

Crucial File

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX,
PLOT NO 6776 B-1, "SIDDHI SADAN" BUILDING,
NARAYAN UPADHYAY MARG,
BHAVNAGAR - 364 001.

F. No. V/15-22/HQ/DEM/2012-13

Date: - 11.12.2012

Passed by Shri Harcharan Singh, Additional Commissioner.

Order-in-Original No.31/ADC/BVR/2012-13

Any person(s) deeming himself aggrieved by this order may appeal against this order to the Commissioner, Central Excise (Appeals), Central Excise Bhavan, Race Course road, Rajkot 364 001 within three months from the date of receipt of the decision or order of adjudicating authority. The appeal should bear a Court Fee stamp of Rs. 2.50 paise only.

The appeal should be filed in Form ST-4 in duplicate as per the provisions of Section 85 of the Finance Act, 1994 read with Rule 8 of the Service Tax Rules, 1994.

- It should be accompanied with the following :
- Copy of appeal in duplicate.
- Copies of the order in duplicate, one of which shall be certified copy of the order must bear a Court Fee stamp of Rs. 2.50 paise as per Schedule I to the Article of the Court Fee Stamp Act, 1870.
- Proof of payment of Service Tax, penalty, interest etc.

Sub: - Show Cause Notice No. V/15-22/HQ/DEM/2012-13 dated 30.04.2012.

Brief facts: -

1. M/s. Saurashtra Chemicals Ltd. Birlasagar, Porbandar (hereinafter referred to as the "Noticee") are holding Central Excise Registration No.AAACB8764DXM003 under Rule 9 of Central Excise Rules, 2002 and are engaged in manufacture of excisable goods viz. Soda Ash, Soda Bi Carbonate and Liquid Bromide etc. falling under Chapter sub heading 2836 20 10, 2836 30 00 and 2801 3020 respectively of First Schedule to the Central Excise Tariff Act, 1985. The Noticee are availing benefit of Cenvat credit of Central Excise Duty/Service Tax paid on inputs, capital goods and input services under Rule 3 of Cenvat Credit Rules, 2004.

2. During the course of scrutiny of Central Excise records and other private records in respect of availment and utilisation of Cenvat credit maintained by the Noticee for the period from March 2011 to November 2011 by the officers of Central Excise (Audit), Bhavnagar it has been observed that the Noticee had availed Cenvat Credit amounting to Rs 8,21,243/- on inputs and Rs 23,01,051/- on input services under Rule 9(1) of Cenvat Credit Rules, 2004 on the strength of documents as detailed and described in Annexure A and Annexure B to the Notice dated 30.04.2012

3. As per provisions of Rule 9(2) of Cenvat Credit Rules, 2004 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 documents and

"Provided that if the said documents does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealer or provider of taxable service and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the document have been received and accounted for in the books of account of the receiver, he may allow the Cenvat credit."

g/f file

4. Since the documents listed in Annexure A and Annexure B to the Notice dated 30.04.2011 did not contain all particulars as prescribed under Central Excise Rules, 2002 or Service Tax Rules, 1994 as the case may be inasmuch as the said documents neither contain complete address or name of the Noticee nor valid for the purpose of availing Cenvat credit. The discrepancies observed in those documents have been described in Remarks column of Annexure A and Annexure B. Such documents are not containing all the mandatory particulars as per the provisions of Rule 9(2) of Cenvat Credit Rules, 2004 therefore the Noticee were not eligible for availment of Cenvat credit totally amounting to Rs 31,22,294/- under Rule 9(1) of Cenvat Credit Rules, 2004 on the strength of those documents. In view of above facts, it appeared that the Noticee have violated the provisions of Rule 9 of Cenvat Credit Rules, 2004 by availing Cenvat credit on the strength of ineligible documents, therefore the wrongly availed Cenvat credit was liable to be recovered from them along with interest under Rule 14 of Cenvat Credit Rules, 2004 read with section 11A (1) and Section 11AA of the Central Excise Act, 1944 and by acting in the above manner the Noticee had rendered themselves liable for penal action under Rule 15 of the Cenvat Credit Rules, 2004.

