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::आयुक्त (अपील) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील फाइल संख्या Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/142 /BVR/2016	AC/JND/03/2016	19-10-2016

5258 to 5263

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-047-2017-18

आदेश का दिनांक / Date of Order:	10.10.2017	जारी करने की तारीख / Date of issue:	12.10.2017
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कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरोक्तित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**
M/s. Austin Engineering Co. Ltd.,
Vill - Patla, Taluka - Bhesan, Dist - Junagadh.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है /
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(ii) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपील के अलावा शेष सभी अपीले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सेस्टैट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दूजे किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सारजन करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /
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.5000/- Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में सारजन करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमशः 1,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सारजन करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) कित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत टर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर को अपीलीय न्यायाधिकरण को आवेदन दूने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एए के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुमाना विवादित है, या जुमाना, जब केवल जुमाना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेल्वेट जमा की गई राशि
(iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (स. 2) अधिनियम 2014 के आरम्भ से पूर्व कित्ती अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्थात् अपील को लागू नहीं होगी।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतक के अंतर्गत अर्ज सशुद्ध, भारत सरकार, पुनरीक्षण आवेदन इकाई, कित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाता चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या कित्त किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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.
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद, के उत्पादन शुल्क के भुगतान के लिए जो इयूटी केडीएट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा कित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समाविधि पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां फॉर्म संख्या EA-8 में जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ के तौर पर TR-6 की प्रति संलग्न की जानी 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 O.I.O 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.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ मूल रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -) का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिए। इस संघ के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथासंभव अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सुनिश्चित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

M/s. Austin Engineering Company Limited, Patla, Tal. Bhesan via-Ranpur-Sorath, District – Junagadh (hereinafter referred to as "Appellant") has filed present appeal, against Order-in-Original No. AC/JND/03/2016 dated 19.10.2016 (hereinafter referred to as "impugned order"), passed by the Assistant Commissioner, Central Excise Division, Junagadh (hereinafter referred to as "lower adjudicating authority").

2. Briefly stated, facts of the case are that on scrutiny of ER-1 return for the month of May, 2015 revealed that appellant had cleared their final products valued at Rs. 27,83,000/- under central excise invoice dated 31.05.2015 claiming exemption from payment of Central Excise duty under Notification No. 64/95-CE dated 16.03.95, as amended and informed jurisdictional Range Superintendent that they had not availed cenvat credit on principal inputs and had reversed proportionate cenvat credit of Rs. 21,770/- availed on common inputs and also reversed cenvat credit of Rs. 21,238/- availed on common input services on 31.05.2015. SCN No. V/3-18/D/2015-16 dated 17.11.2015 demanding recovery of Rs. 1,66,980/- being 6% of value of exempted goods in view of Rule 6(3)(i) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004"), as the appellant had availed cenvat credit on common inputs and common input services for manufacture of dutiable as well as exempted goods and no separate account had been maintained by them and no such intimation regarding maintenance of separate records had been given to the department, was issued to the appellant under Rule 14 read with Rule 6 of CCR, 2004 and Section 11A(1) of the Central Excise Act, 1944, with proposals to recover interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Act and to impose penalty under Rule 15(1) of the CCR, 2004 and for appropriation of cenvat credit already reversed. The lower adjudicating authority adjudicated the show cause notice vide impugned order wherein he confirmed demand of Rs. 1,66,980/- under Rule 14 of the CCR, 2004 read with Section 11A of the Act; interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Act and also imposed penalty of Rs. 1,00,000/- under Rule 15(1) of CCR, 2004 and appropriated Rs. 43,008/- paid by the appellant.

3. Being aggrieved with the impugned order, the appellant has preferred the present appeal on the following grounds: -

(i) The appellant had informed the department before issuance of SCN and had declared before the department that they had not deliberately availed credit on

principal inputs, like Bearings, etc. which had gone in manufacture of exempted final products as at the time of receipt of such inputs itself, the appellant were aware that this would be attributable to the exempted clearances and in that way separate accounts were maintained.

