NATION TAX MARKET

::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

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/143/BVR/2017	**BHV-EXCUS-000-JC-070-16-17**	**08-03-2017**

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

BHV-EXCUS-000-APP-029-2017-18

आदेश का दिनांक / Date of Order: **05.09.2017** जारी करने की तारीख / Date of issue: **06.09.2017**

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 उपरलिखित 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 :-
Omkar Synthetics P. Ltd., Office No. 237, Sagar Complex, Jashonath Chowk, Bhavnagar 364 001.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में 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:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक न 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.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीले सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ 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 प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहा उत्पाद शुल्क की माँग ,ब्याज की माँग 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहा 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 प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहा सेवाकर की माँग ,ब्याज की माँग 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहा 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/-.

...2...

578

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र 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 दर्ज 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 For 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 35एफ 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते 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) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।/
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 मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाइ, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना 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, जहा नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर 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 ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतिया संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य 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 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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 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 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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 संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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 है । /
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. Omkar Synthetics Pvt Ltd, Office No. 237, Sagar Complex, Jashonath Chowk, Bhavnagar 364001(*hereinafter referred to as* '**the appellant'**) have filed the appeal against the Order-in-Original No. BHV-EXCUS-000-JC-072 to 74-2016-17 dated 08.03.2017 (*hereinafter referred to as* '**the impugned order'**) passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar *(hereinafter referred to as* '**the adjudicating authority**').

2. Facts of the case are that the appellant is a registered central excise assessee holding registration No. AABCO2876JEM001 and engaged in manufacture of excisable goods viz. Polypropylene Multifilament Yarn (210 Deniers) and Polypropylene Multifilament Yarn (Other than 210 Deniers) both falling under tariff item 5402 59 10, Waste of Polypropylene Filament generated falling under tariff item 5402 59 10, Twine made of Polypropylene Multifilament Yard (210 Deniers and other than 210 Deniers) both falling under tariff item 5607 90 90 and Waste of Twine generated falling under tariff item 5607 90 90 of the First Schedule to the Central Excise Tariff Act, 1985.During the course of audit, it was found that the appellant had taken credit on all the inputs used in the manufacture of finished goods cleared on payment of duty as well as cleared under exemption notification no. 30/2004-CE dated 09.07.2004. Exemption Notification 30/2004 CE dated 09.07.2004 stipulates that the said exemption was not applicable to the goods in respect of which credit of duty on inputs has been taken under Cenvat Credit Rules,2004 (*hereinafter referred to as the* "**CCR,2004**"). The appellant had not reversed the Cenvat Credit on inputs used for manufacture of exempted goods before its utilization. However, appellant cleared the goods by paying the amount under Rule 6(3) of the CCR,2004. Therefore, the appellant was issued Show cause notices as tabulated below for the period from April, 2011 to July, 2016 denying the exemption under notification 30/2004-CE dated 09.07.2004 (*hereinafter referred to as* "**the said notification**") and demanding Central excise duty under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as* "**the Act"**) read with Rule 14 of the Cenvat Credit Rules (*hereinafter referred to as* "**CCR,2004**"), alongwith interest under Section 11AA and also proposing penalty under Rule 15 of the of CCR,2004.

Sr No.	Period	Duty Amount Involved(Rs.)
1	April, 2011 to March, 2015	1,18,91,219/--
2	April,2015 to Nov,2015	39,69,053/--
3	Dec,2015 to July, 2016	33,50,386/-

These show cause notices were adjudicated and demands were confirmed by the adjudicating authority under Rule 14 of CCR,2004 readwith Section 11A, recovery of interest under Section 11A of the Act and Rule 14 of the CCR,2004 was ordered. Penalty was also imposed under Rule 15 of CCR,2004 readwith with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant preferred appeals mainly on the following grounds:-

(i) It is on record that they manufactures and clears total six types of different goods having different description falling under two tariff items.

(ii) The department was not clear whether there was any violation of condition of Notification No. 30/2004-CE dated 09.07.2004 or whether CENVAT Credit was wrongly availed. Whether amount paid @ 6% reversed on value of exempted final products amount to non availment of CENVAT Credit or full amount was required to be reversed? Department was also not clear whether to recover CENVAT Credit or deny the benefit of Notification No. 30/2004-CE dated 09.07.2004 on the ground of violation of conditions of notification.