5. Therefore, Joint Commissioner, Central Excise Commissionerate, "Siddhi Sadan" Building, Plot No. 6776/B-1, Narayan Upadhyay Marg, Bhavnagar - 364 001 issued a show cause notice No. V/15-22/HQ/DEM/2012-13 dated 30.04.2012 to the Noticee proposing the following actions :

- (i) Recovery of Cenvat credit amounting to Rs 8,21,24/- on inputs and Rs 23,01,051/- on input services totally amounting to Rs 31,22,294/- (Rupees thirty one lac, twenty two thousand, two hundred and nine four only) availed and wrongly utilised as detailed in Annexure A and Annexure B to the Notice dated 30.04.2012 under Rule 14 of the Cenvat Credit Rules 2004 read with section 11A(1) of the Central Excise Act, 1944 ;
- (ii) Recovery of interest at appropriate rate from the relevant date on the above said Cenvat credit wrongly availed and utilised under provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 ;
- (iii) Imposition of penalty under Rule 15 of Cenvat Credit Rules, 2004.

6. Defence reply and personal hearing :

6.1 The Noticee filed a written reply No. NH/BCP/EXCISE/SAUKEM/SCN/2012 dated 19.05.2012 to the show cause notice dated 30.04.2012 mainly stating as under:

- (i) At the outset we deny all the allegations and averments made in the Notice. We further submit that it is undisputed and admitted fact that documents/invoices on which credit has been taken are in the name of our company i.e. 'Saurashtra Chemicals Limited'. However, in some invoices supplier of input and service providers have wrong address of the company. There is no dispute about the actual receipt and consumption of the inputs as well as services in the manufacture of excisable goods viz. Soda ash. Therefore, there is no justification or any valid ground to deny the credit only on the ground of non-mentioning of address or wrong address in the invoices which is simply a procedural and technical lapse. We further state that in case of invoices issued by M/s GMDC, a government undertaking company, it is learnt from them that due to typographical error in the computer system, address in the invoices were wrongly mentioned. However, the concerned supplier i.e. GMDC has rectified the mistake by issuing a certificate in the matter. The said certificate would be produced at the time of personal hearing of this case. Further, it can be seen from the perusal of transport receipts that name and address of the company is shown as 'Saurashtra Chemicals Limited-Porbandar'. From this it is evident that the goods are actually delivered at factory premises at Porbandar only. Therefore, the proposed denial of the CENVAT credit merely on the ground of wrong address mentioned in the invoices is required to be dropped and credit may be allowed in such cases in light of several decisions.
- (ii) As regards to proposed denial of CENVAT credit of input services on the ground that....

- (e) In some invoices name of the company is shown but address is not shown;
 - (f) In some invoices name of the company is shown but address is shown as C/o Nirma Limited Ahmedabad ;
 - (g) In some invoices Service Tax registration number of service provider company is hand written;
 - (h) Invoice of service tax paid on Security service provided at Salt works at Jamnagar.
- (iii) In this regard, for the issue (a) it is submitted that M/s Saurashtra Chemicals Limited has no other unit except unit as Porbandar. Therefore, when invoice is in the name of the company, merely no mention of address at 'Porbandar' cannot be justifiable or valid ground to deny the credit.
- (iv) As regards to issue (b), it is submitted that M/s Saurashtra Chemicals Limited has got its accounts and audit section as separate part in Nirma House, Ahmedabad. Therefore, the address shown in the invoices as 'C/o Nirmal Limited Ahmedabad' is proper and correct. It is well settled law that if address of head office is shown in invoice, credit is correctly and legally admissible.
- (v) As regards to issue (c), it is submitted that there is no prohibition or any ban for non-mentioning the service tax registration number by hand written. Accordingly, proposed denial of the credit of input service on this ground is without authority and jurisdiction and so required to be dropped.
- (vi) As regards to issue (d), it is submitted that the entire quantity of Salt obtained from Salt works at Jamnagar is being brought at the factory premises of Porbandar for its use in the manufacture of excisable goods i.e. Soda Ash. Thus the credit of input service of security service by us is correctly and legally admissible as per law. In support of this we rely on the decision reported at 2008 (9) STR 65.
- (vii) As regards to denial of service tax at Sr No 34 and 35 of Annexure B, it is submitted that in absence of any contrary evidence brought on record by the department, the allegation based on presumption and assumption is not acceptable by any law. We further submit that since the related documents are in bulk, we will produce the same during their personal hearing of this case as evidence.
- (viii) From all the above submissions, it will be appreciated by the learned Joint Commissioner that the entire SCN is issued without proper verification and scrutiny of the documents. The proposed denial of the CENVAT credit merely on technical and procedural lapses is not sustainable in the light of the settled law by decision of the appellate authority reported in 2012 (277) ELT 357 (Tri-Del) and proceedings may please be dropped.
- (ix) As regards to invocation of larger period and penal actions, it is submitted that this is not a case of fraud, suppression of facts or misstatement with mala fide intention on our part. Therefore, in absence of any ingredient to establish the charges as required under Section 11A (1) and Section 11AC of Central Excise Act brought on record by the department, the proposed penal actions are without authority and jurisdiction and so the same may please be dropped. We request for personal hearing in our case before it is decided.

