आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलेफैक्स07926305136

DIN : **20221164SW00009429FD**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/163/2022 /5468- 72

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-001-APP-082/2022-23**
दिनाँक Date : **24-11-2022** जारी करने की तारीख Date of Issue 28.11.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **12/CGST/Ahmd-South/AC/PMC/2022** दिनाँक: **23.02.2022** passed by Assistant Commissioner, CGST, Divison V, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **M/s Metso (India) Pvt Ltd. (Unit-II)**
Plot No. 535 to 537, Nr. Hanuman Temple,
Kubadthal Patiya, Kunjad – 382430

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 हानिकार खाने 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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायाल्य 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.

(55) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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:

(cli) amount determined under Section 11 D;
(clii) amount of erroneous Cenvat Credit taken;
(cliii) 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

The present appeal has been filed by M/s. Metso (India) Pvt. Ltd., Unit No.II, Plot No.535 to 537, Near Hanuman Temple, Kubadthal Patiya, Kunjad, Ahmedabad – 382 430 (hereinafter referred to as the appellant) against Order in Original No. 12/CGST/Ahmd-South/AC/PMC/2022 dated 23.02.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-V, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AAACS3407LEM006 and engaged in the manufacture of goods falling under Chapter Heading 73259920 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of CERA audit of the records of the appellant for the period from January, 2015 to March, 2017, it was observed that the appellant had availed cenvat credit of Rs.2,66,336/- during the period from February, 2015 to October, 2015 on invoices issued in favour of M/s. Metso (India) Pvt. Ltd., 611-612, Opposite Vallabh Nagar, Odhav Road, Odhav, Ahmedabad – 382415 having Central Excise Registration No. AAACS3407LXM004. It appeared that the appellant had wrongly availed the cenvat credit in violation of the provisions of Rule 9 (2) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004) and failed to prove the admissibility of the cenvat credit as per Rule 9 (6) of the CCR, 2004. The cenvat credit wrongly availed was utilized by the appellant for payment of Central Excise duty on clearance of their final products.

3. The appellant was, therefore, issued a Show Cause Notice bearing No. V.73/3-08/Metso/Dem/18-19 dated 28.12.2018 wherein it was proposed to :

a) Recover the cenvat credit amounting to Rs.2,66,336/- under Rule 14 of the CCR, 2004 read with Section 11A (4) of the Central Excise Act, 1944.

b) Recover Interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Central Excise Act, 1944.

c) Impose penalty under Rule 15 (2) of the CCR, 2004.

4. The SCN was adjudicated vide the impugned order wherein the demand of cenvat credit was confirmed along with interest. Penalty equivalent to the cenvat credit confirmed was imposed under Rule 15 (2) of the CCR, 2004.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. There is no dispute regarding the receipt of inputs as well as its consumption in the manufacture of final goods. There is no dispute about the excise element shown in the invoices and, therefore, on this ground the cenvat credit is not deniable.

ii. They are having two units and they had taken credit on the registered premises having registration No. AAACS3407LEM006 instead of AAACS3407LXM004. They had not taken cenvat credit in both the units. Therefore, cenvat credit is not deniable.

iii. They rely upon the judgment in the case of Raymond Ltd. Vs. CCE, Indore – 2017 (047) STR 0142.

iv. Since both the units belonging to them are interlinked, the services utilized by one unit can be taken by the other unit. They had maintained common books of accounts with regard to both the units and the services utilized in Unit-II and credit taken in Unit-I have been duly reflected in the common books of accounts.

v. Rule 7 of the CCR, 2004 also entitles a manufacturer to take cenvat credit of service tax even if the amount has been paid by some other unit or the office of the manufacturer located elsewhere. They rely upon the judgment in the case of Greaves Cotton Limited – 2015 (37) STR 395 (T) and Commissioner Vs. ECOF Industries Pvt. Ltd.– 2011 (23) STR 337 (Kar.).

vi. The issue in the present case is squarely covered by the aforesaid decisions and therefore, the impugned order is required to be set aside.

vii. Reliance is also placed upon the decision in the case of Commissioner of Central Excise, Salem Vs. Chemplast Sanmar Ltd. – 2007 (5) STR 18.

viii. They have sufficient evidence that the goods were entered into the account of Unit No.II and the same goods were not entered in the other unit. Therefore, on this ground, credit is not deniable.

ix: There is no allegation that they had taken cenvat credit in both the units. There is no mala fide intention to claim wrongful credit.

x. The penalty is not imposable in view of the grounds taken above and the penalty may be set aside. It is a question of interpretation and there was no mala fide intention to evade payment of duty.

