



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,

Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)23/Ahd-South/2018-19  
Stay Appl.No. /2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-026-2018-19  
दिनांक Date : 12-07-2018 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. Supdt/01/AR-II/Div-II/2018-19 दिनांक: 12.04.2018 issued by  
Superintendent, Range -II, Div-II, Central Tax, Ahmedabad-South

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

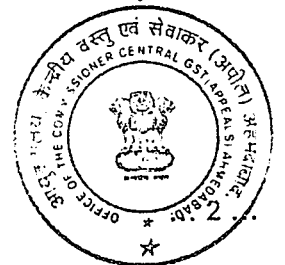
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

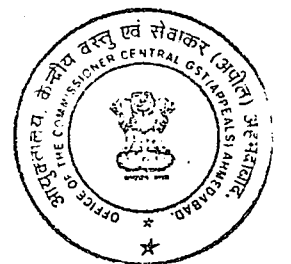
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैनटल 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 अनुसूचि-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 alone is in dispute."



ORDER-IN-APPEAL

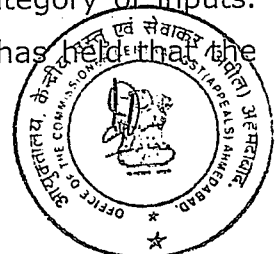
M/s Bodal Chemicals Ltd (Unit-III), Plot No.2102, GIDC, Phase-III, Vatva, Ahmedabad [hereinafter referred to as "the appellant"] has filed this appeal against Order-in-Original No.Supdt/01/AR-II/Div-II/2018-19 dated 12.04.2018 [hereinafter referred to "the impugned order"] passed by the Superintendent of Central GST, AR-II, Division-II, Ahmedabad South [hereinafter referred to "the adjudicating authority"].

2. Briefly stated, 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] demand of Central Excise duty amounting to Rs.7,020/- which was not paid on clearance of M.S.Scrap generated out of the capital goods during April 2015 to December 2015. Vide order-in-original dated 24.06.2016, jurisdictional Assistant Commissioner has denied the credit of Rs.11,671/ and demanded 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 jurisdictional Assistant Commissioner has further confirmed the demand of Rs.7,020/ with interest on the ground that since the appellant has availed cenvat credit on the capital goods and as per provisions of Rule 3(5A) of Cenvat Credit Rules, 2004, they 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. The Commissioner (Appeals), vide OIA dated 24.07.2017 has remanded the case for deciding afresh after looking into the functional use of the capital goods which was used in connection with repairs of capital goods and also to re-determine the value of scrap generated and cleared out of the capital goods.

2.1 Vide the impugned order, the adjudicating authority has again denied the credit availed towards the capital goods M. S.Channel, M.S.Angles, Bars M.S.Beam, H.R.Plates, Coil, M.S.Plates and also confirmed the short payment of duty on clearance of M.S.Scrap generated out of the capital goods along with interest on such credit wrongly availed/duty short paid. The adjudicating authority has further imposed penalty of Rs.5,000/- under Section 11 AC of Central Excise Act, 1944.

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

- They had never claimed that MS Angles, Channels were eligible for credit under the category of capital goods; that they had claimed such goods used for repairs and maintenance of capital goods under the category of inputs. The Commissioner (Appeals), vide order dated 26.03.2018 has held that the



said goods used in the maintenance and repairs of capital goods are eligible for cenvat credit.

- The adjudicating authority has not considered the submissions furnished by the appellant and held that no evidence in support of the contention of the said inputs having been used for repairs.
- No credit was taken on the capital goods from which the scrap was generated, therefore, no duty is required to be paid; that the adjudicating authority has not considered the invoices submitted by them, on being called before the issuance of show cause notice; that the invoices clearly shows that the scrap has been shown to be generated from pipe and plastic liner.

4. Personal hearing in the matter was held on 27.06.2018. Shri N.K.Tiwari, Consultant appeared for the same and reiterated the ground of appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the grounds of appeal as well as at the time of personal hearing. The limited point to be decided in the instant case relating to [i] eligibility of Cenvat credit amounting to Rs.11,671/-availed on goods viz. M. S.Channel, M.S.Angles, Bars M.S.Beam, H.R.Plates, Coil, M.S.Plates ; and [ii] short payment of Central Excise duty amounting to Rs.7,020/- on clearance of M.S.Scrap.