(iii) It is undisputed that it had availed CENVAT Credit on inputs and reversed the same on the exempted final products as provided under Rule 6(3) of CCR, 2004. As per sub-rule (3D) of Rule 6 once amount is paid under sub-rule (3) of Rule 6 it is deemed to be CENVAT Credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT Credit of inputs and input services shall be taken. Thus, it had rightly availed benefit of Notification No.30/2004-CE dated 09.07.2004 by paying an amount @ 6% of value of exempted final product under sub-rule (3) of Rule 6 of the CENVAT Credit Rules, 2004 and there was no need to reverse actual amount of CENVAT Credit. Even amount paid under sub-rule (3) of Rule 6 ibid, on or before 6th of the following month amounts to reversal of CENVAT Credit prior to removal of the exempted goods as also provided under Explanation II to sub-rule (3D) of the said Rule 6.

(iv) It was their bona fide belief that since procedure as provided under sub-rule (3) of Rule 6 is followed by them, it amounts to non-availment of CENVAT Credit of inputs contained in exempted final products, hence they rightly claimed the exemption under the said notification. Such provisions under CENVAT Credit Rules are there to cover such situation, where it is not possible to maintain separate account of inputs used in manufacture of dutiable final products and

exempted final products. The adjudicating authority has misinterpreted above provision by inferring at Para 3.11 of the impugned order (after reproducing Rule 6(3)) that appellant has not maintained separate account but opted to pay an amount of 6% of va*lue of exempted goods.*

(v) With effect from 01.04.2011 Rule 6 was replaced by new Rule 6 in CENVAT Credit Rules, 2004 and sub-rule (3D) of Rule 6 clearly provides that *"Payment of an amount under sub-rule (3) shall be deemed to be CENVAT Credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT Credit of inputs and input services shall be taken."*

(vi) Sub-rule (3) of Rule 6 ibid starts with non obstinate clause viz. *"Notwithstanding anything contained in sub-rules (1) and (2)"*, and hence sub-rule (3) has over riding effect over sub-rules (1) and (2). Therefore, even if as per provisions of sub-rule (1) the manufacturer is not entitled for availing CENVAT Credit on inputs used in or in-relation to the manufacture of exempted goods and as per provisions of sub-rule (2) manufacturer does not maintain separate account but if he pays an amount equal to 6% as pr sub-rule (3), then provisions of sub-rules (1) and (2) will not be applicable. Thereby, there was no violation of provisions of Rule 6 at all.

(vii) CBEC vide Circular No.858/16/2007-CX dated 08.11.2007, clarified that if the credit taken on inputs used in the manufacture of the said goods cleared under said notification No.30/2004-CE has been reversed before utilization, it would amount to credit not having been taken. This Circular has also been considered in the SCNs and the impugned order but the same has been misinterpreted by the adjudicating authority.

(viii) They referred Hon'ble CESTAT's Order No. A/1528 / 1529/ WZB/ AHD/ 2007 dated 22.06.2007 in the appeal No. E/447 to 448/2007 filed against the Order-in-Original No. 50/BVR/ COMMR/2006 & 51/BVR /COMMR/ 2006 dated 29.12.2006 by M/s. Shiv Synthetics and M/s. Seavenus Synthetics on the identical case of availment of CENVAT Credit, its subsequent reversal and benefit of Notification No.30/2004-CE as has been done by the appellants.

(ix) The adjudicating authority discarded the binding decision of jurisdictional Hon'ble Tribunal on erroneous reasons referring *Apex Court in the case of Chandrapur Magnets Wires (P) Ltd.* reported as *1996 (81) ELT 3 (SC).* It was

contended that it was erroneous to hold that the appellant has not done any actual reversal but used facility of Rule 6 in the present case; that in the present case the appellant has not reversed Cenvat credit in total but has made payment of amount at the rate of 6% which would amount to reversal of Cenvat Credit and thus credit deemed to have been not taken. The adjudicating authority failed to understand the ratio of the decision of Chandrapur Magnets Wires (P) Ltd.(supra) and twisted the matter from "reversal of credit before removal" to "reversal of actual amount of CENVAT Credit". They placed reliance on an order of CESTAT in the case of M/s. Sri Lakshmi Saraswathi Textiles (Arni) Ltd. reported as 2008 (222) E.L.T. 390 (Tri. - Chennai).

