



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



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

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O/O No.	दिनांक / Date
	V2/65 & 66/GDM/2016	04 & 03/AC/2016-17	15.09.2016

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

KCH-EXCUS-000-APP-125-TO-126-2017-18

आदेश का दिनांक /
Date of Order: **11.12.2017** जारी करने की तारीख /
Date of issue: **14.12.2017**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/सदयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गांधीधाम/द्वारा उपरलिखित जारी मूल आदेश से नृजित /
 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 Appellant & Respondent :-**
M/s. Lakme Lever Ltd. [Formerly known as M/s. Aquagel Chemicals P. Ltd.]Grinding Unit, Survey No. 159, Varsana Bhimasar-Padana Road, PO : Padana, Gandhidham - 370 240

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 अधीनस्थ 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) खासकर मूल्यांकन से सम्बंधित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जाती 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 बतौर मूल अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामनी भवन असातो अहमदाबाद-380016 को की जाती चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumai Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अधीनस्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधिसूचिका, 2001 के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को धार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि अथवा पि.सी.टी. एवं सेवाकर का जुर्माना, रु. 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अधीनस्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सांकेतिक शेष के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनस्थ न्यायाधिकरण की शाखा स्थित है। भुगतान आदेश (एन.ओ.डी) के लिए अर्हता-पर 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) अधीनस्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर विधिसूचिका, 1994 के नियम 9(1) में तहत निर्धारित फॉर्म S.T.-5 में धार प्रतियों में की जा सकती एवं उसके साथ टिप्पणी आदेश के विरुद्ध अपील की गयी है, उसकी प्रति साथ में संलग्न की जायेगी (जिसमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि अथवा पि.सी.टी. एवं सेवाकर का जुर्माना, रु. 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अधीनस्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सांकेतिक शेष के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनस्थ न्यायाधिकरण की शाखा स्थित है। भुगतान आदेश (एन.ओ.डी) के लिए अर्हता-पर 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) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत टर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (यहाँ से एक प्रति प्रामाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलार्थी न्यायाधिकरण को आवेदन टर्ज 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 अपीलार्थी न्यायाधिकरण (सेस्टैट) के प्रति अपील 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 अपीलार्थी प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मात्र के 10 प्रतिशत (10%), जब मात्र एवं जुर्मोन विवादित है, या जुर्मोन, जब केवल जुर्मोन विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित टैय एलि दस करोड़ रुपय 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 जो गई गलत राशि
 - (iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत टैय रकम
- बशर्ते यह कि इस धारा के प्राधान्य विन्तीय (स. 2) अधिनियम 2014 के अन्तर्गत पूर्व किसी अपीलार्थी प्राधिकारी के समक्ष विचारार्थीत स्वयंम अर्जी एवं 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 की पुनरीक्षण आवेदन :**
Revision application to Government of India:
 इस आदेश की पुनरीक्षण अधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारक के अंतर्गत अथवा अधिनियम, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त सहायक, राजस्व विभाग, पीसी नजिल, जीवन टॉप भवन, इस्ट ब्लॉक, 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, जहां 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 छूट (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) सूचिबद्ध उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इव्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत राज्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (स. 2), 1998 की धारा 109 के दृष्टात निर्यात की गई तरीक अथवा समतुल्यता 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 नम्बर EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के पारगमन 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 अद्ययनी के लक्षण 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 अद्ययनी की जानी चाहिए। / जहाँ सम्बन्ध रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि सम्बन्ध 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 टर्ज में किया जाना चाहिए। इस लक्ष्य के होते हुए भी की विषय वही कार्य से बचने के लिए उपाधिकृत अपीलार्थी 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if exising Rs. 1 lakh fee of Rs. 100/- for each.

