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| <br>सत्यमेव जयते | <b>केंद्रीय कर आयुक्त (अपील)</b><br><b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b><br>केंद्रीय कर भवन,<br>सातवीं मंजिल, पोलिटेकनिक के पास,<br>आम्बावाडी, अहमदाबाद-380015<br>टेलीफोन : 079-26305065 | <br>7 <sup>th</sup> Floor, GST Building,<br>Near Polytechnic,<br>Ambavadi, Ahmedabad-380015<br>टेलीफैक्स : 079 - 26305136 |
|---|---|--|

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/65/Ahd-I/2017-18 / 40-404  
 Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-252-2017-18  
 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 01/Supdt.(Adj)/VS/Div-II/2017  
 दिनांक: 23/6/2017, से सृजित

Arising out of Order-in-Original No. 01/Supdt.(Adj)/VS/Div-II/2017 दिनांक: 23/6/2017 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-III  
 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 अतल नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा क 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 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 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.

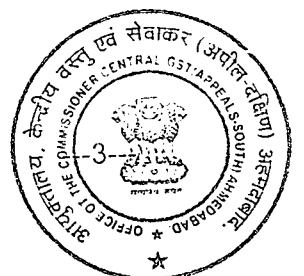
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-वी/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 (सिस्टेंट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल 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 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 मागले 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 होमा "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 Chemicals Ltd, Unit-III, Plot No.2102, GIDC, Phase-III, Vatva, Ahmedabad 382445 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.01/Supdt.(Adj.)/VS/Div-II/2017 dated 23.06.2017 (henceforth, "impugned order") passed by the Superintendent, Central Excise, Div-II, Ahmedabad-I (henceforth, "adjudicating authority").

2. Briefly stated, the facts leading to present appeal are that a periodic show cause notice was issued to the appellant on 17.05.2017 raising total demand of Rs.30,341/- on following reasons-

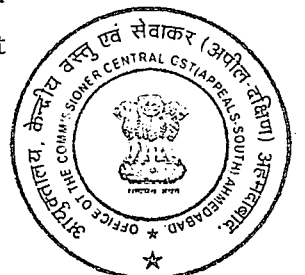
- (i) Cenvat credit of Rs.6,856/- taken on C I Castings, HR Plates, Bars, CR Sheets, etc. during Jan-2016 to Dec-2016 was sought to be denied on the ground that these goods were not 'capital goods' in terms of Cenvat Credit Rules, 2004.
- (ii) Non-payment of central excise duty of Rs.23,485/- for the period Jan-2016 to Dec-2016 on the clearance of MS Scrap allegedly generated out of scrapping of capital goods.

2.1 The show cause notice was adjudicated vide impugned order, whereby adjudicating authority confirmed the entire demand raised in the show cause notice, except the demand of Rs.1,000/- pertaining to clearance of MS Scrap out of Rs.23,485/-. 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. Feeling aggrieved with the impugned order, appellant has preferred this appeal.

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

3.1 With regard to credit on HR Plates, MS Bars, etc., appellant states that they had submitted the details of Cenvat credit taken on goods and usage of goods in their letter dated 13.01.2017; that they had also produced ledger showing accounting of goods under the head repairing of plant and machinery; and thus it cannot be said that they had not produced any evidence to show that the goods on which credit was taken were not used for repair and maintenance of the plant and machinery installed in the factory.

3.1.1 Appellant submits that from 01.04.2011, the definition of input has been enlarged to include all goods used in the factory and it is not case of the department that the goods on which credit was taken were 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 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; that no credit was taken on the capital goods from which scrap was generated.

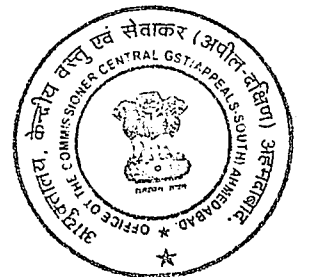
3.3 According to appellant, after amendment in the interest provisions w.e.f. 01.04.2012, interest is recoverable only if the Cenvat credit has been taken and utilized; that in the impugned order there is no such finding as to whether Cenvat credit was utilized by the appellant or not. Appellant has also objected to the imposition of penalty.

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. Two different issues are involved and I deal with them individually as under -

5.1 **Credit on MS bars, angles, plates, etc.** - As per appellant, the goods in dispute were used for repairs of capital goods. Further, in the personal hearing, appellant has quoted my own order in their case dated 26.10.2017 whereby credit on MS bars, angles, plates was allowed relying on 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 these 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. Jindal 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:

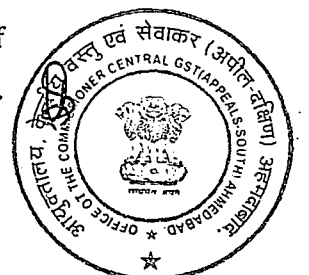


"5. I have considered submissions from both the sides and perused the records. I find that the issue as to whether the goods used for repair and maintenance of plant and machinery are eligible for cenvat credit, stands decided in favour of the Appellant by Hon'ble Rajasthan High Court in the case of 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."

5.1.1 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.

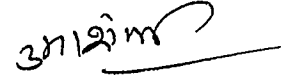


The order of adjudicating authority disallowing Cenvat credit of Rs.6,856/-, therefore, requires to be set aside.

5.2 **Excise duty on MS scrap** -There are two invoices on which duty has been demanded in the impugned order. The description of goods shown in the invoices - 'Wastage Old Bags/Packing (Scrap), Scrap, MS Scrap old Beam Roof & Old Copper Wire' - reveals nothing to conclude that waste/ scrap sold was a waste and scrap of any capital goods on which credit was taken. As per appellant, scrap was not generated 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 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. As a result, adjudicating authority's order demanding duty of Rs.22,485/- deserves to be set aside.

6. In view of above, entire demand confirmed in the impugned order is liable to be set aside. The question of interest and penalty does not arise as duty demand has failed to sustain and there is no wrong avilment of Cenvat credit. The impugned order is accordingly set aside and 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.

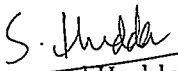


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested

  
(Sanwarimal Hudda)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

By R.P.A.D.

To,  
M/s Bodal Chemicals Ltd, Unit-III,  
Plot No.2102, GIDC, Phase-III, 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-II, Ahmedabad- South.
5. Guard File
6. P.A.