6.2 A personal hearing was fixed on 26.07.2012 before the adjudicating authority wherein Shri Motibhai A. Patel, a tax consultant on behalf of the Noticee appeared on 26.07.2012 for hearing and stated as under :

- (i) Credit is proposed to be denied merely on the ground of incorrect address of the factory. There is no dispute about the receipt of duty paid goods in the factory and its consumptions in the manufacture of excisable. In fact, the audit has not properly scrutinised other relevant documents such as Lorry receipts, payment particulars etc. However, the supplier M/s GMDC issued the certificate rectifying the mistake for incorrect address in the invoices pertaining to relevant period. The same is produced for consideration;

- (ii) As regards to availment of credit on input services, the objection raised by the audit is without proper scrutiny and verification of the documents. The address is C/o Nirma House and not Nirma, Ahmedabad ;
- (iii) The same is the issued with other invoices. The same has been explained in defence reply dated 22.05.2012. The same is requested to be considered. The copies of relevant invoices are produced for perusal. Since the issue is about procedural lapse and technical in nature, it requires to be condoned and considered in light of several decisions and SCN may be dropped.

7. I have carefully gone through the facts of the case, defence reply filed by the Noticee and all the relevant documents placed in the file. On going through the facts of the case, I find that the Noticee are engaged in the manufacture of excisable goods viz. Soda Ash. Soda Bi Carbonate and liquid bromide etc. falling under Chapter sub Heading 2836 2010, 2836 30 00 and 2801 30 20 of the First Schedule to the Central Excise Tariff Act, 1985 and are also availing the benefit of Cenvat credit of Central Excise Duty / Service Tax paid on Inputs, Capital goods and Input services under Rule 3 of Cenvat Credit Rules, 2004. It is alleged in the show cause notice that the Noticee have taken CENVAT credit documents which did not contain complete address or name of the Noticee for the purpose of availing Cenvat credit. These discrepancies are listed in Annexure A and B to the show cause notice dated 30.04.2012. It is alleged in show cause notice that the Noticee are not eligible for the availment of Cenvat credit under Rule 9(1) of Cenvat Credit Rules, 2004 as it did not contain mandatory particulars as per provisions of Rule 9(2) of the said rules. This fact was revealed during the course of scrutiny of records and other private records for the period from March 2011 to November 2011 by officers of Central Excise (Audit), Bhavnagar. It is the charge in the show cause notice that Noticee availed Cenvat credit amounting to Rs 8,21,243/- on inputs and Rs 23,01,051/- on input services totally amounting to Rs 31,22,294/-. It is alleged in the show cause notice that the said amount requires to be demanded and recovered under Rule 14 of the "Cenvat Credit Rules, 2004 read with Section 11A (1) of the Central Excise Act, 1944 along with interest under Rule 14 of the said Rules read with Section 11AA of the Central Excise Act, 1944 and penalty under Rule 15 of the Cenvat Credit Rules, 2004.