(E) न्यायाधिकरण न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्वयंम 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 अपीलार्थी न्यायाधिकरण (सर्वे विधि) नियमवली, 1982 में लीप्ट एवं अन्य संबंधित मामलों को सम्भालित 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 अपीलार्थी न्यायाधिकारी को अपील टाइम करने से संबंधित न्यायक, विस्तृत और लीडनरस 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. Aquagel Chemicals Private Limited M/s. (Now known as M/s. Lakme Lever Ltd.), Survey No. 159, Varsana, Bhimasar-Padana Road, Off N. H. 8-A, Near Aggarwal Automobiles, P. O. Padana, Gandhidham (Kutch)- 370 240 (*hereinafter referred to as 'the appellant'*) has filed both the appeals against the Orders-In-Original as mentioned below (*hereinafter referred to as 'the impugned order'*), passed by the Assistant Commissioner, Central Excise Division - Gandhidham (*hereinafter referred to as "the lower adjudicating authority"*):-

Sr. No.	Appeal No.	Order-In-Original No. & Date	Amount involved (Rs.)
01	V2/65/GDM/2016	04/AC/2016-17 dated 15.09.2016	1,72,023/-
02	V2/66/GDM/2016	03/AC/2016-17 dated 15.09.2016	2,70,580/-

2. Since the issue involved in both the appeals is common in nature, the same is being decided by this common order.

2.1 Briefly stated the facts of Appeal No. V2/65/GDM/2016 are that the appellant had availed Cenvat credit of Rs. 1,72,023/- on the basis of various invoices issued by M/s. Power Electricals who provided services meant for replacement of electrical parts and electrical repairing & maintenance work.

2.2 The facts of Appeal No. V2/66/GDM/2016 are that the appellant had availed Cenvat credit of Service Tax of Rs. 2,70,580/- in respect of civil construction and repairing services viz. execution, Plane C.C., Back filling, PCC Flooring, Brick Masonry, RCC Slab, Steel cutting, Cement plaster, sand supply, plastic paint, cement primer and wall finishing etc. provided by M/s. Sorathia Pravin Dhanji.

2.3 The said services received by the appellant fell under the category of "Construction or Renovation of Commercial/Industrial Buildings Service" as defined under the section 65(105)(zzq) and 'Works Contract service' as defined under the Section 65 (105) (zzzza) of Finance Act, 1994 (*hereinafter referred to as "the Act"*) which were alleged to be specifically excluded as defined under Rule 2(l)(ii) of Cenvat Credit Rules, 2004 (*hereinafter referred to as "the Rules"*).

2.4 Show Cause Notices No. V/CEX/GIM/DSCN/AQUAGEL/06/2014-15 dated 21.07.2015 and V/CEX/GIM/DSCN/AQUAGEL/05/2014-15 dated 21.07.2015 were issued to the appellant, wherein demanding Cenvat credit of Rs. 1,72,023/- and Rs.

2,70,580/- respectively, under Section 11A(1) of the Central Excise Act, 1944 read with Rule 14 of the Rules along with interest under Section 11AA of the Act and proposing to impose penalty under Section 11AC of the Central Excise Act, 1944, read with Rule 15 of the Rules.

3. The lower adjudicating authority vide the impugned orders confirmed the demand of Cenvat credit of Rs. 1,72,023/- and Rs. 2,70,580/- respectively, under Rule 14 of the Rules read with Section 11A(1) / 11A(4) of the Act along with interest under Rule 14 of the Rules read with Section 11AA of the Act and also imposed penalty of Rs. 1,72,023/- and Rs. 2,70,580/- under Rule 15 of the Rules read with Section 11AC of the Central Excise Act, 1944, respectively.

4. Being aggrieved by the impugned orders, the appellant preferred the present appeals, *inter-alia*, on the following grounds :-

- (i) They availed services of M/s. Power Electricals for replacement of electrical parts against damaged parts & electrical repairing & maintenance work in factory etc. wherein manufacturing activity is conducted. The description of the invoice shows "*Cable laying on tray, PVC Cable connection with supply of D.C. Cable glands*" etc. The same is nothing but repair of factory, comprising of various machines, machinery, plant, equipment, apparatus, appliances etc. inter connected to carry out the desired manufacturing activity and the same would be specifically covered under the inclusive definition as "*modernization, renovation and repairs of factory*" and thus credit of Service Tax paid on the said service was taken treating the same as input service under Rule 2(l) of the Rules.
- (ii) They had engaged services of M/s. Sorathia Pravin Dhanji for repairing services, namely execution, plane C. C., back filing PCC flooring, brick masonry, RCC slab, steel cutting, cement plaster, sand supply, plastic paint, cement primer and wall finishing, etc of the factory building which is used for manufacturing activity. The description of the invoice shows "*PCC Flooring Work, etc.*" The services provided was used for repairs of factory, the same would be specifically covered under the inclusive definition as "*modernization, renovation and repairs of factory*" and thus credit of Service Tax paid on the said services was availed by them considering the same as input service under Rule 2(l) of the Rules.

