

- 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(34)/57/Ahd-I/2016-17 / 1140-44  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-078-2016-17  
दिनांक 27.03.2017 जारी करने की तारीख Date of Issue 28/03/2017

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

ग Asstt. Commissioner, Div-II केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
AC/04/Div-II/2016-17 दिनांक: 15/07/2016, से सृजित

Arising out of Order-in-Original No. AC/04/Div-II/2016-17 दिनांक: 15/07/2016 issued by Asstt. Commissioner, Div-II Central Excise, Ahmedabad-I

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

M/s. Nisarg Enterprises 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 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।

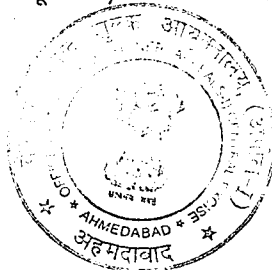
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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



... 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.

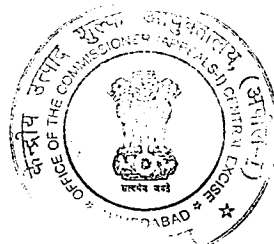
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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।

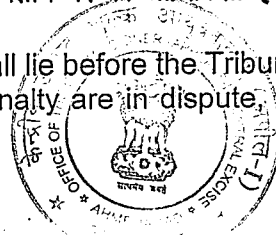
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Nisarg Enterprises Private Limited, Plot No. 3601/2, Phase-IV, GIDC Vatwa, Ahmedabad 382 445 [for short - 'appellant'] has filed this appeal against OIO No. AC/04/Div II/2016-17 dated 15.7.2016, passed by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

2. Briefly stated, a show cause notice dated 16.10.2015, was issued to the appellant *inter alia* proposing [a] demand of Central Excise duty of Rs. 58,478/- along with interest in respect of clearances of scrap, generated out of capital goods; [b] disallowing CENVAT credit of Rs. 14,106/- on items which are neither capital goods nor inputs, along with interest; [c] confiscation of the scrap cleared without payment of duty; [d] proposing penalty on the appellant. This notice was adjudicated vide the impugned OIO wherein the adjudicating authority set aside the proposals mentioned at [a] & [c] *supra*. In respect of the proposal mentioned at [b] above, he disallowed CENVAT credit of Rs. 14,016/-; ordered recovery of the credit along with interest and further imposed penalty of Rs. 7,008/- on the appellant.

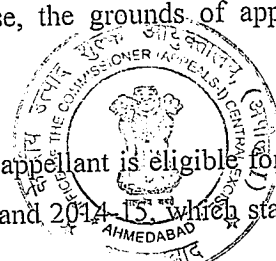
3. The appellant feeling aggrieved, has filed this appeal on the following grounds:

- (a) that the details of CENVAT credit disallowed is (i) CENVAT availed on MS plate, HR plate and bars Rs. 8990/-, CENVAT availed on Grease Rs. 428/- and CENVAT credit availed on paints Rs. 4335/-;
- (b) these items were used in maintenance and repairing of machinery installed in the factory;
- (c) that through oversight the credit was availed as capital goods instead of credit on inputs;
- (d) that the goods used in fabrication and repairs of machinery qualify as inputs; that these were used in maintenance and repairing of mixture machines, sulphuric acid tanks and vessel and acid tanks; that therefore there is a direct nexus with the manufacture of detergent;
- (e) there is no justification to deny the credit which is taken;
- (f) that they would like to rely on OIA no. 370/13-14 dated 6.3.2014;
- (g) that they would also like to rely on the case of Kishan Sahakri Chini Mills Limited [2013(292) ELT 394, Kareli Sugar Mills [2013(296) ELT 59], Hindustan Zinc Limited [2007(214) ELT 510, Ambuja Cement Eastern Limited [2010(256) ELT 690] and Alfred Herbert (India) Limited [2010(257) ELT 29];
- (h) that CENVAT credit used on paints used within the factory is admissible; that they would like to rely on the case of M/s. Nagarjuna Agricem [2003(160) ELT 572], UG Sugar & Industries [2011(272) ELT 383], M/s. Harsa Engineers [2011(263) ELT 628];
- (i) that credit on greases were covered under erstwhile Modvat rules and is not excluded under CCR '04;
- (j) that the notice is hit by limitation;
- (k) that as there is no contravention, no penalty is imposable.