(x) It is settled principle of law that adjudicating authority is legally required to maintain judicial discipline by following the ratio of the decisions rendered by jurisdictional CESTAT unless such decision is reversed or stayed by Hon'ble Supreme Court/ High Court. Since the judgment of Hon'ble Tribunal in the case of M/s. Shiv Synthetics and M/s. Seavenus Synthetics has not been challenged, it has attained finality and therefore, binding upon the adjudicating authority. This contention is further buttressed by the judgment of Hon'ble High Court of Gujarat rendered in the case of E I DUPONT INDIA PRIVATE LIMITED & 1 Vs UNION OF INDIA & 3: 2013-TIOL-1172-HC-AHM-CX. Based on the directives of Hon'ble High Court in the above judgment, the CBEC had also directed the departmental officers to maintain judicial discipline by following the ratio of a binding decision of higher appellate forum vide instructions under letter F. No. 201/01/2014-CX.6 dated 26.06.2014.

(xi) If the adjudicating authority's findings were to be considered as correct, then the provisions of sub-rule (3) and sub-rule (3D) of Rule 6 become redundant. Therefore, question of reversal of actual Credit or total amount of credit in respect of exempted goods does not arise. Reference to Explanation to Rule 3 of the CCR, 2004 to deny the benefit Notification No. 30/2004-CE without appreciating provisions of sub-rule(3D) of Rule 6 ibid is ridiculous.

(xii) They have already made a debit from CENVAT Credit account @ 6% of value of exempted final products under Rule 6(3) of CCR, 2004. If the benefit of said notification is to be denied, it is entitled for re-Cenvat Credit.

(xiii) Show Cause Notice dated 11.02.2016 demanding duty for the period April, 2011 to March, 2015 was time barred as there was no omission on their part and the issue is a matter of interpretation. Entire activities were within the knowledge

of the department and clearance of goods without payment of duty and reversal of an amount @6% of value of exempted final products were reflected in monthly returns ER-1 filed for the period under dispute. Therefore allegation of malafide intention, willful mis-statement with an intention to evade central excise duty is totally erroneous.

(xiv) No interest and penalty was payable by them as duty demanded is devoid of merits and impugned order is not legally sustainable. Further, department was not clear at the time of issue of show cause notice as to whether there was demand of wrongly availed Cenvat credit or demand of Central Excise duty. It was proposed to recover Cenvat credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (without invoking provisions of sub section (4) of the said section) of the Central Excise Act, 1944 in all the SCNs. Contrary to this, it was inferred in notices that appellant was liable to pay the duty referred therein. The adjudicating authority has also ordered recovery of duty under Rule 14 of the CCR, 2014 read with Section 11A of the Central Excise Act, 1944 under the impugned order. In other words, even if it is considered for sake of argument, though erroneous, that appellant had committed an offence in terms of Section 11A, even then no penalty was imposable on it in terms of Rule 15(1) of the Cenvat Credit Rules, 2004 irrespective of the fact that it had already reversed Cenvat credit at the appropriate rate at the material time.

(xv) The adjudicating authority has grossly erred in imposing penalty under Rule 15(1) under the impugned order. Penalty was not imposable under Rule 15(1) of the Cenvat Credit Rules, 2004 as the said rule specifically deals with confiscation and penalty in relation to erroneous availment and utilization of Cenvat credit. No quantity or value of any goods were identified against which Cenvat credit was wrongly availed. Therefore, no penalty can be imposed on it under the said rule. They relied the decision of Hon'ble CESTAT in the case of Bill Forge Pvt Ltd V/s. CCE, Bangalore reported in 2010 (256) E.L.T. 587 (Tri. - Bang.) as affirmed by Hon'ble High Court [2012 (26) S.T.R. 204 (Kar.)].