(iii) They referred to the definition of Rule 2(l) w.e.f. 01.04.2011 which covers services used directly or indirectly in or in relation to manufacture of final products. The definition of input service has excluded words 'setting up' from the inclusive part and certain exclusion clauses have been added, wherein exclusion clause (A) excludes Commercial and Industrial Construction services from the scope of Input Service.

(iv) They submitted that the change made in the definition of input service w.e.f. 01.04.2011 would not affect the admissibility of the services provided by both the service providers, as the said services are covered under the 'means' part of the definition of Input Service; that they relied upon the decision in the case of M/s. Bellsonica Auto Component reported as 2014-TIOL-430-CESTAT-DEL, M/s. NTF India Pvt Ltd - 2013 (30) STR 575 (T) and M/s. Raymond Zambaiti - 2012 (278) ELT 535 (T). They further submitted that services used indirectly in relation to manufacturing activity were input services and credit of Service Tax paid on such services was admissible and in this regard they relied on the following judgments:-

- | | |
|-----------------------------------|--|
| (a) Coca Cola India Pvt. Ltd. - | 2009 (242) E.L.T. 168 (Bom). |
| (b) Ultratech Cement Ltd. - | 2010 (2q S.F.R. 577 (Bom.). |
| (c) Deepak Fertilisers - | 2013 (32) STR 532 (Bom.) |
| (d) Endurance Technologies - | 2015-TIOL-1371-HC-MUM-ST |
| (e) Parrys Agro - | 2015 (40) STR 243 (T-LB) |
| (f) Raymond Zambaiti pvt. Ltd., - | Order No.A/1S3/10/SMB/CIV dated 04.03.2010 |
| (g) Raymond Zambaiti pvt. Ltd., - | 2009 (15) S.T.R.596 (Commr.Appt.) |
| (h) NTF - | 2013 (30) STR 575 (T) |
| (i) Kitech - | 2015 (38) STR 223 (T) |
| (j) Mork Exhaust - | 2015 (38) STR 223 (T) |

(v) They relied on CBEC Circular No. 943/04/2011-CX dated 29.04.2011 wherein it has been clarified that credit of input service used for repair or renovation of factory/office is allowable, as it is specifically included in inclusive part of the definition of Input Service. They also relied on the judgment in the case of M/s. Ratan Melting - 2005 (181) ELT 364 (SC) and M/s. Dhiren Chemical Industries - 2002 (139) ELT 3 (SC)

(vi) The demand is time-barred and the extended period is not invocable in

absence of any conscious and deliberate suppression of facts, mis-statement as they were maintaining statutory/other records, RG-23A Part-I and II, ER-1 returns etc. That their records have been audited by the audit parties of Central Excise as well as CERA. The details/information were well within the knowledge of the Department and thus no suppression of facts relying on various judgments in support of their claim.

- (vii) They also stated that the issue related to interpretation of law and thus no penalty can be imposed upon them; that provisions of Rule 15 of the Rules read with Section 11AC of the Central Excise Act, 1944 are not applicable in terms of many judgment cited without specifying as to how are these applicable to them.
- (viii) They also stated that the interest is not payable as the demand itself is not sustainable; that penalty is not imposable in the absence of *mens rea and* relied upon many case laws without detailing as to how are these relevant in the facts of their case.

5. Personal hearing in the matter was attended by Shri Tushar Bansal, Commercial Manager, Shri Subodh Thakur, Executive Commercial and Shri K. Srinivasa, Executive Commercial and they submitted that Cenvat credit on the goods had been used in packing line; that nothing has been used in building constructions or civil constructions, but only for repairs and maintenance of equipments and in packing line; that they would submit details where items were used. They vide their letter dated 04.11.2017 submitted copy of work order issued to M/s. Power Electricals to substantiate their claims.

