



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW000000DFB6

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP /255/2023 / 34
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-156/23-24 and 28.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	28.12.2023
(ङ)	Arising out of Order-In-Original No. 428/AC/DEMAND/22-23 dated 18.1.2023 passed by The The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Narayan Industries Plot No. 1303/1,2, Phase-IVGIDC, Naroda Ahmedabad - 382330

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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 में हो माल की प्रक्रिया के दौरान हुई हो।

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.



(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।

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।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 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 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 :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलों 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।

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 above para.

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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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. Narayan Industries, Plot No 1303/1,2, Phase-IV, G.I.D.C., Naroda, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 428/AC/DEMAND/2022-23 dated 18.01.2023 passed by The Assistant Commissioner, Central GST & Central Excise, Division -I, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding Central Excise Registration No AABFN2415KXM001 (Now GSTN 24AABFN2415K1ZK) and engaged in manufacturing of Copper Phthalocyanine Blue (CPC Blue) and Pigment Alpha Blue. A fire incident broke out in the above said premises on dated 01.03.2017. The appellant informed the same to the jurisdictional range superintendent. Panchanama dated 07.03.2017 was drawn according to which Stock of inputs as such, input contained in semi-furnished goods & finished goods and capital goods were destroyed in the fire accident. Duty amount Rs. 24,57,891/- was involved on the inputs destroyed in fire. While going through the PLA register for the month of March-2017, it was noticed that the appellant have debited Rs. 24,07,891/- under the Head of Basic Excise Duty, Rs. 35,000/- under the Head of Education Cess and Rs. 15,000/- under the Head of S. & H.E. Cess (Total Rs. 24,57,891/- vide Entry No 21 dated . It was noticed that there was no stock of inputs destroyed in fire on which Cenvat credit of Edu. Cess and SHEC was availed by them. All the inputs were procured under invoices issued after 01.03.2015, i.e. the date from which E.C and SHEC were not eligible for payment of Central Excise duty. Therefore, the appellant should have paid the amount Rs. 50,000/- (E.C. Rs. 35,000/- + S.H.E.C. Rs. 15,000/-) from the Head of Basic Excise Duty which has not been paid by them.

3. Further, during the fire incident, some capital goods were also destroyed. The appellant had availed Cenvat credit of Rs. 17,71,377/- on the above capital goods which were procured during the period from 2013 to 2017. Cenvat credit on the depreciated value of capital goods was worked out to Rs. 14,79,819/-. The appellant submitted that they have used the capital goods in their factory and the same were destroyed in fire and converted into scrap. The scrap was taken away and auctioned by the insurance company. Not considering the above submission they were issued the SCN F. No. IV/12-02/Narayan Inds/17-18 proposing the demand:

(i) of Rs. 50,000/- not paid from the correct Head "Basic Excise Duty" along with interest, Penalty under Section 11AC(1)(c) and Penalty under the provisions of Rule 25 of the Central Excise Rules, 2002 and



(ii) of Cenvat Credit Rs. 14,79,819/- not reversed on the removal of capital goods damaged in fire accident along with interest and penalty under Section 11AC(1)(c) and Penalty under the provisions of Rule 25 of the Central Excise Rules,2002.

2.1 Not considering the reply dated 16.12.2022 filed by the appellant, The adjudicating authority confirmed the demand of Rs. 50,000/- not paid from the correct Head "Basic Excise Duty" under Section 11A(4) of CEA,1944 along with interest under section 11AA. (i) Imposed Penalty of Rs. 50,000/- under Section 11AC(1)(c) and (ii) Penalty of Rs. 50,000/- under the provisions of Rule 25 of the Central Excise Rules,2002:

Further, the adjudicating authority also confirmed the demand of Rs. 14,79,819/- under section 11A(4) of the Act, not reversed on the removal of capital goods damaged in fire accident along with interest under section 11AA and imposed (i) penalty of Rs. 14,79,819/- under Section 11AC(1)(c) and (ii) Penalty of Rs. 14,79,819/- under the provisions of Rule 25 of the Central Excise Rules,2002.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant submitted that the concerned person was on leave due to illness and also failed to inform to the appellant regarding OIO. Later, on being recovered, he informed to the appellant about concerned OIO. Due to this reason, there was delay of 07 days in filing the appeal. The applicant has requested to consider the cause of delay.
- The appellant submitted that they were engaged in manufacturing of Copper Phthalocyanine Blue(CPC Blue) and Pigment Alpha Blue and holding Central Excise Registration No AABFN2415KXM001. A fire incident broke out in their above said premises on dated 01.03.2017. The appellant informed the same to the national Insurance Co. Ltd, The police, FSL and Central Excise Authorities also.
- That Central Excise Audit Department scrutinized their Excise Records from 01.04.2015 To 31.03.2017. As per the duty calculation sheet, finished goods worth Rs. 19,85,625/-, semi-finished goods of Rs. 46,23,788/- and inputs of Rs. 1,58,69,120/- were destroyed in the fire accident which involved duty of Rs.24,57,891/-. Appellant paid total excise duty of Rs. 24,70,529/- vide debit entry no. 21 dated 31.03.2017.
- They submitted that they have rightly paid/reversed amount of Rs. 50,000/- from Education Cess (Rs. 35,000/-) and S&HE Cess (Rs. 15,000/-) for payment of excise duty out of total amount of Rs. 24,70,529/-. They made reference of the Notification No. 12/2015 - CE (NT) dated 30.04.2015, which is re-produced as under:



the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule (7), in clause (b), after the second proviso, the following shall be substituted, namely:-
 "Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act.

- That The Appellant have submitted sample copies of the invoices raised by them for the period on or after 01.03.2015 highlighting Education Cess and SHEC charged separately along with basic transaction value.
 - That Some Capital goods namely S.S reactor, Glass Line Reactor, Scrubber etc were also destroyed in fire on which Cenvat credit was taken by the Appellant at the time of purchase in the year from 2012 to 2017. After that destroyed, Capital goods were removed as scrap and the scrap material was taken by the Insurance company and were being auctioned by insurance company. As the goods were used in their factory and same have become obsolete, non-functional and non-usable i.e. scrap. In such circumstances, Application of Rule 3(5A)(a)(ii) in place of Rule 3(5A)(b) of Cenvat Credit Rules,2004 by the adjudicating authority is erroneous and liable to set aside.
 - That the appellant had availed Cenvat credit of Rs. 17,71,377/- on the above capital goods which were procured during the period from 2013 to 2017. Cenvat credit on the depreciated value of capital goods was worked out and considered to Rs.14,79,819/- by the adjudication authority which is not legal as per law.
 - Further they submitted that the demand in the present case relates to the period from 2013 to 2017 .As the show cause notice has been issued on dated 26.02.2021, the demand is time barred. Further, the Appellants hasn't suppressed any facts to evade payment of duty as they have filed monthly returns from time to time. Therefore, extended period can't be invoked.
 - The appellant submitted that the demand raised without considering the submission and facts is not legally sustainable. They denied all the demand confirmed vide impugned OIO and requested that same may be quashed and set- aside.
4. Personal hearing in the case was held on 22.11.2023. Miss Madhu Jain, Advocate, appeared on behalf of the appellant for personal hearing and reiterated the submission made in the appeal. She submitted that SubRule 3(5) (a) of the Cenvat Credit Rules 2004 is not applicable to them as the burnt capital goods didn't go out of the factory premises. She requested to allow their appeal.



5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 18.01.2023 and delivered on dated 28.01.2023 to appellant. The present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 05.04.2023, i.e. after a delay of 7 day from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that The appellant was not informed timely by the concerned person and the person was on leave due to illness. When he returned, the process of filing appeal could get started against the impugned OIO and then after filed the present appeal on 05.04.2023 which was required to be filed on or before 29.03.2023.
6. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 07 days and take up the appeal for decision on merits.
7. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise.
8. I find that in the SCN in question, the demand raised of Rs. 50,000/- was against the amount not paid from the correct Head "Basic Excise Duty" but Rs. 35000/- from the Head of EC and Rs. 15,000/- from Head of SHEC. The appellant contended that they have rightly paid/reversed amount of Rs. 50,000/- from Education Cess (Rs. 35,000/-) and S&HE Cess (Rs. 15,000/-) for payment of excise duty out of total amount of Rs. 24,70,529/-. They also made reference of the Notification No. 12/2015 - CE (NT) dated 30.04.2015 in support of their claim, which is re-produced as under:

the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule (7), in clause (b), after the second proviso, the following shall be substituted, namely:-
"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act.