4. Shri P. D. Rachchh, Advocate appeared on behalf of the appellant in personal hearing and reiterated the grounds of appeal. He explained the provisions of Notification No.30/2004-CE dated 09.07.2004 at Sr No. 7 & 11, Board's Circular dated 01.02.2007 and dated 8.11.2007, Rule 6(3) and Rule 6 (3D) read with Explanation II and submitted that conditions of Notification 30/2004-CE dated 09.07.2004 were being met by them as held by CESTAT incase of M/s. Shiv Synthetics order No. A/ 15288/ 529/ WZB/ AHD/ 2007 dated

21.06.2007 and Shri Laxmi Saraswati Textiles (ARNI) Ltd reported as 2008(222) ELT 390 (Tri) in terms of Hon'ble Supreme Court order dated 12.12.99 reported in 1996(81) ELT 3 (SC) in case of Chandrapur Megnet Wire (P) Ltd. He contended that since they are paying amount @6% as provided under Rule 6(3), they fulfill conditions of Notification 30/2004CE dated 09.07.2004 as amended and also conditions of Notification 67/95-CE dated 16.03.1995 as per provision (at Sr No. Vi). He emphasized that since amount @6% under Rule 6(3) has been paid by them on Twine (exempted Final product), it needs to be considered that Cenvat Credit has not been taken by them as per Rule 6(3D) for the purpose of exemption notification 30/2004-CE as well as 67/95-CE wherein exemption has been granted on condition that no Cenvat Credit of inputs shall be taken. He submitted that this Rule 6 (3D) has been brought with effect from 01.04.2011 and the period under dispute is from April, 2011 to July, 2016. He also submitted that they have paid amount @6% for every month by 5th of the following month and hence all payments are required to be considered as payment made before removal of the goods in terms of Explanation-II under Rule 6 of Cenvat Credit Rules.

FINDINGS:-

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and records of personal hearing. The issue involved in the matter is whether appellant has correctly claimed exemption under Notification 30/2004-CE dated 09.07.2004 or otherwise.

6. I find that the eligibility of the exemption notification has been denied on the ground that cenvat credit of inputs had been taken by the appellant whereas exemption is not available when cenvat credit is taken on inputs. Careful perusal of the issue reveals that the bone of the contention is that on one hand, appellant claims that they have fulfilled the condition of the exemption notification in terms of Rule 6(3D) by way reversal of credit under Rule 6(3) of CCR, 2004, whereas, on other hand, department is of the view that once the credit is availed by the appellant on the inputs, it is in violation of the condition of the exemption notification and hence appellant has wrongly availed the exemption under Notification 30/2004-CE dated 09.07.2004. Therefore, it is required to be examined whether obligation fulfilled under Rule 6(3) of CCR,2004 can be treated as Cenvat Credit not taken by virtue of Rule 6(3D) and whether this would suffice obligation under Notification 30/2004-CE dated 09.07.2004.

6.1 I find that Rule 6(3) of CCR, 2004 relates to adjustment of credit on inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer. This rule deals with cases where adjustment of credit is required to be made as the inputs or input services have gone into the manufacture of exempted final products also. One option specifically provides reversal of credit at specific rate to be done, if the manufacturer is not able to meet the requirement of maintaining separate inventory and accounts of the receipt and use of inputs for the manufacture of goods on which exemption is claimed. Such reversal brings about the adjustment of excess credit taken. In other words, it is equivalent to reversal of credit on inputs. The legislation has brought in a very clear and specific version of law under Rule 6(3D) explaining that such reversal would amount to non availment of credit to claim exemption from duty where condition of No Cenvat Credit of inputs is stipulated. The appellant had satisfied the requirement of not taking Cenvat Credit on the inputs used in the manufacture of exempted goods. I find merit in appellant's argument that if the revenue's contention is to be believed, Rule 6(3) and Rule 6(3D) would become redundant in the statute. The appellant has relied upon Hon'ble CESTAT's decision vide Order No. A/1528 &1529/ WZB/ Ah'bad/07 dated 21.06.2007 in the very similar cases of M/s. Shiv Syntehtic & M/s. Seavenus Synthetics. Hon'ble CESTAT in the said order has held as under:-

> *" 2. After hearing both sides, we find that the law on the point stands declared by the Hon'ble Supreme Court in the case of Chandrapur Magnet (Wires) Pvt Ltd Vs CCE, Nagpur 1995 (81) ELT 3 (SC). It has been held that the reversal of credit of duty originally availed would amount to the effect as if no credit has been availed. In light of the above decision, it has tobe held that the credit availed and reversed would amount to the situation as if the same was not availed, thus satisfying the condition of Notification No.30/04-CE.*
> *3. We also note that identical issue stands decided by the Tribunal in the case of Fobs Gokak Mills Ltd 2006 (77) RLT 626 (Tri-Bang). In view of our foregoing discussion, we set aside the impugned order and allow the appeals with consequential relief to the appellants.".*

