

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/121/Ahd-I/2016-17 / 10000 to 10004
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-120-2017-18
दिनांक 26.10.2017 जारी करने की तारीख Date of Issue _____

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

ग Superintendent, Div-III केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं MP/20/Supdt-Adj/Div-III/2016-17 दिनांक: 1/27/2017, से सृजित

Arising out of Order-in-Original No. MP/20/Supdt-Adj/Div-III/2016-17 दिनांक: 1/27/2017 issued by Superintendent Div-III Central Excise, Ahmedabad-I

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

**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 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।

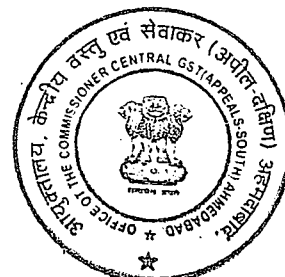
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

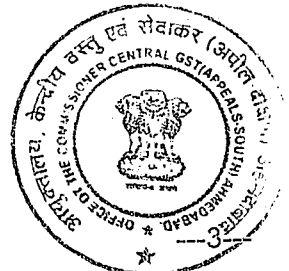
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी 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 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 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 Bodal Chemicals Ltd, Unit-I, Plot No.110, GIDC, Vatva, Ahmedabad 45 (henceforth, "*appellant*") has filed the present appeal against the Order-in-Original No.MP/20/Supdt-Adj/Div-III/2016-17 dated 27.1.2017 (henceforth, "*impugned order*") passed by the Superintendent, Central Excise, Div-III, Ahmedabad-I (henceforth, "*adjudicating authority*").

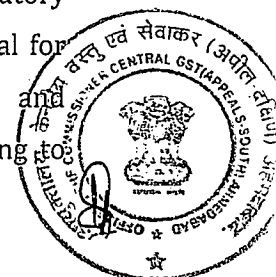
2. Briefly stated, the facts leading to present appeal are that a show cause notice was issued to the appellant on 2.5.2016 raising total demand of Rs.1,02,881/- on following reasons-

- (i) Cenvat credit of Rs.73,834/- taken on 'paints' during Apr 2015 to Sep 2015 was proposed to be denied on the ground that it was not an input in terms of rule 2(k) of the Cenvat Credit Rules, 2004.
- (ii) Cenvat credit of Rs.11,930/- taken on C I Castings, HR Plates, Bars, CR Sheets, etc. during Apr 2015 to Sep 2015 was sought to be denied on the ground that these goods were neither inputs nor capital goods.
- (iii) Cenvat credit of Rs.12,923/- taken of service tax paid on freight charges paid for transporting the waste material (spent acid) to the effluent treatment plant and charges paid for treatment of this waste material in the effluent treatment plant was proposed to be denied on the ground that outward freight beyond place of removal was excluded from the definition of input service and that treatment of waste material had no nexus with the manufacture of final products.
- (iv) Non-payment of central excise duty for the period Apr 2015 to Sep 2015 on the clearance of MS Scrap.

2.1 The show cause notice was adjudicated vide impugned order. The demand involved in credit taken on paints was dropped and remaining (Rs.29,047) was confirmed. Further, interest on the demand confirmed was ordered to be recovered and a penalty of Rs.5,000/- was imposed under rule 15(1) of the Cenvat Credit Rules, 2004 read with section 11AC(1)(a) of the Central Excise Act, 1944. The appeal filed is against the demands confirmed and penalty imposed.

3. In the grounds of appeal, the main points, in brief, are as follows-

3.1 Appellant states that treatment of waste material (spent acid) is a statutory requirement under pollution control laws; that such treatment being essential for manufacture of final product as a statutory requirement, transportation and treatment charges are covered under input service category. That it is wrong to



apply exclusion clause under para (BA) and para (C) of the definition of input service under rule 2(l) *ibid*.

3.2 With regard to credit on HR Plates, MS Bars, etc., appellant submits that it is not the case of the department that these goods were not used in the factory of manufacture. Appellant adds that the Explanation to rule 2(k) inserted vide Notification No.16/2009-CE(NT) and taken as support to deny the credit did not find place after amendment in the definition of rule 2(k) w.e.f. 1.4.2011. Appellant argues that the adjudicating authority has not followed the judicial pronouncements whereby it has been held that MS Angles, Bars, Channels used for repairs of capital goods in the factory are admissible for Cenvat credit under the category of capital goods.