FINDINGS :-

6. I have carefully gone through the facts of the case, the impugned orders, the appeal memorandum and written as well as oral submissions made by the appellant.

7. I find that the appellant has filed both appeals delaying it by 2 days. For Appeal No. V2/65/GDM/2016, the appellant has filed miscellaneous application for condonation of delay stating that employee, who received the impugned order, proceeded on leave without informing the management only when he resumed office on 08.09.2016 and hence there was delay of 2 days in filing appeal. However, the appellant has not filed any application for condonation of delay for appeal No. V2/66/GDM/2016, however since delay is of merely 2 days, I

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condone delay in both appeals and proceed to decide the appeals on merits.

8. The issue to be decided is whether the appellant is eligible for Cenvat Credit of input services provided by (i) M/s. Power Electricals for replacement of electrical parts against damaged parts & electrical repairing and maintenance work in factory etc. and (ii) M/s. Sorathia Pravin Dhanji for services of execution, plane C. C., back filing PCC flooring, brick masonry, RCC slab, steel cutting, cement plaster, sand supply, plastic paint, cement primer and wall finishing, etc. in respect of the factory building or not.

9. Regarding Cenvat credit on the services provided by M/s. Power Electricals the appellant has submitted a copy of Work Order No. AQUA-III/ELECT/W.O./11-12/11 dated 05.07.2011 allotting work to M/s. Power Electricals, Ankleshwar. The scanned copy of the Work Order is as under :-

[Handwritten signature]

WORK ORDER

VENDOR
POWER ELECTRICALS
 F-9 Ananday Complex Plot No.7321A
 GDC Estate,
 Ankleshwar-392002 Dist.-Bharuch.
 PHONE NO: (0) 02548-223323 M-9428112723

ORDER NO:AQUA-III/ELECT/W.O/11-12/11
 ORDER DATE:05/07/11

ORDER PERIOD: 1st JULY TO 30th SEPTEMBER 2011.

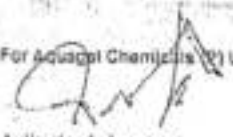
S/NO	ITEM DESCRIPTION	QTY	UOM	RATE
1	Vendor will job relevant to specific site work & project (includes as per attached rates & Terms As Per Annexure-1). (Attached rates & Terms and conditions.	1	JOB	As Per attached.

- Terms & Condition:**
- 1 Vendor should follow all our Standard (Which we have mention in Annexure-A. In case of serious existence of "Key standards". Your contract will terminated.
 - 2 ACPL will have a right to control you all supervisor/technician will coordinate and report everyday to Electrical Engg.incharge.
 - 3 After three months we will review and derived final ARC.
 - 4 Taxes: Extra.
 - 5 Payment: After 15 days of Work completion.
 - 6 Service: Round the clock and also during the holiday.
 - 7 Penalty: For Violation of any of our Rs.1000 will be charged extra.
 - 8 Other safety health and environment responsibilities of contractors as per attached Annexure-A.
 - 9 Penalty will be imposed due to poor quality,poor SHH, and reputation of job.

SAFETY HEALTH AND ENVIRONMENT CLAUSE.
 The contractor shall be fully responsible for safety & health of his employees and environment impact due to his operations. He shall ensure to all the relevant statutory norms.
 The contractor shall ensure that all his personnel's, while in the premises of the company, comply with company's rules and regulations regarding SHE as notified from time to time. The contractor shall further ensure that environmental impact of his activities will be minimized as per the stringent norms that are communicated by the unit head.

JOB SITE:
 Aquagel Chemicals Pvt.Ltd.,
 Survey No: 199,190,161,
 Off N.H-8a, Near Agrawal Automobiles,
 Padana-Bhimasar Road, VIII-Varasana,
 Gandhidham, Kutch-370 201.