6. Personal Hearing in the case was held on 22.11.2022. Shri Naimesh Oza, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted copies of monthly return under Rule 7 of the Central Excise Rules, 2002 and copies of two judicial pronouncements namely, Raymond Ltd Vs. CCE, Indore – 2015 (09) LCX 0324 and CCE, Salem Vs. Chemplast Sanmar Ltd. – 2005(10) LCX 0204 during the hearing.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute involved in the present appeal relates to the availment of cenvat credit on the strength of invoices, which are in the name of the other unit of the appellant. The demand pertains to the period February, 2015 to October, 2015.

8. It is observed that the SCN and the impugned order have referred to Rule 9 (2) of the CCR, 2004 for denying the cenvat credit. The text of the said Rule stipulates that :

> "No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:".

8.1 Further, Rule 11 of the Central Excise Rules, 2002, stipulates that no excisable goods shall be removed from a factory of warehouse except under an invoice signed by the owner of the factory or his authorized agent. Sub-rule (2) of Rule 11 of the Central Excise Rules, 2002 stipulates that :

> " The invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value of goods and duty payable thereon :".

8.2 In terms of the above provisions of the CCR, 2004 and CER, 2002, Cenvat credit can be taken only on an invoice which contains the details as

prescribed in sub-rule (2) of Rule 11 of the Central Excise Rules, 2002. In the instant case, the invoices on the strength of which credit was availed by the appellant were all issued in the name of their other Unit at Odhav. This is one of the grounds on which the cenvat credit has been disallowed to the appellant.

9. In this regard, it is observed that the appellant have in the appeal memorandum, relied upon the judgment in the case of Raymond Limited, Greaves Cotton and ECOF Industries. I find that in these cases the dispute was pertaining to availment of cenvat credit of the input service. The appellant have also relied upon the judgment in the case of Commissioner of Central Excise, Salem Vs. Chemplast Sanmar Ltd. – 2007 (5) STR 18 (Tri.-Chennai). The relevant portion of the judgment in this case are as under :

> "M/s. Chemplast Sanmar Limited have three manufacturing plants, I, II and III. During the period January to May, 1995, plant I (respondent) took Modvat credit on inputs on the basis of invoices which were addressed to plants II and III and not to plant I. On the invoices issued by one of the input-suppliers, the consignee's address was corrected from plant II to plant I. The department did not accept any of the invoices as valid document for availment of input duty credit by plant I of the respondent-company. Accordingly, show-cause notices were issued to the respondents. The original authority disallowed the entire credit to the respondents and also imposed on them a penalty of Rs.2,500/- The first appellate authority set aside the order passed by the lower authority, after holding that the input credit was not deniable to one manufacturing unit of a company on the ground that the relevant invoice had shown another unit of the company as the consignee, where there was no dispute of receipt of the input in the credit-taking unit and its utilization in the manufacture of final product in that unit. Ld. Commissioner (Appeals) followed the Tribunal's decision in the case of *L & T Ltd* v. *CCE* [1994 (72) E.L.T. 948], wherein it had been held that Modvat credit was not to be denied to L & T Ltd., Kansbahal merely by reason of the fact that the duty-paying document showed the consignee's name shown as "L & T Ltd., Calcutta". In that case also there was no dispute of the fact that the input had been received and used in the manufacture of final product in the factory of M/s. L & T Ltd., Kansbahal. We find that the Tribunal's decision in the case of *L & T Ltd.* (supra) is squarely applicable to the facts of the present case. The Revenue (appellant) says that the Tribunal's decision in *L & T Limited's* case has not been accepted by the department and that a reference application has been filed with the Tribunal. Any pendency of such reference application is no reason to discount precedent-value of the Tribunal's decision in *L & T Ltd.* case."

