TION TAX MARKET :: आयुक्त (अपील) का कार्यालय, केन्द्रीय वस्तु एव o/o THE COMMISSIONER (APPEALS), C द्वितीय तल, वस्तु एवं सेवा कर भवन / 2 रेस कोसे रिंग रोड, / Race Cour <u>राजकोट / Rajkot - 366</u> Tele Fax No. 0281 - 2477952/2441142 Email		रेवा कर अचल / 2 nd Floor, GST Bhavan. इ. / Race Course Ring Road, 7/ Rajkot - 360 001	
<u>रजिस्</u> क	<u>zś зта ए. ŝl. द्वारा</u> :- м ^а на инда изил Адрен / File No. V2/70 /GDM/2016 V2/1/GDM/2017 3421	нук жере ж / бриж / 010 Na Date Refund/08/2016-17 28.09.2016 Refund/09/2016-17 23.11.2016	
ন্দ্র	Hale Heat deal (Order-un-Abben to	-1-	
	KCH-EXCUS-00	00-APP-007 to 008 -2017-18	
	आदेश दिनांक/ 03.07.2017 Date of Order:	जारी करने की लारीख / 05.07.2017 Date of issue:	
	श्री कुमार संतोष, आयुक्त (अपील), राज Passed by Shri Kumar Santosh,	Commissioner (Appeals), Rajkot	
म	अतरेश से सुजित: / Arising out of above mentioned OKO issued by Ad Reskot / Jampagar / Gandhidham	न्द्रीय डामाद शुल्का सेवाकर, राजकोट / जामजनर / नांधीपतम। दनारा उपरलिखित जापि स् Idmonal/Joint/Deputy/Assistant Commissioner, Central Excise / Service Te	
घ	अपीलकर्ता/ प्रतिवादी का नाम एवं पता / N M/s. Johnson Matthey Chem 169/P90/P2/P16 Adani Port Road, Villag		
	Any person aggrieved by this Order-In-Appear may r	े में उपयुक्त प्राणिकारी / प्राणिकारण के समस अणील टावर कर सकता ≹।/ We an appeal to the appropriate authority in the following way:	
(A)	शीमा शुल्क, बेन्द्रीय उत्पाद शुल्क, एवं सेवाबर झपीलेव ज्यायाधिकरण के प्रति अपील, वेन्द्रीय उत्पाद शुल्क अधितियम, 1944 की पता 358 के अंतर्मन एवं वितन अधितियम, 1994 की धात 86 के अंतर्गत तिम्नलिखित जगह की जा सकती है // Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 358 of CEA, 1944 / Under Section 88 of the Finance Act, 1994 an appeal lies to		
0)	eaffacter मुख्याबज हो सम्बद्धिपा सभी मामले सीमा शुल्क, व आर. क. पुरस, बड़े दिल्ली, को की जानी चाहिए U The special bench of Customa, Exces & Service matters relating to classification and valuation	स्वद्रीय उत्पादन सुरूक एवं जेवाकर अपीक्षेय त्यावाधिकरण की विशेष पीठ, वेस्ट वलेंक वं Tax Appellate Tribunal of West Block No. 2, FLK. Puram, New Delhi in	
(4)	की पशिवन सेविय गीठिका, जो-20, रुपू मेरटल हारिपटन कर	सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एव सेवाकर अमीलिय ज्यायागिकरण (सिस्ट प्राइड, लेपानी नगर, महनदाबाद-380016, को की जानी पाष्ट्रिए ॥ & Service Tax Appetlate Tribunal (CESTAT) at O-20, New Mental Hosp n case of appeals other than as mentioned in para- 1(a) above	