G.S.T. TIN No.2414170077 16-9-2005
 C.S.T. TIN No.2454170077 16-9-2005
 G.S.T. TIN No.24010400562 KUTCH

For Aquagel Chemicals Pvt Ltd.

 Authorised signatory

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9.1 The description of services provided in the said Work Order says that the services provided were in relation to site maintenance and project activities. Further on going through the attached Annexure, it is seen that the appellant had received services of electrical/instruments installation and removal etc. I, therefore, find that the aforesaid services received by the appellant from M/s. Power Electricals is allowable in view of definition of Input Service as defined under Rule 2(l) of the Cenvat Credit Rules, 2004 during the relevant period (i.e. w.e.f. 01.04.2011), which is produced below for ready reference:-

"(l) "input service" means any service,-

- (i) used by a provider of output service for providing an output service; or*
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

and includes services used in relation to modernization, renovation or repairs of a factory premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal,

but excludes services,

(A) specified in sub-clauses (p), (zn), (ztl), (ztlm), (ztlq), (ztlzh) and (ztlza) of clause (1-05) of section 65 of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

- (a) constructions of a building or a civil structure or a part thereof, or*
- (c) laying of foundation or making of structures for support of capital goods except for the provision of one or more of the specified services;"*

[Emphasis supplied]

9.2 The appellant has correctly contended that the services provided by M/s. Power Electricals were for replacement of damaged electrical parts and electrical repairing and maintenance work in factory building which are squarely covered under inclusive part of definition of Input Service under Rule 2(l) of the Cenvat Credit Rules.

02/10/23

9.3 CBEC Circular No. 943/04/2011-CX dated 29.04.2011 also allows Cenvat credit in such cases as below :-

Sr. No.	Issue	Clarification
4.	Is the credit of input services used for repair or renovation of factory or office available?	Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or on office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services

9.4 In light of Rule 2(l) of Cenvat Credit Rules, Work order submitted by the appellant, CBEC Circular dated 29.04.2011 and various case laws, I find that Cenvat credit on the services provided by M/s. Power Electricals is allowable to the appellant. I, therefore, allow Appeal No. V2/65/GDM/2016 and set aside the impugned order.

10. Regarding credit of Rs. 2,70,580/- on services provided by M/s. Sorathia Pravin Dhanji, I find that the lower adjudicating authority has confirmed demand, *inter alia*, observing that, "The said services were meant for Civil Construction and repairing services viz. Execution, Plan C.C., Back Filing, PCC Flooring, Brick Masonry, RCC Slab, Steel Cutting, Cement Plaster, Sand Supply, Plastic Paint, Cement Primer and Wall finishing etc.; that these services were falling under the category of "Construction or Renovation of Commercial / Industrial Buildings Service" as defined under Section 65(105)(zzq) and/or Works Contract service as defined under the section 65(105)(zzzza) of the Act, which were specifically excluded in (A) Category of exclusion as defined under rule 2(l)(ii) of Cenvat Credit Rules, 2004."

10.1 On the other hand, the appellant has contended that the said services provided by their service provider, M/s. Sorathia Pravin Dhanji, Civil Contractor fall under inclusive definition of 'Input Service' as defined under Rule 2(l)(ii) of the Rules as the services received were used by them directly or indirectly, in or in relation to manufacture of their final products upto the place of removal. However, no work order has been provided by the appellant in respect of the services provided by M/s. Sorathia Pravin Dhanji. The scanned copies of illustrative R.A. Bills No. 84 dated

27.01.2012 and No. 89 dated 01.03.2012 submitted by the appellant in their Appeal Memorandum are reproduced under :-

(i) R.A. Bill No. 84 dated 27.01.2012 :-

Mo. 99793 23646

Plot No. 20, Shivsagar Society, ANJAR (KUTCH) 370 110.

