



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065- टेलिफैक्स 07926305136



## स्पीड पोस्ट

- क फाइल संख्या : File No : V2(32)160/Ahd-South/2019-20/14426 TO 14430
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-121-2019-20  
दिनांक Date : 18-03-2020 जारी करने की तारीख Date of Issue 03/06/2020  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. Supdt/02/Div-II/2019 दिनांक: 20.11.2019 , issued by  
superintendent, Div-II, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Bodal Chemicals Ltd  
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 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 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 .

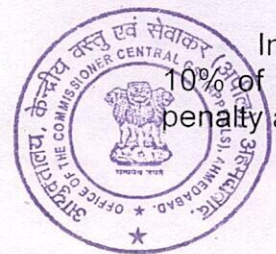
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 "appellant"] has filed this appeal against Order-in-Original No.Supdt/02/DIV-II/2019 dated 20.11.2019 [hereinafter referred to as "impugned order"] passed by the Superintendent of Central GST, Division-II, Ahmedabad South [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that based on Audit Observations, the appellant were issued show cause notices for the period from January 2010 onwards till December 2016, alleging that they availed and utilized Cenvat credit wrongly on capital goods viz. M. S.Channel, M.S.Angles, SS CR Sheet, H R Sheet, M.S.Beam, H.R.Plates, Coil, M.S.Plates and were not paying Central Excise duty on clearance of M.S.Scrap generated out of the capital goods. On the basis of information sought by the Department, the appellant has submitted that during the period from January 2017 to June 2018, they availed Cenvat Credit amounting to Rs.2,680/- on SS CR Sheet and HR Sheet and also cleared scrap generated out of capital goods, on payment of applicable duty. Accordingly, a Show Cause Notice dated 07.09.2018 was issued to them for denying and recovery of Cenvat Credit amounting to Rs.2,680/- along with interest and imposition of penalty under Rule 15(1) of the Cenvat Credit Rules, 2004. Vide impugned order, the adjudicating authority has denied the said credit and ordered for its recovery along with interest. He also imposed penalty of Rs.2,680/- under the Rule ibid.

3. Aggrieved with the impugned order, the appellant has filed the present appeal, mainly on following grounds:

- 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 OIA No.AHM-EXCUS-001-APP-452-2017-18 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 is furnished.
- The adjudicating authority has wrongly relied on Notification No.16/2009-CE(NT) dated 07.07.2009 and decision of Hon'ble Tribunal in the case of M/s Vandana Global [2002(149)ELT 618-Tri.Del]; that the said Notification restrict the admissibility of credit on Angles, Plates and Channels etc if used in the construction of shed, building or structure for capital goods; whereas, in the instant case, they had taken the credit of said items for maintenance and repairs of capital goods.



- The decision of Vandana Global Ltd supra is no more a good law as the Hon'ble High court of Calcutta in the case of Ms Surya Alloys Industries Ltd [2014 (305) ELT 47] has distinguished the said decision and allowed in favour of assessee.
- Penalty imposed on them is not justifiable and bad in law.

4. Personal Hearing in the matter was held on 25.02.2020. Shri N.K.Tiwari, Consultant, appeared during hearing and reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in Appeal Memorandum as well as oral submission made during Personal Hearing. The limited point to be decided in the instant case pertaining to eligibility of Cenvat credit amounting to Rs.2,680/-availed on goods viz. SS CR Sheet, H R Sheet etc.

6. I find that the adjudicating authority has denied the credit in question 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 in question etc were used in the maintenance and repairs of capital goods has been put on record.

7. As regard the Cenvat credit taken on the goods viz SS CR Sheet, 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. I find from the impugned order that the appellant had taken credit of the said goods in question amounting to Rs.21,434/-. Looking in to the quantity and value of the goods, it appears that there is merit in the argument of the appellant that the goods in question were used in connection with repairs and maintenance of the capital goods. Further, the appellant has taken hundred percent credits involved in respect of such goods in their Capital Goods account. 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 any new capital goods. I further find that the Commissioner (Appeals) has vide Order-in-Appeal No.AHM-EXCUS-001-APP-069-2015-16 dated 18.03.2016 denied the Cenvat Credit on the subject goods in dispute in appellant's case pertaining to earlier period. However, the said order has been set aside by the Hon'ble Tribunal, Ahmedabad vide Order No.A/12095/2017 dated 28.08.2017. The Hon'ble Tribunal has held that the goods used for repairs and maintenance of plant and machinery are eligible for Cenvat credit.The relevant para of the said order is reproduced below:

"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 judgements of the cases of Kisan



*SahkariChini Mills Ltd. Vs. Commissioner of Central Excise, Lucknow 2013 (292) ELT 394 (Tri.-Del.), Commissioner of Central Excise, Customs & Service tax, Visakhapatnam-I vs. Jindal Stainless Ltd. 2016 (343) ELT 527 (Tri.-Bang.) and SarjooSahkariChini Mills Ltd. Vs. Commissioner of Central Excise, Lucknow 2009 (248) ELT 559 (Tri.-Del.). This Tribunal in KissanSahkariChini Mills Ltds case (supra) after analysing 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 Honble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) wherein Honble High Court has held that MS/SS plates used in the workshop meant for repair and maintenance of the plant and machineries would be liable for cenvat credit and also by the judgments of Honble Chhattisgarh High Court in the case of Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise (supra) and Honble Karnataka High Court in the case of Commissioner of Central Excise v. Alfred Herbert (India) Ltd. (supra) wherein Honble 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 Honble High Court of Andhra Pradesh, in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. v. 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..

*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. There is no dispute of the fact that these items were used in the factory for repair and maintenance of the capital goods. In the result, the impugned order is set-aside and the appeals are allowed with consequential relief, if any, as per law".*

8. Since the Hon'ble Tribunal has set aside the appellate authority's order on the same issue pertaining to the appellant's case, I am bound to follow the same in this case also which is in nature of periodical show cause notice. Further, I also find that by following Tribunal's above decision, the Commissioner (Appeals), Ahmedabad had also allowed the subject issue in favour of the appellant in respect of demand raised by the department for subsequent periods, vide OIA dated 26.03.2018. Under the circumstances, I do not find any merit in the finding of adjudicating authority in denying the Cenvat Credit involved in the instant case by the reason that there is no evidence put forth by the appellant to the effect that the goods in question were used in the maintenance or repair of the capital goods installed in their factory. In view of above discussion, I allow the credit taken by the appellant in respect of the goods in question. Since the denial of Cenvat credit is set aside, interest and penalty thereof is also set aside.



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

*Akhilesh Kumar*  
 (Akhilesh Kumar) 18<sup>th</sup> March 2022  
 Commissioner (Appeals)

Attested

*Mohan V.V.*  
 (Mohan 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 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.





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