4. Personal hearing in the matter was held on 16.2.2017. Shri Vikram Singh Jhala, AGM(Excise), appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal.

5. I have gone through the facts of the case, the grounds of appeal, and the oral averments raised during the course of personal hearing.

6. The question to be decided is whether the appellant is eligible for CENVAT Credit which was availed during the years 2012-13, 2013-14 and 2014-15 which stands disallowed by the impugned OIO.



7. The adjudicating authority in para 23 & 24 has mentioned the items on which credit is availed as HR plate, ERW pipes, servo grease. The show cause notice however lists the items as HR plates, paints, servo grease. The adjudicating authority, has disallowed the credit on the grounds that [a] HR plates and ERW pipes classified under chapters 72 and 73 do not find a mention in the definition of capital goods under CCR '04; [b] the items on which CENVAT credit is availed do not have any relationship with the manufacture of detergent washing powder; that they do not qualify as inputs; that these items used for repair and maintenance of capital goods is outside the purview for availing CENVAT credit under rule 2(a) of CCR '04.

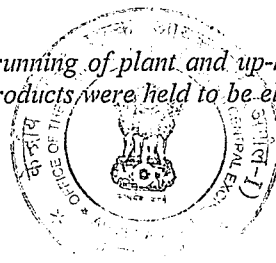
8. The appellant on the other hand is contending that the impugned items on which credit is taken were used in maintenance and repairing of machinery installed in the factory; that through oversight the credit was availed as capital goods instead of credit on inputs; that the goods used in fabrication and repairs of machinery qualify as inputs; that these were used in maintenance and repairing of mixture machines, sulphuric acid tanks and vessel and acid tanks and hence there is a direct nexus with the manufacture of detergent;

9. Capital goods, as per the definition, includes all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, etc. of the First Schedule to the Central Excise Tariff Act, 1985 and their components, spares and accessories used in the factory of the manufacturer of the final products, amongst other things. While input, as per explanation 2, to the definition, included goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. The adjudicating authority, has disallowed the CENVAT credit primarily because the goods do not fall within the definition of capital goods as defined under Rule 2(a) (A) of the CCR '04 and that these are neither inputs, as defined under Rule 2(k) of the CENVAT Credit Rules, 2004.

10. However, the issue as far as use of HR plates in repairing is concerned, is no longer res integra. In the case of M/s. Hindustan Zinc Limited [2007(214) ELT 510 (Raj)], the Hon'ble High Court of Rajasthan, held as follows:

*3. This Court concluded that goods once brought in factory for use in up-keep and maintenance of plant and machinery, which are directly used in manufacture of excisable articles, are the capital goods, and were certainly of subordinate necessity to such plant and machinery for the running of plant and is otherwise essential for its smooth and regular operations. Without proper up-keep and maintenance, the principal plant and machinery cannot function properly. Use of such capital goods is essential for smooth running of plant with greater efficiency. In other words, the goods in question are essential supplement to the plant and machinery for use in manufacturing goods, for its greater efficiency and better results and thus, it is an integral part of the process with which the primary machines are engaged. Looked from these aspects, there is no impediment for the goods in question qualifying as capital goods eligible for Modvat credit.*

*4. Consequently, such goods which are necessary for running of plant and up-keeping of the machinery directly involved in the manufacturing and products were held to be eligible to avail Modvat credit.*



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I find that this judgement has been upheld by the Hon'ble Supreme Court [Hindustan Zinc Ltd. - 2007 (214) E.L.T. A115 (S.C.)].

11. As far as CENVAT credit on paints and grease is concerned, it has been held by the Tribunal that CENVAT credit on these goods are eligible [refer judgement of M/s. Nagarjuna Agrichem [2003(160) ELT 572] and Modi Rubber Limited [2000(119) ELT 197].

12. In view of the foregoing, the appeal is allowed and the impugned OIO dated 15.4.2016, is set aside.

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

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 27/3/2017

Attested

*Vinod*

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

By RPAD.

To,

M/s. Nisarg Enterprises Private Limited,  
Plot No. 3601/2, Phase-IV,  
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, Division II, Ahmedabad-I.
5. Guard file.
6. P.A