(14)	गये प्रथव EA-3 को पार प्रतियों में देवे किया जाना प्राणव लगावा गया जुमोना, वयर 5 मध्य या उसने कम, 5 लाख 1 5.000/ रुपये अथवा 10.000/- रुपये का विश्वीरित जमा पुर शाखा के महायक रजिस्टार के जाज से किसी भी सार्वजिनक भूगताज, बैंक की उस प्राखा में होना पाहिए जहा संबधित अ शाख 500/- रुपए का लिसीपित पुरुष जला करना होना ।	ए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के जियम 6 के अशर्तन निप्रांगिन ' । इनमें से कम में कम एक प्रति के लाप, जहां उत्पाद शुल्क की मॉन, क्याज़ की मॉन लगर या 50 जाव हपए तक अथवा 50 लाख ल्पए से अधिक है तो क्रमज 1.000/ उ का की प्रति वालम्ज करें। निर्धापित शुल्क का मुगतज, संबंधित अपीलीय ल्यापायिकरण क्षेत्र के बैंक दक्षता जारी रेखांकित हैं बे हापट देवंता किया जाना चाहिए । लंबेपित हुपद मोलीय ल्यापायिकरण की शाक्षा लियत है । स्थासन आदेश (स्टे जोडेर) के लिए आवेदन प	
	(Appeal) Rules, 2001 and shall be accompanied Rs.5000/ Rs.10,000/- where ansount of duty demi respectively in the form of crossed bank draft in to place where the bench of any nominated public Application made for grant of stay shall be accomp		
(8)	लिपोपित प्रचय S T.5 में सार प्रतियों में की जा सकेला एव ते एक प्रति प्रसाणित होतों चाहिए। और इतमें से कम से ब 5 लाख या उससे बम, 5 लाख रुपए या 50 लाख रुपा 10,000% रुपये का तिप्रोपित जमा शुल्क की प्रति संतरन राजिश्टार के लाम से पिजी भी शवजिनक क्षेत्र के बैंक हया उस शाखा में होना चाहिए जहां संबंधित अपीतीय स्थाशाधिक का तिप्रोपित शुल्क जमा करना होगा थे	, 1994 की घता 86(1) के जंतर्गत जेवाका नियमवाली, 1994, के लियम 9(1) के उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी पति लाथ में सलम्म करें (जा एक प्रति के साथ, जहां सेवाकर की मॉग, स्वाप्त की मॉग और लगाया गया जुर्माना, तक अधवा 50 लाख रुपए से अपिक हे तो कम्पत: 1,000- रुपये 5,000- रुपये 5 करें। लिप्तॉरेत शुरुक का मुगतान, संबंधित अपीलीय ल्यावाधिकरण की शाखा के सन् रा ज्यारी रेध्वाधिल बैंक ड्राक्ट देवारा किया जन्मा पाहिए । संबंधित हाफ्ट का मुगतान, बैंक राज की शाखा स्थित है । स्थानन आदेश (स्टे ऑपेट) के लिए आवेदन-पत्र के साथ 500/-	
	quadruplicate in Form S.T.5 as prescribed under copy of the order appealed against (one of which where the amount of service tax & interest deman service tax & interest demanded & penalty leved the amount of service tax & interest demanded & deat in favour of the Assistant Receptar of the	b6 of the Finance Act, 1994, to the Appellate Tribunal Shall be file. Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied to shall be certified copy) and should be accompanied by a feets of Rs. 10 ided & penalty levied of Rs. 5 Lakts or less, Rs.5000/- where the amount is more than five lakts but not exceeding Rs. Fifty Lakts, Rs.10,000/- with penalty levied is more than fifty Lakts rupees, in the form of crossed is bench of nominated Public Sector Bank of the place where the bench of etax shall be accompanied by a fee of Rs.500/-	

