
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(29)/56/Ahd-I/2017-18 / 405-09
 Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP,251-2017-18
 दिनांक Date : 17-1-2018 जारी करने की तारीख Date of Issue 22/01/18

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

ग Superintendent, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं MP/01/AR-V/DIV-III/SUPERINTENDENT/2017 दिनांक: 31/5/2017, से सृजित

Arising out of Order-in-Original No. MP/01/AR-V/DIV-III/SUPERINTENDENT/2017 दिनांक: 31/5/2017 issued by Superintendent, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
 M/s. Bodal Chemicals Ltd. U-I
 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 :

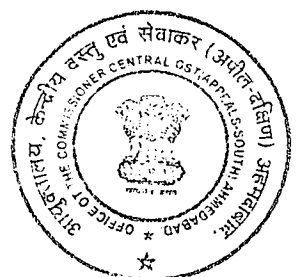
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रायः काल के दौरान हुई हो।

(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.

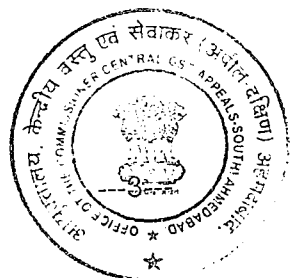
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 मेटल 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 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 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 'नंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

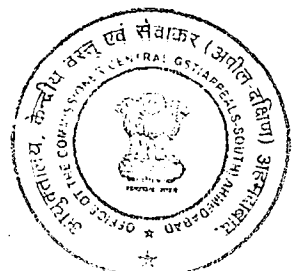
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

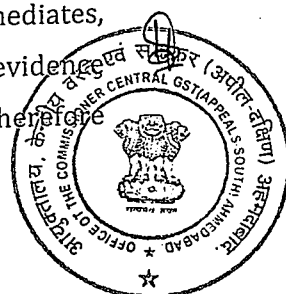
M/s Bodal Chemicals Ltd, Unit-I, Plot No.110, GIDC, Vatva, Ahmedabad 382445 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.MP/01/AR-V/Div-III/Supdt./2017 dated 31.05.2017 (henceforth, "impugned order") passed by the Superintendent, Central Excise, Div-III, Ahmedabad-I (henceforth, "adjudicating authority").

2. Briefly stated, the facts leading to present appeal are that a show cause notice was issued to the appellant on 30.04.2015 raising total demand of Rs.77,590/- for the period Apr-2014 to Mar-2015 on following reasons-

- (i) Cenvat credit of Rs.8,566/- taken on 'paints' 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.16,081/- taken on C I Castings, HR Plates, Bars, CR Sheets, etc. was sought to be denied on the ground that these goods were neither inputs nor capital goods.
- (iii) Cenvat credit of Rs.14,916/- 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 of Rs.26,953/- on the clearance of MS Scrap.
- (v) Cenvat credit of Rs.11,074/- involved in short quantity on account of purity difference of dye intermediates was proposed to be recovered.

2.1 The show cause notice was adjudicated vide Order-in-Original No.MP/04/AR-V/DIVISION-III/SUPERINTENDENT/2015-16 dated 13.10.2015 and entire demand was confirmed. Feeling Aggrieved, appellant filed an appeal with the Commissioner (Appeals), who, vide Order-in-Appeal No.AHM-EXCUS-001-APP-020-2016-17 dated 22.09.2016, upheld the order appealed against on point (ii) & (iii) and on remaining issues remanded back for fresh order.

2.2 While deciding the issues remanded back, the adjudicating authority disallowed the Cenvat credit on 'paints' and confirmed duty demand on MS Scrap. With regard to Cenvat credit involved in short quantity of dye intermediates, adjudicating authority noted that appellant had not submitted any evidence regarding non claim of refund of excess duty by the supplier and therefore



appropriated the amount already paid towards this liability. Appellant has preferred this appeal against the impugned order.

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

3.1 With regard to Cenvat credit on 'paints', appellant submits that definition of inputs has changed from 01.04.2011 whereby inputs are defined as all goods used in the factory; that it was not the case of the department that the paint on which Cenvat credit was taken was not used in the factory.

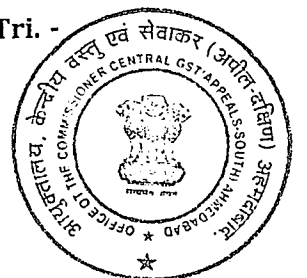
3.2 With regard to demand of excise duty on scrap said to have been generated from scrapping of capital goods, appellant states that no evidence has been brought on record by the department to prove that scrap was generated from capital goods on which Cenvat credit was taken; that no credit was taken on the capital goods from which the scrap was generated and as such no duty was required to be paid. 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.

