



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटिकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(29)/52/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-029-2017-18
दिनांक 24.07.2017 जारी करने की तारीख Date of Issue 24/8/17

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Superintendent, Range-II, Div-II केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं
Supdt/01/AR-II/Div.II/2016 दिनांक: 24/06/2016, से सृजित

Arising out of Order-in-Original No Supdt/01/AR-II/Div.II/2016 दिनांक: 24/06/2016 issued by
Superintendent, Range-II, Div-II Central Tax, Ahmedabad-I

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

M/s Bodal Chemicals Unit-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 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 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 चैलेंज 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 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 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 Bodal Chemicals Ltd (Unit-III), Plot No.2102, GIDC, Phase-III, Vatva, Ahmedabad [hereinafter referred to as "the appellant] has filed this appeal against Order-in-Original No.Supt/01/AR-II/Div-II/2016 dated 24.06.2016 [hereinafter referred to "the impugned order"] passed by the Superintendent of Central Excise, AR-II, Division-II, Ahmedabad-1 [hereinafter referred to "the adjudicating authority"].

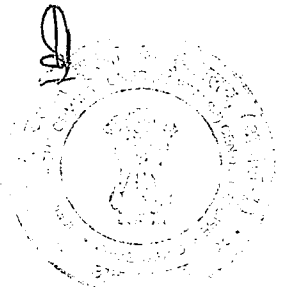
2. Briefly stated, the facts of the case is that a show cause notice dated 11.04.2016 was issued to the appellant, alleging that [i] the appellant had availed and utilized Cenvat credit of Rs.11,671/-wrongly towards ineligible capital goods viz. M. S.Channel, M.S.Angles, Bars M.S.Beam, H.R.Plates, Coil, M.S.Plates during April 2015 to December 2015; and [ii] Central Excise duty amounting to Rs.7,020/- has not paid on clearance of M.S.Scrap generated out of the capital goods in the factory of the appellant during April 2015 to December 2015. The adjudicating authority, vide the impugned order has denied the credit of Rs.11,671/-with interest on the grounds that the said goods are not covered under the definition of capitals/specifically excluded from the definition of inputs. The adjudicating authority has further confirmed the demand of Rs.7,020/ with interest on the ground that the appellant has availed cenvat credit on the capital goods and as per provisions of Rule 3(5A) of Cenvat Credit Rules, 2004, the appellant shall pay an amount equal to the duty leviable on transaction value of such goods. A penalty of Rs.5,000/-was also imposed under Rule 15(1) of Cenvat Credit Rules read with Section 11 AC of the Central Excise Act.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The adjudicating authority has contended that no evidence in support of their contention that the goods viz M.S.Channel, M.S.Angles etc were used in the maintenance and repairs of capital goods has been put on record; that the adjudicating authority has completely overlooked the submissions made by them, where in the use of the said inputs in the repairing of the capital goods had been specifically shown.
- The adjudicating has correctly recorded the provisions of Rule 3(5A) of Cenvat Credit Rules, however, the appellant had not taken any credit on the capital goods from which the scrap was generated; that in the circumstances, no duty is required to be paid. The adjudicating authority has completely overlooked the said submissions.
- The case law relied on by the adjudicating authority is distinguishable from the facts of the instant case.
- No interest and penalty is payable, looking into the facts of the case.

4. Personal hearing in the matter was held on 20.06.2017 and Shri N.K.Tiwari, Consultant appeared for the same. He reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant. The limited point to be decided in the instant case relating to [i] eligibility of Cenvat credit amounting to Rs.11,671/-availed and utilized towards goods viz. M. S.Channel, M.S.Angles, Bars M.S.Beam, H.R.Plates, Coil, M.S.Plates for repairing of

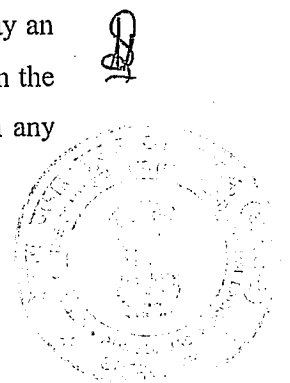


capital goods during April 2015 to December 2015; and [ii] Central Excise duty amounting to Rs.7,020/- has not paid on clearance of M.S.Scrap generated out of the capital goods in the factory of the appellant during April 2015 to December 2015.