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वित्त अधिविधक, 1994 की धारा 88 की उप-धाराओं (2) एवं (2A) के अतलेत दले की नदी अपील, संवाकर निषमवाली, 1994, के लियम 9(2) एवं 9(2A) के तहत लिधोरित प्रथव S.T. 7 में की जा सकेती एवं उसके साथ आगुकत, कैन्द्रीय उत्पाद धुरुक अधवा आगुकत (अधील), केन्द्रीय उत्पाद युरुक द्वारा पाहित आदेश की धरियां सालगत करें (उनजी से एक पनि प्रलाणित होनी धाईरण) उनेर आगुकत दवारा सहायक आगुकत अथवा प्रमायुक्त, केन्द्रीय इत्याद मुल्का सेवाकर, को अपीतीय स्थायाधिकरण को आवेदल हवे करने का निर्देश देने वाले आदेश की पति भी साथ से शलरन करनी होती । / The appeal under sub section (2) and (2A) of the section 85 the Finance Act 1994, shall be filed in For ST 7 as prescribed

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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

- नीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेताकर अपीसीय प्राधिकरण (संस्टेट) के प्रति अपीलों के सामने में वेन्द्रीय उत्पाद शुल्क अधिनियम 1944 की पता 350फ के अंतर्गत, जो की विल्तीय अधिनियम, 1994 की पता 83 के अंतर्गत लेखकर को भी लागू की गई है. इस अदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क(सेंग कर मांग के 10 प्रतिशत (10%), जब मांग एवं तुर्माल विव्वदित है, या तुर्माला, जब केटल जुर्माला विवादित है, का मुगलान किया लाए, बशाँ कि इस पाता के अंतर्गत जम्म कि जल्ते वाली आवंधित देव प्रति देव करोड़ वयर से अधिक न हो। (ii)
 - केन्द्रीय उत्पाद सुल्क एवं सेवाकर के अगरील 'आंग किए गए मुल्क' से जिस्स शासिल है
 - धारा 11 ही के अंतर्गत रक्षत्र 60 रोलवेट जमा की सी गई शावत राति 100
 - 100
 - सेलवेट जमा नियमावली के नियम 6 के अंतर्गत देव रक्त

. बहरीं यह कि इस प्राप्त के प्रार्थपान वित्तीय (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राण्डिकारी के समझ विद्याल्पीन स्थमन अभी एवं अपील को लागू लहे होने।/

For an appeal to be field 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

- in
 - amount determined under Section 11 D
- 643 amount of erroneous Cenvat Credit taken.
- 610 amount payable under Rule 6 of the Cenval 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.

मारत सरकार को पुनरीक्षण आतेदन : (C)

Revision application to Government of India: इस आदेश की पुनरीक्षण यात्रिका निर्मानिधित सामाणों में, केंद्रीय उत्पाद शुमक अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अतमेत आप शरिय आधन सरकर, पुनरीक्षण आवेदन ईकाई, जिल्ल मधालय, राजस्व विमान, पौधी मजिल, जीवन दीप आतन, संसद साले, तई दिसावी-110001, की

A revision application les 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 Dehi-110001, under Section 35EE of the CEA 3944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 abid.

