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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>7 <sup>th</sup> Floor, GST Building,<br>Near Polytechnic,<br>Ambavadi, Ahmedabad-380015 |
| ☎ : 079-26305065  |   | टेलिफैक्स : 079 - 26305136   |

9019 709023

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)142/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0133-2018-19  
दिनांक Date : 31-12-2018 जारी करने की तारीख Date of Issue

10/1/2019.

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

Arising out of Order-in-Original No. AC/13/DIV-III/2017-18 दिनांक: 25.09.2018 issued by Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Bodal Chemicals Ltd. U-II**  
**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, 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 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 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.

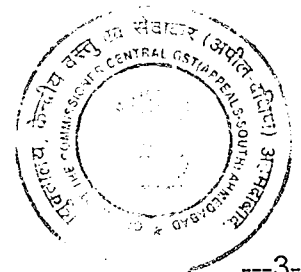
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

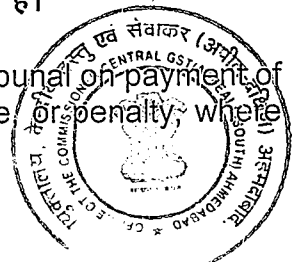
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

M/s. Bodal Chemical Ltd (Unit II) Plot No.123 & 124, Phase-1, GIDC, Vatva, Ahmedabad, Gujarat, (for short - 'appellant') has filed this appeal against Order-in-Original No.AC/13/Div-II/2017-18 dated 25.09.2018 (for short - *impugned order*), passed by the Assistant Commissioner, Central GST, Division-II, Ahmedabad-South (for short - 'adjudicating authority').

2. Briefly, the facts are that based on Revenue Para of CERA Audit for the period from 2010-11 to 2013-14, a show cause notice dated 01.07.2015 was issued to the appellant, alleging that they had availed CENVAT credit in respect of common taxable services but had failed to maintain separate accounts as stipulated in Rule 6 of the CENAT Credit Rules, 2004. The notice further alleged that the appellant was engaged in trading activity in addition to manufacturing goods falling under chapter 29 of Central Excise Tariff Act, 1985. The jurisdictional Assistant Commissioner, vide order-in-original No.AC/15/Div.II/2015-16 dated 29.02.2016 decided the aforementioned show cause notice, wherein he confirmed the demand of Rs. 1,61,730/- along with interest and also imposed penalty under Rule 15(2) read with Section 11AC (1)(e) of the Central Excise Act, 1944. Vide Order-in-Appeal No.AHM-EXCUS-001-APP-064-2016-17 dated 27.02.2017, the Commissioner (Appeals) held that the CENVAT credit demanded cannot be more than the CENVAT credit availed and accordingly, he remanded the matter to the adjudicating authority for determining the CENVAT credit availed by the appellant on such exempted service. However, the adjudicating authority has again determined the duty of 6% of trading activity (exempted service) and confirmed the duty accordingly and also imposed penalty under Rule 15(2) read with Section 11AC of Central Excise Act, 1944, vide OIO No.AC/06/Div II/2017-18 dated 28.03.2018. The case was again remanded by the Appellate Authority, vide OIA No.AHM-EXCUS-APP-030-2018-19 dated 30.07.2018 with a specific direction to follow the decision Appellate Authority. However, the adjudicating authority has again confirmed the demand with interest and penalty on the ground that the appellant has failed to furnish the information related to the Cenvat credit on the exempted goods.

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

- The proceedings came up before the adjudicating authority as per directions of the Commissioner (Appeals) order dated 27.02.2017/30.07.2018; that the Commissioner (Appeals) has remanded the matter to the adjudicating authority to determine the CENVAT credit availed on such exempted service and held that the CENVAT credit demanded cannot be more than the CENVAT credit availed. The adjudicating authority has not followed the said direction



and failed to determine the amount of CENVAT credit on such exempted service.

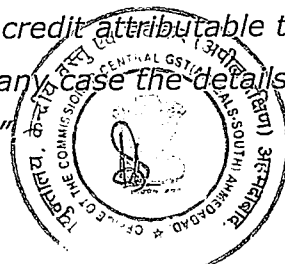
- The adjudicating authority has failed to consider the submissions made by the appellant and thus the impugned order is in violation of principles of natural justice; that the adjudicating authority having failed to under taken any verification the facts that whether the appellant had taken any input service credit of the services utilized in trading activity or both, the demand confirmed is merely on the basis of presumption.
- No penalty is imposable.

4. Personal hearing in the matter was held on 11.12.2018. Shri N.K.Tiwari, Consultant appeared for the same and reiterated the grounds of appeal. He further pointed out that the directions of Commissioner (Appeals) order dated 27.02.2017/30.07.2018 was not carried out by the adjudicating authority.

5. I have carefully gone through the facts of the case, the appellant's grounds of appeal and submissions made during the course of personal hearing. The issue to be decided is whether the demand confirmed in terms of Rule 6 of CENVAT Credit Rules, 2004 [for short-CCR] along with interest and penalty, is correct or otherwise.