6. At the outset, I observe that the adjudicating authority has denied the credit of Rs.11,671/- on the grounds that the said goods are not covered under the definition of capitals/specifically excluded from the definition of inputs; that no evidence in support of their contention that the goods viz M.S.Channel, M.S.Angles etc were used in the maintenance and repairs of capital goods has been put on record. As regards demand of Rs.7,020/-, the adjudicating authority has contended that the appellant has availed cenvat credit on the capital goods and as per provisions of Rule 3(5A) of Cenvat Credit Rules, 2004, the appellant shall pay an amount equal to the duty leviable on transaction value of such goods; that they have not produced any support of their argument that no credit was taken on the capital goods in question.

7. As regards the issue relates to admissibility of Cenvat credit on M.S. Angles, M.S. Channel, etc (all items of Chapter 72/68) as "capital goods" under Rule 2(b) of Cenvat Credit Rules, it is the argument of the appellant that they used the said goods for repairing of capital goods, hence Cenvat credit is admissible. However, I observe that details of functional use of the said goods are not discussed/ furnished by the appellant either before adjudicating authority or before the appellate authority. I find that the definition of capital goods considered all components, spares and accessories of the capital goods falling under Chapter 82, 84, 85, 90. In the instant case, the dispute is as to whether the said goods were used for repairing of capital goods or otherwise within the factory. Since the said chapters viz. 72/68 are not specifically included in the definition of capital goods, eligibility of credit on such goods as per definition of capital goods can be recognized only after the functional usage. If the accessories and components etc are used for repairing of capital goods, there is no dispute regarding eligibility of the credit. Since the admissibility of Cenvat credit on the said goods has different view by Hon'ble CESTAT/Court, I am of the considered view that the eligibility of credit of the said goods can be recognized only after determination of functional usage. There is no evidence on record that the said goods were used in connection with repairs of capital goods. Therefore, the adjudicating authority has contended that the appellant has failed to submit any support to their argument. In the circumstances, I am of the considered view that the matter requires further consideration by the adjudicating authority. The appellant is at liberty to furnish any evidence /support to prove the functional use of the goods that it was used in connection with repairs of capital goods only. Therefore, I remand the issue to the adjudicating authority for fresh consideration.

8. As regards demand of Rs.7,020/-, I find that there is no dispute on either side that as per provisions of Rule 3(5A) of Cenvat Credit Rules, 2004, the appellant shall pay an amount equal to the duty leviable on M.S.Scrap generated out of the capital goods in the factory of the appellant. The argument of the appellant is that they have not taken any




duty on capital goods from which M.S.Scrap was generated. I observe from the defence reply to show cause notice that they had submitted before the adjudicating authority that the scrap generated and sold by them was not only from capital goods but also out of tubes and pipes, beams used as supportive structure etc. Further, I observe that the demand of Rs.7020/- raised by the department is pertaining to the period of April 2015 to December 2015 which was subsequent to the show cause notice covering the period of August 2014 to March 2015; that the details of value of scrap generated and cleared out of the capital goods in their factory was given by the appellant vide their letter dated 08.01.2016, on being called for by the department vide letter dated 31.12.2015. However, while submitting such information, the appellant has not mentioned that the value furnished by them involves value of scrap generated from capital goods where no credit was taken. It appears that in the circumstances, the adjudicating authority has contended that the appellant has not produced any support of their argument.

9. Considering the contention of the appellant as well as the adjudicating authority, I feel that the matter should examine again by the adjudicating authority in light of submission made by the appellant. The appellant shall furnish all their evidence in support of their argument to show that they have not taken any credit on the capital goods from which they generated the scrap in question. In view foregoing, this issue also succeeds by way of remand.

10. In view of above discussion, I remand the appeal to the adjudicating authority for fresh decision after granting proper natural justice to the appellant. The appeal stands disposed of accordingly.

उमाशंकर
24/7/16
(उमा शंकर)
आयुक्त (अपील्स - I)
Date: 24/07/2016

Attested


(Mohanana V. V.)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To,
M/s Bodal Chemicals Ltd (Unit-III),
Plot No.2102, GIDC, Phase-III, Vatva, Ahmedabad

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-I
3. The Additional Commissioner (System), Central Excise, Ahmedabad-I
4. The Deputy/Assistant Commissioner, Central Excise, Ddivn.II, Ahmedabad-I
5. Guard file.
6. P.A