9.1 The judgment passed in the Chemplast Sanmar Ltd. case has been followed by various Tribunals. The CESTAT, Ahmedabad in the case of Plastic Products Engg. Co. Vs. Commissioner of C.Ex., Ahmedabad – 2009 (248) ELT 859 (Tri.-Ahmd.) had held that denial of credit on grounds that invoices were in the name of appellant's other unit is not legally sustainable

when there is no dispute that inputs were not received by the appellant and not utilized in manufacture of final products.

9.2 Considering the facts of the case and the materials available on record, I find that the issue involved in the present appeal is squarely covered by the above judgment of the Hon'ble Tribunal. Therefore, adhering to the principles of judicial discipline and by following the judgment of the Hon'ble Tribunal supra, I am of the considered view that the impugned order denying cenvat credit to the appellant on the grounds that invoices were issued in the name of appellant's other unit is not legally sustainable. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed.

10. The other ground on which the cenvat credit has been disallowed to the appellant is that the appellant failed to prove that the goods covered by the invoices in question were received and accounted for in their books of accounts. In this regard, the appellant have during the course of the personal hearing, submitted the 'Proforma for the monthly return under Rule 7 of the Central Excise Rules, 2002'. From the details contained in the said document, it is observed that the goods in respect of which cenvat credit was availed by the appellant were received by them in their factory. It has been held in a plethora of judgments, including those mentioned above, that once the receipt and utilization of the inputs is established, cenvat credit cannot be denied for procedural infractions. In the case of Commissioner of Central Excise, Salem Vs. Chemplast Sanmar Ltd. supra, upheld the order of the first appellate authority that input credit was not deniable to one manufacturing unit of a company on the ground that the relevant invoice had shown another unit of the company as consignee, where there was no dispute of receipt and utilization of the input.

10.1 In the case of Commissioner of C.Ex., Salem Vs. JSW Steels Ltd. – 2011 (265) ELT 50 (Tri.-Chennai) the Hon'ble Tribunal had held that :

> "I have heard both sides. I find that receipt of the goods in the assessee's factory and the use thereof stand confirmed by the report of the officer. The assessee's stand that the non-production of the original was due to its loss does not stand controverted. The photocopy of the original invoice shows that the goods have discharged duty. The cumulative circumstances led to the conclusion that credit is to be extended to the assessees as their claim namely inputs being duty paid, and the use thereof in the factory of the assessees stands established. Failure on the part of the department due to long time gap to verify the transporters copy in original

cannot lead to denial of substantive benefit of credit to the assessees. I, therefore, uphold the impugned order and reject the appeal."

10.2 A similar view was taken in the case of Commissioner of Central Excise, Kolhapur Vs. Shah Precicast P. Ltd. – 2012 (26) STR 187 (Tri.-Mumbai) wherein the Hon'ble Tribunal had held that substantial benefit cannot be denied on the basis of mere technical violation.

10.3 In view of the facts discussed hereinabove, I find that the receipt of the inputs in the factory of the appellant stands established by the documents submitted by them during the personal hearing. Accordingly, considering the above judicial pronouncements, I am of the considered view that the appellant cannot be denied cenvat credit. Therefore, the impugned order is set aside and the appeal filed by the appellant is allowed.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

(Akhilesh Kumar) 24th November, 2022.
Commissioner (Appeals)
Date: 24.11.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Metso (India) Pvt. Ltd. Unit No.II, Appellant
Plot No.535 to 537,
Near Hanuman Temple,
Kubadthal Patiya,
Kunjad, Ahmedabad – 382 430

The Assistant Commissioner, Respondent
CGST, Division- V,
Commissionerate : Ahmedabad South.

Copy to:

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

3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.