(Emphasis supplied)

6.2 I find that the impugned order is not what is stipulated in the central excise law and the adjudicating authority has not correctly appreciated the provisions of central excise made to deal with such situation. My views are further supported by the Hon'ble CESTAT's recent decision in the case of M/s. Spentex Industries reported in 2016 (338) ELT 614 (Tri-Del) wherein identical issue has been decided wherein it has been held that reversal of credit would satisfy the condition of the Notification 30/2004-CE and assesse would be entitled to claim

the exemption. Relevant Para 5 of the decision is reproduced below:-

> *"5. The short point for decision is the eligibility of the appellant for exemption under Notification No. 30/2004-C.E. when they have reversed 6% of the value of exempted goods in terms of Rule 6(3)(i). We find the appellants claim on the applicability of sub-rule (3D) of Rule 6 is legally sustainable. The said sub-rule provides for a deeming provision to the effect that payment of amount under sub-rule (3) should be considered as credit not taken for the purpose of such exemption notification. The appellant's case is covered by the said provision as pointed out by the ld. Counsel for the appellant even before the introduction of the said sub-rule in 2011. The Tribunal held that payment of amount under sub-rule (3)(i) of Rule 6 will make the assessee eligible for claiming such exemption as the present one. We find the case laws relied on by the ld. Counsel for the appellants clearly support their contention. The decisions of the Tribunal in Life Long Appliances Ltd. (supra), was affirmed by the Hon'ble Supreme Court reported at 2006 (196) E.L.T. A144 (S.C.). We find the original authority had fallen in error in not considering the said sub-rule (3D) and relying on explanation (3) of Rule 3. We find the said explanation has no relevance to the facts of the present case in view of the specific provision of sub-rule (3D) of Rule 6. In view of above analysis and findings, we find the impugned order is unsustainable, and accordingly, set aside the same. The appeal is allowed."*

(Emphasis supplied)

6.3 I also find that even prior to insertion of Rule 6(3D) in the statue, Hon'ble CESTAT in the Case of M/s. JCT Ltd reported in 2017 (345) ELT 289 (Tri-Chan), for the dispute pertaining to the period from Dec, 2004 to September, 2005, has held that availing Cenvat Credit on inputs at earlier stage does not debar manufacturer to claim at later stage, if reversal is made as prescribed under Rule 6 (3) of the CCR,2004. The relevant Para of the decision is reproduced as under:-

> *"6. On careful consideration of the submissions made by the learned Counsel for the appellant, we do agree with the submission of the learned Counsel that at the time of availment of credit on the inputs it was not known to the appellant which inputs will go into the manufacture of said goods but before clearance of the said goods, the appellant has reversed the credit attributable to the inputs used in the manufacture of said goods. Therefore, we hold that the reversal of credit is equivalent to not taken the credit on inputs used; in the manufacture of said goods. In that circumstance, the appellant is entitled to avail the benefit of Notification No. 30/2004-C.E. Consequently, the demands are not sustainable against the appellant. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.*

(Emphasis supplied)

6.4 The Hon'ble CESTAT, Ahmedabad in the case of M/s. Omkar Textile Mills Pvt Ltd reported as 2014 (311) ELT 587 (Tri-Ahd), relying on the Hon'ble Gujarat High Court's decision in the case of Ashima Dyecot Ltd

[2008(232)ELT 580] has held that subsequent reversal of Cenvat Credit at later stage is sufficient for claiming exemption under Notification no. 30/2004-CE. Relevant Para 6 of the decision is reproduced below:-