6. I find that the issue involved in the matter has already been decided by the Appellate Authority, vide OIA No. AHM-EXCUS-001-APP-064-2016-17 dated 27.02.2017 and OIA No.AHM-EXCUS-APP-030-2018-19 dated 30.07.2018, wherein the matter was remanded to the adjudicating authority for re-determination of CENVAT credit availed by the appellant on exempted service. In the said OIA, it has been held that the demand of amount under Rule 6 is not more than the CENVAT credit availed and such demand would clearly be against the spirit of reversal of CENVAT credit. The disputed issue in the matter has extensively discussed in the said OIAs.

7. I find that this is the third time the instant issue is coming before me for decision which is highly deplorable. Neither the adjudicating authority nor the appellant had taken any keen positive attitude to finalize the matter. Vide the impugned order, the adjudicating authority has stated that "*in the absence of information related to the Cenvat credit availed on the exempted service, the recourse of the amount equal to the relevant rates of the value of trading activity or the difference value of sale price and cost price is legitimate and lawful.*" The appellant has contended before the adjudicating authority that "*the entire detail was worked out by the officers of CERA during the course of audit. The amount of credit used both in dutiable as well as exempted products worked out by them based on records audited. The details category wise was not provided to us. We have been contending that no credit attributable to trading activity was being taken by us at the material time. In any case the details having been worked out by CERA Audit are not available with us*"



8. The facts on records reveal that the department has issued show cause notice on the basis of observation raised by CERA Audit that the appellant had taken Cenvat credit on common inputs used for both dutiable goods and exempted goods. In the said objection, it was contended that the appellant availed common service tax credit for manufacturing and trading activity such as Banking service, advertisement service, security service and Chartered Accounting service. As stated above, the appellant's contention is that no credit attributable to trading activity was taken by them during the relevant period. However, they failed to furnish any details in support of their above argument. If they really not availed any credit on such services during the relevant period, as argued by them, it should have been reflected in the records maintained by them and it is their responsible to produce such records before the adjudicating authority. I find that the case was remanded twice and specific direction was given to the appellant to produce such records, supporting their argument. However, they failed to produce any records to show that they had not availed any credit on services viz. Banking service, advertisement service, security service and Chartered accounting service and keeping the arguments that they had not availed any credit. In the circumstances I do not find any substance in their argument and not tenable or acceptable. On the contrary, I find that the CERA Audit has taken the observation on the basis of scrutiny of service tax records which clearly revealed that the appellant had availed common service tax credit on such services.

9. I further find that the appellant has submitted copy of CERA objection along with the appeal memorandum, which contains details of calculation with respect to non reversal of credit attributable to trading activity i.e exempted service. According to the said details, the CERA has calculated the amount required to be reversed on the basis of percentage of trading sell and service tax credit availed during the relevant periods. According to their calculation an amount of Rs.2,30,302/- arrived as non-reversal of service tax credit attributable to trading activity. In other words, the appellant is required to be reversed Rs.2,30,302/- against service tax attributed to trading activity. However, I find that in the show cause notice, the said amount was re-calculated as Rs.1,61,730/- [Rs.24,524/- for period upto 07.04.2011 + Rs.1,37,06/- for subsequent period] and accordingly the adjudicating authority has confirmed the demand. The said amount was calculated under the relevant provisions of Rules prevailed at the relevant time. The calculation is widely elaborated in the show cause notice/impugned order. In any case, I find that the amount confirmed in the impugned order is less than the amount determined by the Audit as service tax attributable to trading activities during the relevant periods. Since the appellant has failed to furnish any alternative figures/information related to the Cenvat credit availed on the exempted service, the appellant is required to be reversed Cenvat credit amounting to Rs.1,61,730/- as Cenvat credit attributed to exempted services and I do not find any merit to



interfere the confirmation of said amount in the impugned order. Accordingly, I uphold the demand with interest and penalty imposed.

9. In view of above discussion, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

*3/12/18*

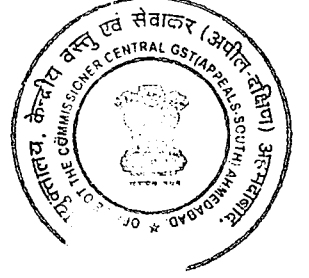
(उमा शंकर)

आयुक्त (अपील्स)

Date : /12/2018

Attested

*Mohanan V.V*  
(Mohanan V.V)  
Superintendent (Appeals)  
Central GST, Ahmedabad



By R.P.A.D

To

M/s. Bodal Chemical Ltd (Unit II)  
Plot No.123 & 124, Phase-1,  
GIDC, Vatva, Ahmedabad,  
Gujarat

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central CGST, Ahmedabad-South.
3. The Deputy/Assistant Commissioner, Central GST, Division-II, Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad South
5. Guard File.
6. P.A. File.