(ii) As regard to other inputs and input services such as stores & spares, security charges, labour charges, sales commission, it is submitted that since at the time of availment of cenvat credit on these inputs and input services, it was not known that the same would also be used towards manufacture of exempted goods, no separate accounts were maintained, but cenvat credit in regard to the same was reversed and therefore provision of Rule 6 was not applicable. Though these submissions were made, the lower adjudicating authority failed to appreciate the same.

(iii) Various judgments in support of the submissions that once the credit is reversed, Rule 6 of the CCR, 2004 would not apply at all were submitted but those judgments were not discussed by the lower adjudicating authority. The lower adjudicating authority placed reliance on judgment of Bombay High Court in the case of Nicholas Piramal (India) Ltd. reported as 2009 (244) ELT 321 (Bom.) whereas the facts of this case are totally different than the facts of that case as no credit on principal inputs, namely, Bearings were availed by the appellant.

(iv) It is evident from the SCN itself that after clearing the goods under exemption on 31.05.2015, the appellant had immediately reversed cenvat credit on pro-rata basis, which was availed on other common inputs and common input services on 31.05.2015 and intimated the department that they had followed procedure as contemplated in Rule 6(3)(a)(b)(ii) of the CCR, 2004 and reversed the cenvat credit proportionately.

(v) Even if the formula contemplated in clause (c) of Rule 6(3A) is applied, the amount required to be paid comes to Rs. 15,667/- only which would be less than the amount of cenvat credit of Rs. 43,008/- reversed by them.

(vi) The appellant relied on following case-laws in support of their contention that even if procedural requirement of Rule 6 of the CCR, 2004 is not followed, substantial benefit could not be denied.

- Manubhai & Co. – 2011 (21) STR 65 (Tri. – Ahmd.)
- Unimark Remedies Ltd. – 2009 (15) STR 254 (Tri. – Ahmd.)
- Neral Paper Mills Pvt. Ltd. – 2009 (14) STR 374 (Tri. – Ahmd.)

(vii) It is settled law that if any assessee who has through oversight availed cenvat credit on all inputs/input services and if they identify the inputs/input services attributable to exempted finished goods and reversed cenvat credit subsequently, there is no

requirement of paying amount @ 6% of the value of the exempted goods. The appellant relied on following case-laws.

- Ashima Dyecot Ltd. – 2008 (232) ELT 580 (Guj.)
- Hello Minerals Water Pvt. Ltd. – 2004 (174) ELT 422 (All.)
- Bharat Earth Movers Ltd. – 2001 (136) ELT 225 (Tri. – Bang.)
- Chandrapur Magnet Wires Pvt. Ltd. – 1996 (81) ELT 3 (SC)

4. Personal hearing in the matter was attended to by Shri Ajay Malhotra, Manager, Shri D.K. Trivedi, Advocate and Shri S.A. Kotal, C.F.O. who reiterated Grounds of Appeal and submitted a letter dated 03.02.2013 submitted to then Range Superintendent to say that clearance of exempted goods to Defence was already intimated; they also submitted a written P.H. submission citing decisions in the case of Cranes & Structural Engineers reported as 2017 (347) ELT 112 (Tri. – Bang.), Aster Pvt. Ltd. reported as 2016 (43) STR 411 (Tri. – Hyd.), Mercedes Benz India (P) Ltd. reported as 2015 (40) STR 381 (Tri. – Mumbai) and Rathi Daga reported as 2015 (38) STR 213 (Tri. – Mumbai) and requested to allow the appeal and set aside the impugned order. No one appeared from the department despite P.H. notices issued to them.

FINDINGS: -

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and submissions made by the appellant. The limited issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority confirming demand of amount @ 6% of the value of exempted goods under Rule 6(3)(i) of the Cenvat Credit Rules, 2004, when the appellant had reversed proportionate cenvat credit on common inputs and common input services used in the manufacture of exempted goods, is correct or not.

