



- 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(29)/53/Ahd-I/2016-17 / 2748-52
Stay Appl.No. NA/2016-17

ख. अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-07-2017-18
दिनांक 29.05.2017 जारी करने की तारीख Date of Issue 15/06/2017

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asstt. Commissioner, Div-III केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
MP/19/DC/2015-16 दिनांक: 20/01/2016, से सृजित

Arising out of Order-in-Original No. MP/19/DC/2015-16 दिनांक: 20/01/2016 issued by Asstt.
Commissioner, Div-III Central Excise, Ahmedabad-I

घ 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 यथारिथिति 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 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) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) 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.



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-cessited, 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 Chemicals Limited, Unit I, Plot No. 110, Phase-II, GIDC, Vatwa, Ahmedabad [for short - 'appellant'] has filed this appeal against OIO No. MP/19/DC/2015-16 dated 20.1.2016, passed by the Deputy Commissioner, Central Excise, Division III, Ahmedabad-I Commissionerate [for short - 'adjudicating authority'].

2. Briefly stated the facts are that based on an audit objection, a show cause notice dated 15.4.2011 was issued to the appellant proposing recovery of the CENVAT credit on capital goods amounting to Rs. 78,911/- wrongly availed during the period from 2008 to 2010, on MS plates, TMT bars, MS channels, MS beams, CI castings, etc.. This notice was decided vide OIO No. MP/15/Dem/AC/2011 dated 29.2.2012 wherein the then adjudicating authority ordered recovery of CENVAT credit wrongly availed along with interest. Penalty was also imposed on the appellant. The appellant's appeal before the Commissioner(Appeals) was rejected vide CIA No. 80/2012(Ahd-I)CE/AK/Commr(A)/Ahd dated 28.9.2012. On an appeal being filed before the Hon'ble Tribunal, the matter was remanded back to the original adjudicating authority vide Order No. A/10872/2015 dated 17.6.2015.

3. It is based on the directions of the Hon'ble CESTAT, Ahmedabad, that the present impugned OIO has been issued, wherein the adjudicating authority has disallowed the CENVAT credit and has further ordered recovery of interest on the CENVAT credit wrongly availed.

4. Feeling aggrieved, the appellant has filed this appeal against the impugned OIO dated 20.1.2016, on the grounds that:

(a) the impugned order has been passed in utter violation to the principles of natural justice as the adjudicating authority has failed to consider the submission made by the appellant;

(b) that it was obligatory on the part of the adjudicating authority to have ascertained the use of the said inputs in order to decide the admissibility of the CENVAT credit;

(c) that the credit pertains to the period 2008-09 and therefore, it would not be possible for production of Chartered Engineer's certificate as the CE could not have verified the inputs used for repairs about seven years back;

That the use of the said inputs not being in dispute, the disallowance of the CENVAT credit by the adjudicating authority is not justified;

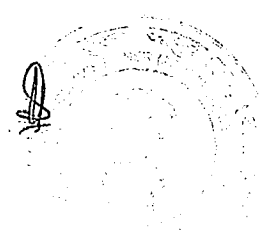
(d) the appellant submits that the admissibility of CENVAT credit of the goods used in the maintenance and repairs of the capital goods has been settled and therefore it was not open for the adjudicating authority to have distinguished the case laws;

(e) that prior to 7.7.2009, there was no specific exclusion for angles, channels, CTD bars;

(f) the appellant refers to the annexure attached to the notice and submits that the use of the inputs has been shown in the manufacture of capital goods which have been put to use in the factory of the appellants;

(g) the impugned order invoking the extended period is legally not tenable;

(h) that the adjudicating authority in para 20 of the impugned order has held that the goods under reference were used for repairs of the capital goods the CENVAT credit on the said goods is not admissible as these goods do not fall under the definition of the CCR '04.



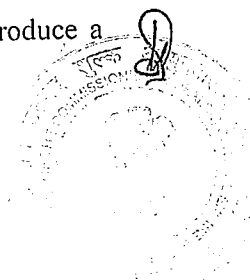
3. Personal hearing in respect of all the three appeals was held on 21.4.2017, wherein Shri N.K.Tiwari, Consultant, appeared on behalf of the appellant. Shri Tiwari, reiterated the grounds of appeal. Shri Hanuman Ram, Superintendent, AR V, division III, Ahmedabad-I appeared on behalf of Revenue.