R.A. Bill No: 84 27.1.2012

Work Done in NSD PLANT

Name of Item	Qty	Rate Per Unit	Amt.
Dismantling Broken wall in NSD.	Jobwork	-	600 = 00
Plaster to Broken wall " "	Jobwork	-	500 = 00
Dismantling old concrete to various Area in NSD. near packing Soap Area.	Jobwork	-	900 = 00
W concrete in dismantled Area near packing Soap Area.	Jobwork	-	1200 = 00.
Repairing & plaster to wall in NSD plant	Jobwork	-	700 = 00
Chipping & cement plaster to 2 sides of find in Sulfonation Area.	Jobwork	-	800 = 00
Concrete to five MB Board near NSD backside loading point.	Jobwork	-	500 = 00 4936
Total:			5200 = 00
Add. 10-30% S. Tax.			586 = 00 498
Net Amt			5736 = 00 5334

C.P. No. _____
 Site Shivsagar Society 2010/19
 MO No. Asanul/wa/co/117/85
 Amt. Rs 5736/-
 Date 25/03/12
 Checked By: SORATHI PRAVIN HANJI
 Approved By: _____

For, Aquagel Chemicals Pvt. Ltd. *Authorized Signatory*

For Lakme Lever Private Limited *Authorized Signatory*

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(ii) R.A. Bill No. 89 dated 01.03.2012 :-

No. 99793 23646 46

NATHIA P...

Plot No. 20, Shivsagar Society, ANJAR (KUTCH) 370 110.

R.A. BILL No: 89 2/3/12.
Work Done in H.P. Boiler

Name of Item	Qty	Rate Per Unit	Amt.
ipping to platform ind. in H.P. Boiler	10.13 Sqm	40.00	405 = 00
rent plaster work.	10.13 Sqm	138 = 00	1398 = 00
ctery with Special Concrete H.P. Boiler. (Emergency work)	To B work	-	3000 4500 = 00
Total:			6303 = 00
S. Tax. 10.30%			649 = 00 494 = 00
Net Amt:			6452 = 00
			5298/-
			-578 = 00
			57,194

OK
Checked
 06/03/12

SORATHIA PRAVIN CHANJI
 Proprietor
 For, Aggagel Chemicals Pvt. Ltd.

Authorized Signatory

Authorized Signatory

196 hb

P. No. 2010/07
 Site LABSA Weirbina for NSP
 W.O. No. 20011/walco/11-12/92
 Amt. Rs. 5,298/-
 Date 25/03/12
 Checked By: [Signature]
 Approved By: [Signature]

10.2 The description of work undertaken by M/s. Sorathia Pravin Dhanji, establish that the services provided are predominantly work of Civil construction, like cement plastering, dismantling of old broken walls etc. which are covered under the exclusion clause provided in the Rule 2(l) of the Rules. I, therefore, uphold the impugned order No. 03/AC/2016-17 denying Cenvat credit of Rs. 2,70,580/-.

10.3 I find that there was no ambiguity regarding ineligibility of Cenvat credit of Rs. 2,70,580/- on the services provided by M/s. Sorathia Pravin Dhanji as it is clearly a work of Civil construction. I, therefore, do not find any infirmity in the impugned order imposing penalty under Section 11AC of the Act read with Rule 15 of Cenvat Credit Rules. I find that ingredients of invocation of the extended period are available in this case. The appellant attempted to mislead the appellate authority even at appeal stage, I, therefore, uphold the impugned order demanding Cenvat credit of Rs. 2,70,580/- and imposing mandatory equal penalty under Section 11AC of the Act read with Rule 15 of Cenvat Credit Rules and reject the Appeal No. V2/66/GDM/2016.

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

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

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Aquagel Chemicals Private Limited
M/s. (Now known as M/s. Lakme Lever Ltd.),
Survey No. 159,
Varsana, Bhimasar-Padana Road,
Off N. H. 8-A, Near: Aggarwal
Automobiles, P. O. Padana,
Gandhidham (Kutch) - 370 240.

मे. एक्वाजेल केमिकल्स प्राइवेट लिमिटेड, (जो अब मे. लेकमे लीवर लिमिटेड के नाम से जाना जाता था) सर्वे नंबर १५९, वरसाणा, भीमासर-पड़ाणा रोड, ऑफ राष्ट्रीय धोरीमार्ग ८-अ, अगरवाल औटोमोबाइल्स के पास, पोस्ट: पड़ाणा, गांधीधाम, कच्छ-३७० २४०.

Copy for kind information and necessary action to :