3.3 With regard to demand of excise duty on scrap said to have been generated from scrapping of capital goods, appellant states that burden to prove that scrap was generated from capital goods on which Cenvat credit was taken is on the department. As per appellant, rule 3(5A) of the Cenvat Credit Rules, 2004 is applicable only when capital goods are cleared as waste and scrap and that was not the case.

3.4 According to appellant, interest is inapplicable in view of amendment in the interest provisions w.e.f. 1.4.2012. Appellant has also objected to the imposition of penalty.

4. In the personal hearing held on 13.9.2017, Shri N. K Tiwari, Consultant represented the appellant and reiterated the grounds of appeal.

4.1 After the personal hearing was held on 13.9.2017, the appellant has given some additional submission in his letter dated 20.9.2017 and has attached sales invoices in reference to sale of waste and scrap.

5. I have carefully gone through the appeal papers and other documents submitted by the appellant. Three different issues are involved, hence I take them up sequentially.

5.1 **Credit on transportation and treatment of waste material** – As defined in rule 2(l) of the Cenvat Credit Rules, 2004, 'input service' means *any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of the final products and clearance of final products upto the place of removal.* As submitted by the appellant, treatment of factory waste is a statutory requirement under pollution control laws and since appellant does not have in-house treatment



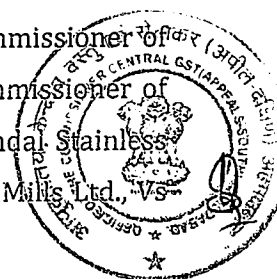
facility, a common treatment facility outside factory was used. The service tax paid on transportation and treatment charges in this regard should be available as Cenvat credit to the appellant as the services used are in relation to manufacture of final products in the sense that effluent waste is generated during manufacturing activities and manufacturing cannot be carried out without complying with the pollution control laws. The definition of input service covers a wide range of services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products.

5.1.1 In the case of Commissioner of C.Ex. & Service Tax (LTU) v. Lupin Ltd [2012 (285) E.L.T. 221 (Tri. - Mumbai)], hon'ble Tribunal, relying on the decision of Bombay High Court in the case of *CCE Nagpur Vs Ultratech Cements Ltd* [2010 (260) ELT 369 (Bom.)], has allowed the Cenvat credit on waste management service used to remove the waste from the factory premises and transport the same to the effluent treatment plant, considering that since waste management is an integral part of manufacturing process, the manufacturer is entitled for Cenvat credit. The appellant has also quoted a Tribunal's order no.A/11047/2015 dated 21.7.2017 in the case of Kanoria Chemicals & Industries Ltd, however, copy of the same has not been supplied.

5.1.2 Therefore, services used for transportation of waste and treatment thereof in a treatment plant outside the factory are covered in the definition of input service and the appellant has rightly availed the credit of service tax paid thereon.

5.2 **Credit on MS bars, angles, plates, etc.** – The goods in dispute were used for repairs of capital goods as noted in the impugned order. In support of the argument that credit is allowable, the appellant has quoted two orders of CESTAT, Ahmedabad in their own case – Final Order No.A/12081/2017 dated 28.8.2017 and Order No.A/12095/2017 dated 28.8.2017. In both theses orders, Hon'ble Tribunal has allowed the Cenvat credit of duty paid on MS Channels, MS Plates, MS Angles, etc. used for repair and maintenance of the capital goods installed in the factory. I quote as under the paragraph 4 of the CESTAT orders for easy reference-

4. I find that the dispute centers around the eligibility of CENVAT credit of the duty paid on the disputed items used within the factory for repair and maintenance of the capital goods, as per the definition of 'input' as prescribed under Rule 2(k) of CCR, 2004. This issue has been considered in the judgments of the cases of *Kisan Sahkari Chini Mills Ltd Vs. Commissioner of Central Excise, Lucknow 2013(292) ELT 394 (Trib.-Del.)*], *Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I Vs. Jinda Stainless Ltd. 2016 (343) ELT 527 (Tri.-Bang.)* and *Sarjoo Sahkari Chini Mills Ltd., Vs.*

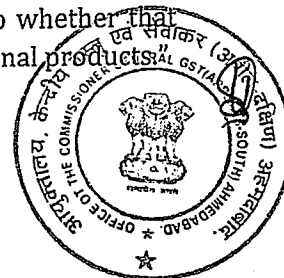


Commissioner of Central Excise, Lucknow 2009 (248) ELT 559 (Tri.- Del.)
This tribunal in Kissan Sahakari Chini Mill Ltd's case (Supra) after analyzing the principle of law observed as follows:

"5. I have considered submissions from both the sides and perused the records. I find that the issue as to whether the goods used for repair and maintenance of plant and machinery are eligible for cenvat credit, stands decided in favour of the Appellant by Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) wherein Hon'ble High Court has held that MS/SS plates used in the workshop meant for repair and maintenance of the plant and machinery's would be liable for cenvat credit and also by the judgments of Hon'ble Chhattisgarh High Court in the case of Ambuja Cements Eastern Ltd., Vs. Commissioner of Central Excise (supra) and Hon'ble Karnataka High Court in the case of Commissioner of Central Excise Vs. Alfred Herbet (India) Ltd.. (supra) wherein Hon'ble High Court have held that the inputs used for repair and maintenance of plant and machinery would be eligible for cenvat credit. The learned departmental representative has cited a contrary judgment of Hon'ble High Court of Andhra Pradesh, in the case of Sree Rayalasseem Hi-Strength Hypo Ltd Vs. Commissioner of Customs & Central Excise, Tirupati reported in 2012 (278) E.L.T 167. Since three High Courts as mentioned above, have held that the inputs used for repair and maintenance of plant and machinery are eligible for CENVAT Credit, I am of the view that it is these judgments which have to be followed.

5.2 The Apex Court in the case of J.K. Cotton SPG & WVG Mills Co. Ltd. V. Sales Tax office reported in 1997 (91) E.L.T 534 (S.C) ., interpreting the scope of the expression - "In the manufacture of goods" In Section 8(3) (C) of the Central Sales Tax Act, 1956 has in para 9 of the judgment held that this expression would cover the goods used in any process/activity which is so integrally connected to the ultimate manufacture of goods without that process or activity, even if theoretically possible, is commercially inexpedient. The scope of the expression used in the definition of 'Input' in Rule 2 (k) of the Cenvat Credit Rules, 2004 - "used in or in relation to manufacture of final products, whether directly or indirectly and whether contained the final products or not" is much wider than the scope of the expression "used in manufacture of " and therefore the expression - "used in manufacture of" and therefore the expression - "used in or in relation to manufacture of final product', whether directly or indirectly" in the definition of input in Rule 2(2) would cover all the goods whose use is commercially expedient in manufacture of final products.

5.3 Repair and maintenance of plant and machinery is an activity without which smooth manufacturing is not possible. Commercially, manufacturing activity is not possible with malfunctioning machines, and leaking tanks, pipes and tubes. Therefore the activity of repair and maintenance of plant and machinery is an activity which has direct nexus with manufacture of final products and the goods used in this activity would be eligible for CENVAT credit. For eligibility of an input for Cenvat credit what is relevant is whether the activity in which that input is used has nexus with the manufacture of final product and the nexus has to be determined on the basis of criteria as to whether that activity is commercially essential for manufacture of the final products.



Thus, the issue already stands decided by CESTAT, Ahmedabad in favour of the appellant and therefore same benefit has to be allowed in the present case also.

5.3 **Excise duty on MS scrap** – As per appellant, the scrap was generated from scrapping of supportive structures, tubes and pipes, and scrap generated from MS Angles, Channels used for repairs of plant and machinery. According to appellant, scrap was not generated from the capital goods on which Cenvat credit was taken. Appellant has provided copies of some invoices where description of goods shows MS scrap, MS scrap from structure support, MS pipes, MS bars, MS plate, MS angle, scrap of plastic bags & liners, etc. Thus, with regard to MS scrap, it is not clear whether scrap was generated from the scrapping of capital goods. Also, there is nothing in the impugned order to establish that MS scrap sold was generated from scrapping of capital goods on which Cenvat credit had been taken. Therefore, in absence of any proof that scrap sold was generated from scrapping of capital goods on which Cenvat credit had been taken, there is no reason to demand duty of excise.

6. In view of above, confirmation of demand involved in aforesaid three issues is liable to be set aside. Recovery of interest or imposition of penalty is also wrong when the main demand has failed to survive. Accordingly, the appeal is allowed.

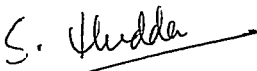
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)

Date: 26-10-2017

Attested


(Sanwermal Hudda)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s Bodal Chemicals Ltd, Unit-I,
Plot No.110, GIDC, Vatva,
Ahmedabad 45



Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - South.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt./Deputy Commissioner, Central Tax, Division-III, Ahmedabad- South.
5. Guard File
6. P.A.