- यदि जान के किसी नुकबान के मामने में, जहां मुकसान किसी माम को किसी कारवाने में मंडार तुह के पारगमन के दौरान या किसी अन्य कारवाने मा फिर किसी एक मंडार यह से दूसरे मंडार मूड पारगमन के दौरान, या किसी मंडार तुह में या मंडारण में मान के प्रसंकरण के दौरान, किसी कारवाने मा किसी मंडार गुह में माने के नुकसान के सामरों 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 0.05
- 00
- मदि उत्यद भुस्क का मुनलान किए बिना भारत के बहरा, नेपाल या म्टान को लाल निर्मात किया रुपा है। / (117) In case of goods exported outside india export to Nepal or Bliutan, without payment of duty.
- सुनिधिया उत्पाद के उत्पादन मुलक के मुगतान के लिए जो इपुटी केवींट इस अधिनिथम एवं इसके विधिन्न पावधानों के लगत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के दूसरा वित्त अधिनिक्षम (स. 2), 1998 की धारा 109 के दूसरा नियत की नई तटीय अथवा समागाविधि पर या बाद में (iv) 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, 1908.
- उपरोक्त आवेदन की दो प्रतिथां प्रपत्र लग्रमा EA-8 में, जो की वेस्टीम उत्पादन शुल्क (अपील) नियमावली, 2001, के लियल 9 के अतर्गत वितिदिष्ट है. इस आदेश के मंग्रेष्टन के 3 साह के अंतर्गत की जानी पाहिए 1 उपरोक्त आवेदने के साथ शुल आदेश व आपील आदेश की दो पतिया लाग्रम की जानी वाहिए। साथ ही केस्ट्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत जिपरीति शुल्क की अदायली के साहय के लौर पर TR-6 की पति संतरन की आमी पाहिए। / (V) 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 Chaltan evidencing payment of prescribed tee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- पुनोशिल मावेदन के साथ निजननिकित निर्धाति शन्म की अदायनी की जानी चाहिए । जेडी संसम्म रक्ता एक ताळ व्यय या उसने कम ही तो कार्य्य 2007 का मुगतान किया. जाए और यदि सलगन रक्ता एक लाख रूपये से ज्यादा हो लो कपूर्य 1000 -/ का मुगलान किया जाए । (Wi) 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.
- uts इस आदेश में कई मूल आदेशों का सजावित है तो पत्येक मूल आदेश के लिए शुल्क का मुमलास, उपयेकन दंग में किया जाना पाहिये। इस लय्य के होने हुए भी की जिखा पड़ी कार्य में जिस समाहिशति अपोलिस आपतिमत्या की एक अपील या कैद्रीय जरकरा को एक आपेल किया जाना है। J 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 scriptocia work if excising Rs. 1 lake fee of Rs. 1006 for each. (D)
- वधानंतरीपित नागरतम्य तुल्क अधितियत, 1975, के अनुसूची। के अनुसार मूल आदेश रचे नगरत आदेश की पनि पर स्थितित 6.50 रूपने का नगरतालय कुल्क दिषिट अंग होना पाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall beer a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act.1975, as amended. (E)
- सीमा हुल्क, केन्द्रीय उत्पाद शुल्क एवं मेताकर अपीलीय ल्याथाप्रिकरण (कार्य जिपि) नियमातलें, 1982 में वर्णित एवं अल्य संबन्धित लामले का समिमतित करने वाले नियमों की और भी प्याल जाकपित किसा जापा है। / Attention is also invited to the rules covering these and other related metters contained in the Customs, Eacise and Service Appellate Tribunal (Procedure) Rules, 1982. (F)
- उच्च अमीलीय प्रतिकारी को अमील हाखिल काले में संबंधित गणपक, विस्तृत और लगीनलम प्रावधाली के लिए, अमीलाफी विश्वलीय देवलाइट (G) www.cbec.gov.in #1 2/ area1 # / / 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

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:: ORDERS IN APPEAL ::

M/s. Johnson Matthey Chemicals India Pvt Ltd. Shed No. S-2, Survey No. 169/P90/P2/P1/P16, Adani Port Road, Village- Dhrub, Mundra, Kutch- 370421 (hereinafter referred to as "the appellant") filed two appeals against Orders-in-Original No. Refund/ 08/2016-17 dated 28.09.2016 and Refund/ 09/ 2016-17 dated 23.11.2016 (hereinafter referred to as "the impugned orders"), both passed by the Deputy Commissioner, Central Excise Division, Bhuj (hereinafter referred to as "the adjudicating authority").

