



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)154/Ahd-South/2019-20 / 14449 70 14454
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-122-2019-20
दिनांक Date : 18-03-2020 जारी करने की तारीख Date of Issue 04/06/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. RRN/01/Supdt/AR-V/Div-III/19-20 दिनांक: 21.10.2019 ,
issued by superintendent, Div-III, AR-V, 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, 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.



(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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 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।

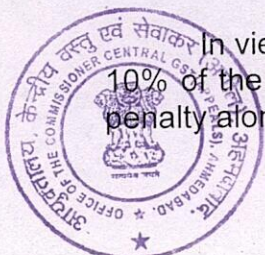
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

M/s. Bodal Chemicals Ltd., Unit-I, Plot No. 110, Phase-II, GIDC Vatwa, Ahmedabad (hereinafter referred to as 'appellant') has filed this appeal against Order-in-Original No. RRN/01/Supdt/AR.V/Div-III/19-20 dated 21.10.2019 (hereinafter referred to as 'impugned order') passed by Superintendent of Central Excise, AR-V, Division-III, Ahmedabad South (hereinafter referred to as 'adjudicating authority').

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of SO dyes and availing Cenvat Credit under Cenvat Credit Rules, 2004. Various Show Cause Notices were issued to the appellant by the department from 2014 onwards till August 2016 for wrong availment of Cenvat Credit on inputs and input services viz. Paints and transportation charges. As it appeared that the appellant had continued to avail such ineligible credit for subsequent period from October 2016 to June 2017, a Show Cause Notice dated 27.08.2018 was issued to them demanding/recovery of Cenvat Credit amounting to Rs.1,77,028/- wrongly availed on input viz. Colors and Paints and Rs.44,195/- on input service viz. transportation charges of waste material (Spent Acid) sent outside the factory. The said Show Cause Notice also proposed recovery of interest and imposition of penalty. The adjudicating authority vide the impugned order dated 21/22.10.2019 has disallowed the CENVAT credit taken on inputs and input services and ordered for recovery of the said amount along with interest and also imposed penalty of Rs.22,122/- in terms of Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 11AC (1)(a) of the Central Excise Act, 1944.

3. Aggrieved with the impugned order, the appellant filed this appeal contending that:

- The impugned order passed by the adjudicating authority is in total disregard to the judicial discipline; that the issue of the subject appeal having been decided in their favour by the Appellate Authorities, it was not open for the adjudicating authority to take a different view and disallow the credit in question.
- the amended definition of inputs provides that it covers all goods used in the factory by the manufacturer of final product with certain exclusions; that paint is required for proper and effective up-keeping and maintenance of capital goods and is therefore a part of the manufacturing activity and credit on such input is available.
- The adjudicating authority, asking to furnish the evidence showing the use of paints for the periods pertaining to October 2016 to June 2017 at this adjudication stage i.e. in October 2019 which is totally illogical.

The treatment of M/s. Novel Spent Acid Management is statutory requirement under Pollution Control Law without which they would not be



allowed to manufacture the final products; that the transportation and treatment charges is covered under input service category; that in the instant case, the transportation was of effluent waste which could not be considered as goods and therefore cannot be considered as chargeable to Service Tax.

5. Personal hearing in the matter was held on 25.02.2020. Shri N.K.Tiwari, Consultant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in Appeal Memorandum.

6. I have gone through the facts of the case, the contention made by the appellant in grounds of appeal, and submissions made at the time of personal hearing. I find that the issue to be decided in the case is relating to the eligibility of the CENVAT credit availed by the appellant on input viz. Paints and input service viz. transportation charges for waste material (spent acid).

7. As regards Cenvat Credit availed on Paints, I find that it is not a case of the department that input in question is not falling under the definition of "input service", or the said input is not received in the factory, or the appellant removed the goods from the factory without using it. The adjudicating authority has denied the credit amounting to Rs.1,77,028/- on the ground that the appellant has failed to furnish any evidence showing the use of input viz. paints to be eligible for Cenvat Credit. When the department has not contested receipt or consumption of the said inputs, the said contention of the adjudicating authority does not have any merit or any logic. The Hon'ble CESTAT, Delhi, vide its order in the case of M/s DSM Sugar [2012 (278) ELT 326] has also held that no condition to be fulfilled in respect of goods used as paint for earning the credit of duty paid on the said item. The relevant para of the decision is reproduced below for clarity:

5. Heard and considered. I have gone through the impugned order. In the impugned order, the Commissioner (Appeals) has discussed the issue in detail. The relevant portion is reproduced below:

"The admitted position of the fact (as per para 10 of "Discussions & Findings" of the order of the Adjudicating Authority) is that the subject item 'paint' is used in the sugar factory for coating of various machines and pipe lines which are made of Iron & Steel to prevent them from deterioration and damage due to rusting and also for repair & maintenance of the plant and machinery. Therefore, this item having been used in the factory is covered by the inclusive definition of input within the expression 'inputs includes; goods used as paint, or packing material, or as fuel within the factory of production. Therefore, it is seen that there is no other condition to be fulfilled in respect of the goods used as paint for the purpose of earning the credit of duty paid on the same. In other words, in view of use of expression 'or for any other purpose' in the definition of 'input', it need not be proved that said item viz. paint has been used in or in relation to the manufacture of dutiable final product. Once the goods received in the factory are used as paint and the goods (i.e. paint) are not removed from the factory, credit of duty paid on the same becomes undeniable."



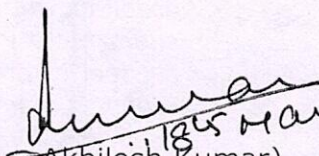
7.1 In view of the foregoing, the impugned order, ordering for recovery of CENVAT Credit availed on paints, is not legally tenable. Hence, the recovery of CENVAT credit in respect of paints ordered along with interest is set aside.

8. As regards Cenvat Credit on input services in respect of Transportation charges for waste material (Spent Acid), I find that the said issue has been decided by the Commissioner (Appeals), Ahmedabad in the appellant's case, pertaining to earlier periods, vide Order-in-Appeal No.AHM-EXCUS-001-APP-047-2015-16 dated 28.12.2015. The Department has objected to availment of CENVAT credit amounting to Rs.44,195/- being the service tax paid to M/s Novel Spent Acid Management (NSAM) on the transportation charges of waster (Spent Acid) on the grounds that the said service has no relation to the manufacturing activity. Spent acid is a waste generated during the course of manufacture of dyes and intermediates. I find that M/s NSAM, is a registered co-operative society, engaged in the treatment of waste and they raises invoices for transportation charges. The Hon'ble Tribunal in the case of M/s. Cheminova India Ltd. [2016(41) STR 487(Tri.-Ahmd.)] held that the input services, as enshrined in Rule 2(l) of the CCR'04, envisages the eligibility to avail CENVAT credit of the service tax paid on the Effluent Treatment Plant (ETP) because the manufacturing activity cannot commence as per the law of the land without an ETP. Further, I find that the Apex court in the case of M/s. IFFCO Ltd. [1996 (86) ELT 177 (SC)] held that treatment of effluents from a plant, is an essential and integral part of the process of manufacture. The issue, therefore, is no longer res integra and the law position is in favour of the appellant.

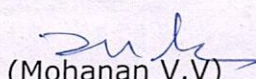
8.1 Therefore, as regards service tax paid on transportation charges, I find that the treated spent acid is being destroyed/cleared and not brought back to the factory of the assessee, thus its destruction is at the premises of M/s. Novel Spent Acid Management, is its place of removal and as such the service tax paid on portion of transportation charges too are eligible for CENVAT credit.

9. In view of the foregoing discussion, the appeal is allowed. The CENVAT Credit of Rs.1,77,028/- and 44,195/- disallowed vide impugned order, is set aside as per the discussion above. Consequently, the interest confirmed and penalty imposed is also set aside.

13. The appeal stands disposed of in above terms.


Akhilesh Kumar
Commissioner (Appeals)
/03/2020

Attested


(Mohanan V.V)
Superintendent (Appeals),
CGST, Ahmedabad.



To,

M/s. Bodal Chemicals Ltd.,
Unit-I, Plot No.110,
Phase-II, GIDC, Vatva,
Ahmedabad- 382 245

Copy To:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone .
2. The Principal Commissioner, CGST, Ahmedabad-South.
3. The Deputy/Assistant Commissioner, CGST, Division-III, Ahmedabad-South.
4. The Superintendent, CGST, AR-V, Division-III, Ahmedabad South.
5. The Assistant Commissioner, System-Ahmedabad South
- ✓ 6. Guard File.
7. P.A.