8. The Noticee in their written submission and during the course of personal hearing have mainly argued as under :

- a) They denied all the allegations and averments made in the notice. They submitted that it is undisputed fact that documents/invoices on which credit has been taken are in the name of their company i.e. Saurashtra Chemicals Limited. However, in some invoices, supplier of input and service providers have shown wrong address of the company. There is no dispute about the actual receipt and consumption of the inputs as well as services in the manufacture of excisable goods viz. Soda Ash therefore there is no justification or any valid ground to deny the credit only on the ground of non-mentioning of address or wrong address in the invoices which is simply a procedural and technical lapse. They further submitted that in case of invoices issued by M/s GMDC, a Government undertaking company, it was learnt from them that due to typographical error in the computer system, address in the invoices were wrongly mentioned, however, the GMDC had rectified the mistake by issuing a certificate in the matter which they would produce at the time of personal hearing. They have argued that it can be seen from the perusal of transport receipts that name and address of the company is shown as 'Saurashtra Chemicals Limited-Porbandar', therefore it is evident that the goods were actually delivered at factory premises at Porbandar only. Therefore, proposal of denial of Cenvat credit on the ground of wrong address mentioned in the invoices is required to be dropped in the light of several decisions. I observe that the documents on which Cenvat credit has been taken are in the name of M/s Saurashtra Chemicals Limited, in some of the invoices, the supplier of inputs /service provider has indicated wrong address, however, the receipt and consumption of the input/services is not denied in the show cause notice. The wrong address on invoices by the supplier of inputs/services is a procedural lapse. The benefit of Cenvat credit is a substantive benefit provided by the statute to the manufacturer and the service providers and I observe that it cannot be curtailed by procedural lapses or lack of relevant procedural provisions which would

otherwise have enabled availment of such credit. I have also perused a certificate dated 13.03.2012 issued by the input supplier M/s GMDC produced at the time of hearing which indicates that invoices generated for April 2011, the address and location may be read as Saurashtra Chemicals limited, Porbander instead of Rajsthan. Similarly, on perusal of relevant lorry receipts it is gathered that the inputs have been delivered at Saurashtra Chemicals, Porbandar. I find that this is also a procedural lapse and is condonable.

- b) For proposed denial of Cenvat credit of input services on the ground that in some invoices name of the company is shown but address is not shown, the Noticee have submitted that M/s Saurashtra Chemicals Limited has no other unit except unit at Porbandar, therefore when invoice is in the name of the company merely non-mention of address at 'Porbandar cannot be a valid ground to deny the credit. I agree with the submission of the Noticee that there is only one manufacturing unit of the Noticee at Porbandar and non-mention of address at 'Porbandar' cannot be a valid ground to deny the Cenvat credit as the receipt of the inputs/service is not denied in the show cause notice. The non mention of address is a technical and procedural lapse and is condonable, the benefit of Cenvat credit is a substantive benefit provided by the statute and it cannot be denied only on procedural lapses.
- c) For proposed denial of Cenvat credit on input service on the ground that in some invoices name of the company is shown but address is shown as C/o Nirma Limited, Ahmedabad, the Noticee have submitted that M/s Saurashtra Chemicals Limited has got its accounts and audit section as separate part in Nirma House, Ahmedabad, therefore, the address shown in the invoice as 'C/o Nirma Limited, Ahmedabad' is proper and correct. It is well settled law that if address of head office is shown in invoice, credit is correctly and legally admissible. I agree with the noticee's contention and observe that the during the course of audit, the relevant documents were not verified. The relevant invoices mentioned C/o Nirma Limited, Ahmedabad. In fact, as contended by the Noticee, M/s Saurashtra Chemicals Limited is housed in Nirma House, Ahmedabad, I find that the invoices (Annexure B) on which Cenvat credit was availed bore endorsement as C/o Nirma limited, Ahmendabad and not Nirma limited, Ahmendabad, therefore I find that Cenvat credit is admissible to the Noticee.
- d) For proposed denial of Cenvat credit of input service on the ground that in some invoices service tax registration number of service provider company is hand written, the Noticee have submitted that there is no prohibition or any ban for non-mentioning the service tax registration number by hand written. I find that there is no dispute about receipt of input service in the show cause notice further, I agree that there is no bar in writing of registration no of the service provider for availment of Cenvat credit by the Noticee.
- e) Similarly, for proposed denial of Cenvat credit of input service on the ground that invoice of service tax paid on security service provided at salt works at Jamnagar, the Noticee have submitted that the entire quantity of Salt obtained from Salt works at Jamnagar was being brought at the factory premises of Porbandar for its use in the manufacture of excisable goods i.e. Soda Ash. Thus, the credit of input service of security service taken by us is correctly and legally admissible as per law and they relied on the decision reported in 2008 (9) STR 65. I observe that as per statute, the Cenvat credit is available in respect of Security service provided at Salt works at Jamnagar when the input i.e. Salt has been used in the manufacture of excisable goods which is not disputed in show cause notice.
- f) For denial of service tax credit for S No. 34 and 35 in Annexure B, they submitted have that in absence of any contrary evidence brought on record by the department, the allegation based on presumption and assumption is not acceptable by any Law. For proposed denial of Cenvat credit at S No. 34 and 35 in Annexure B is on the ground that the supplier's service tax registration seemed invalid but the department has not produced any supporting evidence for such denial, further, department has also not disputed the receipt of the goods. In the circumstances, the substantive benefit as provided by the statute cannot be denied.