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 capital goods/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 against 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 while clearing on scrap; that they have not produced any support of their argument that no credit was taken on the capital goods in question.

7. I find that the instant case was earlier remanded by the appellate authority, vide his OIA dated 24.07.2017 to ascertain the functional use of the goods viz M.S.Channel, M.S.Plates etc and also to re-determine whether the short payment of duty arisen on the value of scrap generated and cleared out of the capital goods or otherwise. However, I find that the adjudicating authority again denied as stated in above para.

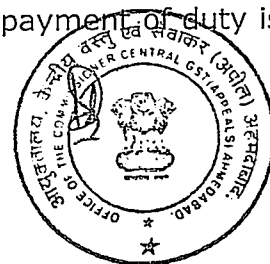
8. As regard the cenvat credit taken on the goods viz M.S.Channel, M.S.Plates etc, the appellant has vehemently argued that they utilized the said goods in connection with repairs and maintenance of the capital goods installed in their factory. They submitted copy of invoices pertains to the credits taken on such goods. These documents were submitted by them before the adjudicating authority



also, however, the adjudicating authority has not discussed anything in this regard. On perusal of the said invoices, I observe that the appellant had obtained 513 kgs of such goods during November 2015 and December 2015, valued at Rs.1,12,459/- and availed credit amounting to Rs.11,671/-. Looking in to the quantity of the goods obtained by the appellant during the periods, it appears that there is merit consideration in the argument of the appellant that the goods in question were used in connection with repairs and maintenance of. Further, the appellant has taken hundred percent credits involved in respect of such goods. All these indicate that they had obtained the goods in question as inputs in connection with repairs and maintenance of the capital goods and not as a structure for support of new capital goods. I further observe that by rejecting Appellate Authority's order OIA No.AHM-EXCUS-001-APP-069-2015-16 dated 18.03.2016, the Hon'ble Tribunal, Ahmedabad, vide order No.A/12095/2017 dated 28.08.2017 in a similar issue in respect of appellant's case, has held that the goods used for repairs and maintenance of plant and machinery are eligible for cenvat credit. In view of above discussion, I allow the credit taken by the appellant in respect of the goods in question.

9. Now, I take the issue regarding short payment of Central Excise duty amounting to Rs.7,020/- on clearance of M.S.Scrap. The appellant contended that the scrap in question was not generated on capital goods but generated from pipe and plastic liner on which credit was not taken. To ascertain the facts, vide earlier OIA dated 24.07.2017 *supra*, the matter was remanded to the adjudicating authority to examine the matter again, in light of documents furnished by the appellant. The appellant has furnished copies of invoices under which they had cleared the scrap in question and statement showing details of scrap generated and removed. However, the adjudicating authority has held that there is absolutely no evidence brought on records by the appellant to support their argument, hence short payment demanded is correct. In this matter, for raising a demand towards short payment duty on clearance of M.S.Scrap generated out of the capital goods, the department should have all details regarding availment of credit on capital goods, capital goods dismantled and scrap generated and cleared out of such dismantled capital goods. In the instant case, no such details has brought on record either in the show cause notice not in the impugned order by the department to show that the scrap which was generated and cleared from the capital goods on which cenvt credit availed. In the circumstances, I do find any merit in the impugned order with respect to short payment of duty pertains to removal of scrap stating that the said scraps are generated and cleared out of capital which credit was taken. Therefore, I set aside the said demand.

10. Since the denial of cenvat credit and demand of short payment of duty is set aside, interest and penalty thereof is also set aside.



11. In view of above discussion, I set aside the impugned order and allow the appeal filed by the appellant. The appeal stand disposed of in above terms.

*3/7/18*

(उमा शंकर)

आयुक्त (अपील्स)

Date : .07.2018

Attested

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

By R.P.A.D  
To

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

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central GST, 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.