3.3 With regard to denial of Cenvat credit on account of purity, appellant states that issuance of debit notes for this reason did not have any effect on the payment of duty of excise which was paid by the supplier; that it is not the case of the department that owing to purity difference, the supplier had sought any refund of duty paid; that so long there is no variation in the duty payment by the supplier, the reversal at the recipient's end of the Cenvat credit of duty so paid is not justifiable; that Cenvat credit was taken based on the duty paying documents and the amount of duty paid by the manufacturer supplier and that can in no way be branded as excess credit.

4. In the personal hearing held on 30.11.2017, Shri N K Tiwari, Consultant represented the appellant and reiterated the grounds of appeal. He cited the earlier order of Commissioner (Appeals) of 26.10.2017.

5. I have carefully gone through the appeal. Three different issues are involved, hence I take them up sequentially.

5.1 **Cenvat credit on paints** – As per definition of "input" given under rule 2(k) of the Cenvat Credit Rules, 2004, all goods used in the factory by the manufacturer of the final product are inputs, subject to exclusions provided in the rule. Since 'paint' does not fall in the exclusion category of inputs, it becomes an eligible input for Cenvat credit. The decision of principal bench of CESTAT in the case of **DSM Sugar v. Commissioner of Central Excise, Merut-I [2013 (31) S.T.R. 210 (Tri. -**

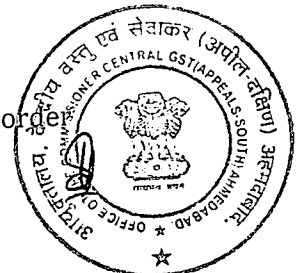


Del.]) has held that paints and thinner used for applying on machinery are covered in the definition of inputs under Cenvat Credit Rules, 2004. Hence, eligibility of paints as inputs cannot be disputed. However, as per adjudicating authority, appellant has not produced any evidence regarding use of paints and in this regard, I note that when the department has not challenged the receipt or consumption of paints in the factory of manufacturer, there is no ground to say that paint was not used in the factory for the stated purpose. Hence, credit of duty paid on paints amounting to Rs.8,566/- has to be allowed and I do the same.

5.2 Excise duty of MS Scrap - As per appellant, the scrap was generated from MS Pipes and MS Drums and not from the capital goods on which Cenvat credit was taken. Also, there is nothing in the impugned order to establish that MS scrap sold was generated from scrapping of capital goods on which appellant had taken Cenvat credit. Therefore, in absence of any proof that scrap sold was generated from scrapping of capital goods on which Cenvat credit had been taken, I find no reason to demand duty of excise. Therefore, confirmation of duty demand of Rs.26,953/- in the impugned order is liable to be set aside.

5.3 Denial of Cenvat credit on account of purity difference -The department has demanded reversal of Cenvat credit on short supply of inputs due to purity difference. The adjudicating authority has noted that in view of the fact that appellant could not produce any evidence to show that supplier of inputs did not claim refund of duty attributable to short supply of inputs on account of lesser purity, excess Cenvat credit was deniable. As decided by Hon'ble Tribunal in the case of **Commissioner of C.Ex., Rohtak v. Toyo Springs Ltd [2013 (294) E.L.T. 639 (Tri. - Del.)]**, entire amount of duty paid by the manufacturer, as shown in the invoice, was available as Cenvat credit and subsequent price reduction would have no effect if supplier did not claim refund of duty. Here, appellant, by raising debit notes, has paid lesser price to the supplier than charged in the invoices and this price reduction would not reduce the credit availability of the appellant in view of Tribunal's decision in aforesaid case of Toyo Springs Ltd unless supplier claimed refund of the duty. Since department has no evidence to show that supplier got refund of duty, benefit of Cenvat credit cannot be denied to the appellant merely on the assumption that appellant might have got refund. Hence, unless department is in a position to prove that refund of excess duty has been claimed by the supplier, availment of Cenvat credit of duty amount shown in the invoice cannot be reduced as decided in the Toyo Springs case. The adjudicating authority's order disallowing the cenvat credit of Rs.11,074/- on reasons of purity difference, therefore, requires to be set aside.

6. In view of foregoing discussion and findings, I set aside the impugned order and allow the appeal.



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

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested

S. Hudda
(Sanwarmal 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 382445

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.