- g) The Noticee have submitted that the entire show cause notice is issued without proper verification and scrutiny of documents, the proposed denial of Cenvat credit merely on technical and procedural lapses is not sustainable in the light of appellate authority decision reported in 2012 (277) ELT 357 (Tri-Del). I observe and agree that the show cause notice is issued without proper verification and scrutiny of the invoices/documents and as such as discussed above, Cenvat credit cannot be denied on mere technical and procedural lapses. For this, I rely on CESTAT Ahmedabad decision in case of CCE Vapi Vs DNH Spinners, reported in 2009 (244) ELT 65 (Tri. Ahd) wherein it is held that substantive benefit is not deniable on procedural grounds.
- h) For invocation of larger period and penal action, the Noticee submitted that this is not a case of fraud, suppression of facts or misstatement with malafide intention on their part, therefore, in the absence of any ingredient to establish the charges as required under Section 11A (1) and Section 11AC of Central Excise Act, the proposed penal actions are without authority and jurisdiction and may be dropped. I observe that the Noticee is a manufacturer of excisable goods and have been filing ER-1 returns on regular basis as per the statutory obligation, therefore, as charged in the show cause notice, it cannot be concluded to have suppressed the fact with malafide intention, further, the period covered in show cause notice is for the period April 2011 to November 2011 i.e. within in the normal period as provided under Section 11A(1) of the Central Excise Act, 1944. I observe that the Cenvat credit is admissible, as discussed above, the charge of recovery under section 11A of the Central Excise At, 1944 as levelled in the show cause notice dated 30.04.2012 is not tenable. Similarly, the charge of recovery of interest under provisions of Rule 14 of Cenvat Credit Rules, 2004 is not tenable.
- i) Coming to the charge of imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004 I find that since the recovery of Cenvat credit is not justified in view of the foregoing discussion and as submitted and argued by the Noticee, I accept the Noticee's submission and hold that the imposition of penalty under Rule 15 is not justified.

In view of the facts, evidence, discussion and findings I pass the following orders.

ORDER

I drop the proceedings initiated under show Cause Notice No./15-22/DEM/HQ/2012-13 dated 30.04.2012 to the Noticee.

sd/-

(HARCHARAN SINGH)
ADDL.COMMISSIONER

To,
M/s Saurashtra Chemicals Limited,
Birla Sagar,
Porandar- 360 576.

Copy to: -

- (1) Commissioner, Central Excise and Service Tax, (RRA), Bhavnagar.
- (2) Deputy Commissioner (Audit), Central Excise Division, HQ, Bhavnagar.
- (3) Deputy Commissioner (Audit), Central Excise Division, Junagadh.
- (4) Superintendent, Central Excise, AR-I, Porbandar.
- ✓ (5) Guard File.

sd/-
11/12/2012
ADDL.COMMISSIONER