Further The Appellant have also claimed that they have submitted sample copies of the invoices issued to them on or after 01.03.2015 highlighting Education Cess and SHEC charged separately along with basic transaction value. while going through the invoices furnished, no element of EC & SHEC was shown separately. Only credit of BED @ 12.5% was passed on by the supplier to appellant. The same was also founded at the adjudication stage. Therefore, the appellants contention doesn't appears to be sustainable.

8.1 Further, I find that in the SCN in question, the demand raised of Rs. 14,79,819/- was against the Non Reversal of Cenvat Credit on the removal of capital goods damaged in fire accident. They had availed Cenvat credit of Rs. 17,71,377/- on the above capital goods which were procured during the period from 2013 to 2017. Cenvat credit on the depreciated value of capital goods was worked out and considered to Rs. 14,79,819/- by the adjudicating authority applying Sub Rule 3(5A)(a)(ii) of Cenvat Credit Rules, 2004. The appellant contended that in their case Rule 3(5A)(b) of Cenvat Credit Rules, 2004 is applicable. The relevant para at present Sub Rule 5 of Rule 3 is as follows:-

(5) When inputs or capital goods on which Cenvat Credit has been taken are removed as such from the factory, or premises of the provider of output services, the manufacturer of final products or provider of output service, as the case may shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9: Provided that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service: Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty of final products;

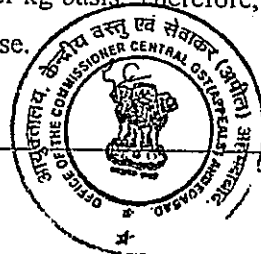
(5A) (a) if the capital goods, on which CEVAT Credit has been taken, are removed after being used the manufacturer or provider of output services shall pay an amount equal to the Cenvat Credit taken on the said capital goods reduced by the percentage points calculated by straight line method, as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:

b) if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

5(B) deals with written off.

5(C) deals with remission under rule 21 of Central Excise Rules, 2002.

In support of their claim, the appellant have furnished the copy of survey report no I/069-F/16-17 dated 08.10.2018 issued by the "Bhimani & Co." in which it is mentioned that the insured has submitted estimate of damage towards machinery/accessories was Rs. 5,36,60,285/-. Further, they furnished the news paper cutting in which it is mentioned that fire damaged Scrap of M/s (approx 180Mt) is available at the premises of M/s Narayan Industries and the intended buyers can obtained the tender documents form the surveyer M/s bhimani & Co. From the above it appears that the capital goods was damaged in fire accident and the same was sold out as scrap which was valued as per kg basis. Therefore, the contention of the appellant appears to be sustainable in the instant case.



9. In view of the above, I am in the agreement with the view of adjudicating authority for the demand discussed in Para 8, and the same is recoverable along with interest and penalty. Further, I am of the considered view that Sub Rule 3(5A)(b) of Cenvat Credit Rules, 2004 is applicable in the case discussed at Para 8.1 above and demand is liable to be dropped.

10. In view of above, I uphold the impugned OIO with extent to the demand of Rs. Rs. 50,000/- not paid from the correct Head "Basic Excise Duty" /- along with appropriate interest and penalties. Further, I drop the demand of Rs.14,79,819/- Cenvat credit on the depreciated value of capital goods. Since the demand itself is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

11. अपील कर्ता 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.

G.C. JAIN
(जानचंद जैन)

आयुक्त (अपील)

Date : 28.11.2023

Attested

Manish Kumar
Manish Kumar
Superintendent (Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Narayan Industries,
Plot No 1303/1,2, Phase-IV,
G.I.D.C., Naroda, Ahmedabad

The Additional Commissioner,
CGST, Ahmedabad North



Appellant

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Additional Commissioner, CGST, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- 6) PA file