2. The brief facts of the case are that the appellant had filed two refund claims for the period covering Jan. 2016 to March. 2016 (Rs.1.98.45,022/-) and April. 2016 to June. 2016 (Rs.1.98.75,660/-) of un utilized Cenvat Credit under Rule 5 of Cenvat Credit Rules. 2004 (*hereinafter referred to* as "**the Rules**") read with Notification No. 27/2012-CE (NT) dated 18.06.2012 The adjudicating authority vide impugned orders rejected both refund claims holding that the appellant attempted to avail double benefits as much as they claimed the benefit of "Duty Drawback" under Customs and Central Excise duties and Service Tax Drawback Rules, 1995 (*hereinafter referred to* as "**Drawback Rules**") and benefit of service tax refund on each of the export consignments in violation of the provisions made under the Cenvat Credit Rules, 2004

 Being aggrieved with the impugned orders, the appellant preferred the present appeal, mainly, on the following grounds:

 As per Circular No. 83-Cus dated 16.10.2000 simultaneous availment of the Service Tax Refund alongwith availment of Customs Portion Drawback is allowed;

 Circular No. 1047/35/2016-Cx dated 16.09.2016 also clarifies that even when input stage rebate is taken, customs portion drawback is admissible;

(iii) They have taken service tax refund which relates to the services availed by them after the removal of the goods from the factory gate for which no Cenvat benefit has been taken by the appellant, that even if it is presumed that benefit of drawback has been taken on the same, no

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dual benefit is being availed by them as no cenvat credit on such services has been taken by them and refund does not include service tax on such services;

(iv) Adjudicating authority has not considered the case laws relied upon by them in true perspective and just held as them not relevant;

(v) Case laws relied upon by the adjudicating authority are not applicable in their case; there is no case for them to choose benefit between two notifications available as benefits of all benefits of exports are available to them and there is no double reimbursement of credits in their case.

(vi) They relied upon the decision of Commissioner (Appeals) Rajkot vide OIA no. 247/2013/Raj)CE/AK/Commr(A)/AHD dated 10.05.2013 in the case of M/s. Krishna Metacraft Pvt Ltd, Shapar(Veraval).

(vii) Refund is being claimed on input stage duties and service tax whereas drawback is being taken of customs portion on AIR Rates and hence no cenvat of the customs duty portion is available that is why AIR rates of DBK are separately give this benefit.

4. Personal hearing in the matter was initially held on 25.04.2017, however, due to change in the Appellate Authority, fresh personal hearing was held on 21.06.2017. Shri Martin Mekwan, Warehouse Manager, of the Appellant appeared on behalf of the appellant and reiterated the above grounds of appeal and filed written submission dated 20.06.2017 reiterating facts and grounds mentioned in Appeal and submitted copies of Cir F No. 609/116/2000-Cx dated 16.10.2000, Notification No. 110/2015-Cus (NT) dated 16.11.2015 highlighting condition 7 of the notification and copy of OIA NO. 247/2013(RAJ)CE/AK/Commr(A)/Ahd dated 10.05.2013.

FINDINGS

5. I have gone through the impugned order, appeal memorandum and records of personal hearing. The crux of the matter in the present appeal is whether granting refund of unutilized Cenvat Credit under Rule 5 of the Rules tantamounts to double benefit to the appellant or otherwise.

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6. The refund is denied by the adjudicating authority on the ground that the Appellants have attempted to avail the double benefit by claiming and availing the said refund as they have already availed the "Duty Drawback" under the Drawback Rules and "Service tax Refund" under Notification 41/2012-ST.

7 I find that the appellant has vehemently argued that they have availed only customs portion of drawback i.e. Drawback rate available in the Drawback Schedule. It is a fact that the "All Industry rates of Duty Drawback" are notified by the Government under two heads i.e. "Drawback when Cenvat facility has been availed" and "Drawback when Cenvat facility has not been availed". The drawback rates when Cenvat facility has not been availed are generally higher as compared to drawback rates when Cenvat facility has been availed. Thus, where drawback rate availed at lower rate i.e. without Cenvat Credit, which is the case here, it implies that the appellants have claimed only customs duty portion in the drawback and hence it does not represent excise duty suffered on inputs. The adjudicating authority has neither discussed the appellant's submission in this regard nor examined the Tariff items and relevant entries in the Schedule appended to the Notification 110/2015 -Cus (NT) dated 16.11.2015 and held that the appellant has attempted to avail double benefit. When the appellant have not been granted the drawback of Central Excise duty, denial of their claim for refund of Central Excise Duty paid on the inputs used in manufacture of exported goods. can't be held.

