3), *ibid*, a non-obstante clause, gives a facility to a manufacturer, opting not to maintain separate accounts to either

[a] pay an amount of 6% of the value of exempted goods; or
[b] pay an amount as determined under rule 3A; or
[c] maintain separate accounts and take CENVAT credit as per conditions therein and thereafter, pay an amount as per sub rule 3A of CCR '04.

9. The undisputed fact is that the appellant was engaged in trading activity also. There is also no dispute as far as the allegation of non maintenance of separate accounts, is concerned. It was imperative on the appellant, to either, not take CENVAT credit in respect of input service used in trading activity or maintain separate accounts as per Rule 6(2), *ibid.* However, as is already mentioned, the appellant took CENVAT credit in respect of input service used in trading activity and also failed to maintain separate accounts.

10. The appellant argued that the traded goods were never brought to their premises but supplied mainly for exports from the place of manufacture without bringing the same to its premises; that no input service on such traded goods was used and therefore, it was incorrect to suggest that common input service credit was taken by them. This argument is not tenable and acceptable, looking into the facts and circumstances of the case. It is fact that the appellant had availed Cenvat credit of common input services viz. banking services, advertisement services, security service, Chartered Accountant service etc in connection with goods traded (supplied for exports) as well as in connection with manufacturing activities in their premises and as held by the adjudicating authority it cannot be delineated transaction wise in such situation. In the circumstances, since the appellant has carried out trading activity and falling within the meaning of 'exempted service' as defined under Rule 2(e) of CCR-04, it was imperative on the appellant, to either, not

take CENVAT credit in respect of input service used in trading activity or maintain separate accounts as per Rule 6(2), *ibid.* However, as is already mentioned, the appellant took CENVAT credit in respect of input service used in trading activity and also failed to maintain separate accounts. Therefore, the provisions of Rule 6 (3) of CCR clearly attracts in appellant's case.

11. Further, I observe that the JS (TRU), CBEC, New Delhi has issued a letter no. 334/8/2016-TRU dated 29.2.2016 on the basis of amendment in Rule 6 *ibid.* The relevant extract of which are reproduced below:

> *(h) Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.*
>
> *(i) sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.*
>
> *(ii) sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.*
>
> *(iii) sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, Page 33 of 38 then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).*
>
> *(iv) The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.*

I understand that the amendment to CENVAT Credit Rules, is not retrospective. However, this amendment reflects the interpretation and intent of the Government. In-fact Joint Secretary himself states that the rules are *being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.* Even otherwise to demand an amount under Rule 6 which is more than the CENVAT credit availed would clearly be against the spirit of reversal.

12. In view of above, the Cenvat credit demanded is not more than the credit availed. In the instant case, I observe that the demand of Rs.1,61,730/-was raised on the basis of percentage of trading value. Therefore, the Cenvat credit availed on such exempted service is required to be determined. In the circumstances, I feel that this issue is required to be considered by the adjudicating authority afresh for determining the Cenvat credit availed by the appellant on such exempted service, as such, I remand back the issue to the adjudicating authority for considering the matter in view of above discussion.

13. The appellant's other contention is that the notice is barred by limitation. The adjudicating authority's justification for invoking extended period is that the appellant has contravened the provisions of Rule 6 and 2(l) of the CCR and has also suppressed facts with the intent to evade payment of duty. Looking into the facts of the case, I do not find any merit interfere the argument of the adjudicating authority for invoking extended period, as the appellant had well aware of the legal provisions available and not followed.

14. I find that the adjudicating authority has imposed penalty under Section 11 AC of the Central Excise Act, 1944. The penalty imposed under the said Section is required to be modified as the demand of amount liable to pay under Rule 6(3) of CCR is modified, as discussed at para 12.

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 :27.02.2017

Attested

(Mohanan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad

By R.P.A.D
To

M/s. Bodal Chemical Ltd (Unit II)
Plot No.123 & 124, Phase-1,
GIDC, Vatva, Ahmedabad,
Gujarat

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad-I.
3. The Deputy/Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I.
4. The Assistant Commissioner, System-Ahmedabad
5. Guard File.
6. P.A. File.