4. Before dwelling on to the dispute, I would like to reproduce the relevant extracts of the Hon'ble Tribunal's order dated 17.6.2015, which resulted in the present OIO dated 20.1.2016. that is under challenge, before me:

"5. In view of the above settled proposition of law, items like MS Plates, Beams, Channels, Angles, etc. when used in the repair of the capital goods would be eligible for cenvat credit but the same item when used in the making of support structures will not be eligible to Cenvat Credit. On a specific query from the Bench, Learned Consultant submitted that no Chartered Engineer's certificate was produced by the appellant in support of their contention. That such items are only used for maintenance and repairs of their capital goods and not for making supporting structures. Reliance placed by the Learned Consultant on the list of items, duly verified by the jurisdictional Central Excise officers also do not throw any light as to where the items like MS Plates, Angles, Channels, TMT Bars etc are used. The matter is, therefore, required to be remanded back to the Adjudicating authority to ascertain the use of these items and decide the same in view of the law laid down by CESTAT and Supreme Court in the relied upon cases by both sides. Appellant is at liberty to produce the documents/chartered engineers certificate to the adjudicating authority to the effect that the inputs for which CENVAT Credit is claimed are used only in the maintenance and repair of the capital goods. Needless to say that the Adjudicating authority shall give an opportunity of personal hearing to the appellant before deciding the case in remand proceedings."

[emphasis supplied]

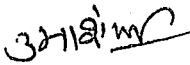
5. As is evident from the aforementioned order, the Tribunal has not left much scope to the adjudicating authority while remanding the matter. The Hon'ble Tribunal clearly held that *items like MS Plates, Beams, Channels, Angles, etc. when used in the repair of the capital goods would be eligible for CENVAT credit but the same item when used in the making of support structures will not be eligible to CENVAT Credit.* This is notwithstanding the fact that the Board in its Circular No. 267/11/2010-Cx.8 dated 8.7.2010, has clarified as follows: *"Further, credit shall also not be admissible on inputs used for repair and maintenance of capital goods."* Hence, what was left for the adjudicating authority in his denovo adjudication was - only to ascertain the use of the disputed items on which CENVAT credit was availed. On going through the impugned order dated 20.1.2016, it is clearly evident that the adjudicating authority asked the Range Superintendent to verify the claim of the appellant. The Range Superintendent vide his letter dated 19.1.2016, stated that at this stage it was not possible to verify as to whether the said goods were used for repairs and maintenance of capital goods. I find that the appellant in his grounds [refer para 12 of the appeal memorandum] has also stated that since the credit pertain to the period 2008, it would not be possible for production of Chartered Engineer Certificate. It is in this background that the appellant states that the adjudicating authority in his denovo adjudication failed to ascertain the use of the said inputs. When the appellant himself is unable to produce a



certificate from the chartered engineer [a professional], the averment, that the adjudicating authority failed to ascertain the use of the said inputs, seems unfair. The onus, to prove that the CENVAT credit was availed correctly and was admissible, is cast on the appellant under Rule 9(5) of the CENVAT Credit Rules, 2004. It is precisely because of this that the Hon'ble Tribunal raised a specific query as to whether the appellant had submitted such a certificate. I find that the adjudicating authority made the best possible attempt, by asking the Range Superintendent to verify the claim of the appellant. Since the appellant was not able to prove that disputed items had been used in the repairs of capital goods, following the order of the Tribunal in this case [para 5 of the order dated 20.1.2016, reproduced supra], the adjudicating authority was left with no option but to recover the CENVAT credit wrongly availed with interest.


6. In view of the foregoing facts, I do not find any reason to interfere with the order of the adjudicating authority more so since the appellant has failed to prove, that the disputed items on which credit was availed, was used in the repairs and maintenance of capital goods. Hence, I reject the appeal.

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


(उमा शंकर)
आयुक्त (अपील्स - I)

Date : 29/05/2017

Attested


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

By RPAD.

To,

M/s. Bodal Chemicals Limited, Unit I,
Plot No. 110, Phase-II,
GIDC, Vatwa, Ahmedabad

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-III, Ahmedabad-I.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad-I.
5. Guard File.
6. P.A.