8. I also find that the submissions made by the appellant before adjudicating authority have not been discussed / countered by the adjudicating authority. The impugned order does not reveal the correctness of the claims made by the appellant with regard to (i) availing only Customs Portion of Drawback and (ii) Rebate of Input services used beyond the place of removal. Therefore, the matter needs to be decided afresh by the adjudicating authority who must examine the appellant's submissions in totality factually as well as legally. Both claims i.e. (i) Refund claim is in respect of Cenvat Credit of input services other than what are covered in the rebate under Notification 41/2012-ST dated 29.6.2012 and (ii) only customs Page No. 5 of 7

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portion of drawback has been availed need to be examined by adjudicating authority verifying the documents.

9. It may also be appreciated that the refund under Notification No. 41/2012-ST dated 29.06.2012 is towards taxable services used for export of goods. I would like to reproduce the relevant portion of the notification, which reads as under:-

"the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid(hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely.-Provided that-

(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. - For the purposes of this notification.-(A) "specified services" means-

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w.e.f. 03.02.2016[(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export.]

upto 03.02.2016 [i. in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods.]

9.1 Refund under Rule 5 of the Rules, refers to refund of unutilized cenvat credit availed on inputs and input services used in relation to manufacture of excisable goods. Thus, refund/ rebate admissible to the assesse under Notification No. 41/2012-ST for specified services are not the services utilized in the manufacture of excisable goods. The appellant in their submissions has very clearly stated that they have not claimed the refund of services tax paid on the services used beyond the place of removal of excisable goods. I find considerable force in the appellant's claim, more to in absence of any evidence contrary to this, that refund claim is admissible to them as it is in relation to the different set of services used for manufacture of exported goods. No double benefit would accrue, if refund claimed by the appellant is granted to the appellant. I am of considered view that in such a scenario, appellant can not be deprived of their legitimate benefit.

10 I rely upon the order of the Hon'ble CESTAT in the case of Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del)

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7 wherein the similar views have been paraphrased as regard inherent power of the appellate office to remit the case back under the provisions of Section 35A(3) of the Central Excise Act, 1944. Further, the Hon'ble High Court of Gujarat, in the case of Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. reported in 2015(37)STR 723 (Guj) held that even after the amendment in Section 35A (3) of the Central Excise Act, 1944 after 11.05.2001, the Commissioner (Appeals) has powers to remand.

11. In view of above, I allow both the appeals by way of remanding the matter back to the adjudicating authority who shall consider the facts afresh and shall pass speaking orders after granting fair opportunity of hearing to the appellant.

The appeals filed by the appellant stand disposed off in above terms.

कुमार संतोष) (कुमार संतोष) आयुक्त (अपील्स - III)

BY R.P.A.D. Speed Post

M/s. Johnson Matthey Chemical India, Pvt Ltd, Shed No. S-2, Survey No. 169/P90/P2/P1/P16, Adani Port Road, Village- Dhrub Mundra Kutch. 370421	मेसर्स जॉन्सन मेथेय केमिकल इंडिया प्रा लिमिटेड शेड नं एस -२, अदानी पोर्ट रोड, गाँव -धब मॅदरा -कच्छ
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- The Chief Commissioner, Central Excise, Ahmedabad.
- The Commissioner, Central Excise & Service Tax, Gandhidham.
- The Deputy Commissioner, Central Excise Division, Bhuj.
- The Superintendent, Central Excise, AR-IV, Bhuj.
- 5. Guard File.