6. The appellant contended that they have not availed cenvat credit on principal inputs, which have gone in manufacture of the exempted final products as at the time of receipt of such inputs itself, the appellant was aware that this would be attributable to the exempted clearances and have also reversed cenvat credit proportionately on other common inputs and input services used in the manufacture of exempted final products at the time of clearance of such final products and that if the formula contemplated in clause (c) of Rule 6(3A) is applied, the amount required to be paid comes to Rs. 15,667/-, which is less than the amount of cenvat credit of Rs. 43,008/- reversed by them.

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7. I find that the appellant has made this plea before the lower adjudicating authority but the lower adjudicating authority rejected the plea on the grounds that the appellant has not maintained separate account under Rule 6(2) of the CCR, 2004 and also did not exercise option under Rule 6(3A) of the CCR, 2004, at the relevant time, therefore, only option remained is to pay an amount @ 6% of value of exempted goods cleared by them. I find that the issue is no more *res-integra* because of order of CESTAT, Ahmedabad in the case of Face Ceramics Pvt Ltd, reported as 2010 (249) E.L.T. 119 (Tri. - Ahmd.), wherein by following the judgment of the Hon'ble Supreme Court and Hon'ble Allahabad High Court, it was held as under:-

"2. It is the appellant's contention that the above goods cannot be considered to be inputs and the credit has been availed as capital goods, in which case the condition of the Notification would not stand contravened. In any case, submits the learned Advocate that the credit of Rs. 4,76,146/- availed by them in respect of the above items stands subsequently reversed by them along with interest of Rs. 1,62,233/- in which case the condition cannot be held to be contravened. He relies upon the Hon'ble Allahabad High Court judgment in the case of Hello Minerals Water Pvt. Limited v. UOI - 2004 (174) E.L.T. 422 (H.C.-Allahabad) laying down that subsequent reversal of Modvat credit amounts to non-taking of credit on the inputs. Learned Adv. also refers the Hon'ble Gujarat High Court judgment in the case of CCE v. Ashima Dyecot Limited - 2008 (232) E.L.T. 580 (Guj.) = 2008 (12) S.T.R. 701 (Guj.) wherein the Tribunal's decision laying down that even if reversal of credit is as per the directions of the Tribunal, it has to be held as if no credit was availed. We note that both the above decisions are based upon the declaration of law by the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires Pvt. Limited v. CCE - 1996 (81) E.L.T. 3 (S.C.).

3. Though the above decision of Chandrapur Magnet Wires Pvt. Limited was placed before the adjudicating authority but he has not followed it, on the ground that the reversal of credit was not made prior to clearance of the goods. In terms of the above decision Hon'ble Gujarat High Court as also Hon'ble Allahabad High Court which have held that such reversal, even if made subsequently would amount as if no credit has been availed. In the present case, the appellants have reversed the entire credit along with interest. As such, it has to be held as if no credit was availed. If that be so, the condition of the Notification cannot be held to be contravened, in which case, the benefit of the same would be available to the assessee."

(Emphasis supplied)

8. Thus, it has already been held in various judgments that subsequent reversal of the credit would amount as if no credit was availed. I also find that the particulars of reversal of cenvat credit intimated by the appellant to the department, has not been challenged in the impugned order and/or in the SCN and therefore the same is correct. The appellant has also explained that they have not availed cenvat credit on principal inputs and they have also reversed Rs. 43,008/- of cenvat credit which is excess than the amount required to be reversed as per formula contemplated in Rule 6(3A) of the CCR, 2004. Therefore, relying on the above decisions, I am of the considered view that the option of paying an amount equal to 6% of value of exempted goods is not required to be enforced on the appellant.

Accordingly, the impugned order confirming demand @ 6% of the value of exempted final product under Rule 6(3)(i) of the CCR, 2004 is not correct, legal and proper.

9. In view of above factual and legal position, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

(Handwritten Signature)
 (कुमार संतोष)
 आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Austin Engineering Company Limited,
 Patla, Tal. Bhesan via-Ranpur-Sorath,
 District – Junagadh

मे. औस्टीन इंजीनियरिंग कंपनी लिमिटेड,
 पाटला, भेसान वाया-राणपुर-सोरठ,
 डिस्ट्रिक्ट - जूनागढ़

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise Commissionerate, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise Division, Junagadh.
- 4) Guard File.