> *"6. Heard both sides and perused the case records. These proceedings started in the year 2007 when show cause notices were issued to the appellants that benefit of Notification No. 30/2004-C.E., dated 9-7-2004 is not admissible as this notification applies to the goods in respect of which credit of duty paid on inputs has not been taken. It was also alleged in the show cause notices that appellants did not maintain separate accounts for inputs as per C.B.E. & C. Circular No. 795/28/2004-CX, dated 28-7-2004, therefore, pro rata credit reversed by the appellants after the clearance was not correct method of reversal. There was no mention of the improper reversal of Cenvat amounts in the show cause notices. In the first remand order, dated 12-10-2010, this Bench crystallized two issues :-*
>
> *(i) That Commissioner has observed that reversal of credit was not at the time of clearance of exempted goods but at the end of the month and that benefit of exemption cannot be extended to the appellants.*
>
> *(ii) That Commissioner observed in some cases that credit reversed is not equivalent to the duty involved on the inputs used in exempted goods.*
>
> *6.1 So far as Point No. (i) above is concerned, this Bench in Para 7 of the remand order dated 12-10-2010, observed that in view of Gujarat High Court's orders in the case of CCE v. Ashima Dyecot Ltd. [2008 (232) E.L.T. 580 (Guj.)] and CCE, Ahmedabad v. Maize Products [2008 (89) R.L.T. 211 (Guj.) = 2009 (234) E.L.T. 431 (Guj.)], reversal of credit even at the appeal stage has been held to be in accordance with law. In the case of CCE v. Ashima Dyecot Ltd. (supra), Hon'ble Gujarat High Court relied upon Allahabad High Court's judgment in the case of Hello Minerals Water (P) Ltd. v. UOI (supra) where it was held that reversal can be made after clearance of goods also and benefit of Notification No. 15/94-C.E., dated 1-3-1994 was held to be admissible. C.B.E. & C. vide Circular No. 858/16/2007-CX, dated 8-11-2007, also clarified that in view of Supreme Court's judgment in the case of CCE, Mumbai-I v. Bombay Dyeing Ltd. [2007 (215) E.L.T. 3 (S.C.)], also relied upon by the appellant, Cenvat credit reversed later is sufficient for exemption under Notification No. 30/2004-C.E., dated 9-7-2004. Accordingly, the issue of reversal of Cenvat credit for the entitlement of Notification No. 30/2004-C.E. was settled at rest in view of the law laid down by Gujarat High Court and only verification and adjustment of Cenvat credit reversal was required as per Para 7 of the judgment in the case of CCE, Ahmedabad v. Maize Products [2008 (89) R.L.T. 211 (Guj.) = 2009 (234) E.L.T. 431 (Guj.)]."*
>
> ***(Emphasis supplied)***

6.5 Similar views have been held by the Hon'ble CESTAT in the case of M/s. Asarwa Mills reported in 2009 (246) ELT 748(Tri-Ahd). Relying on above decisions and in given facts of the case, I am of the considered view that the view taken by the adjudicating authority is not correct, legal and proper and the appellant is entitled to avail the benefit of exemption notification 30/2004-CE where reversal under the provisions of CCR, 2004 has been made and is not in dispute.

7. In view of the factual and legal position, as discussed above, I hold that demands confirmed do not sustain in impugned order. Hence, I set aside impugned order and allow the appeals filed by the appellant.

8. Since, the demand is not sustainable, the order for recovery of interest and imposition of penalty will not survive.

९. अपीलकर्ता द्वारा दर्ज़ की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है.

9. The appeal filed by the appellant is disposed off in above terms.

31/01/2017

(कुमार संतोष)
आयुक्त (अपील्स)

BY R.P. A.D.

To

M/s. Omkar Synthetics Pvt Ltd, Office No. 237, Sagar Complex, Jashonath Chowk, Bhavnagar 364001	**मेसर्स ओमकार सिंथेटिक्स प्रा लिमिटेड** **कर्मांक -२३७, सागर कॉम्प्लेक्स,** **जशोनाथ चोक,** **भावनगर** - ३६४००१

Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
3. The Joint Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavangar.
4. The Assistant Commissioner, GST & Central Excise City Division, Bhavnagar.
5. Guard File.

8. Since, the demand is not sustainable, the order for recovery of interest and imposition of penalty will not survive.

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

9. The appeal filed by the appellant is disposed off in above terms.

06/12/2017 (कुमार संतोष)

प्रवीण पोपट, आयुक्त (अपील्स)

अधीक्षक (अपील)

BY R.P. A.D.

To

M/s. Omkar Synthetics Pvt Ltd. Office No. 237, Sagar Complex, Jashonath Chowk, Bhavnagar 364001	मेसर्स ओमकार सिंथेटिक्स प्रा लिमिटेड कर्मांक -२३७, सागर कॉम्प्लेक्स, जशोनाथ चोक, भावनगर - ३६४००१

Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
3. The Joint Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavangar.
4. The Assistant Commissioner, GST & Central Excise City Division, Bhavnagar.
5. Guard File.