



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

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 |
| | V2/35 & 36/GDM/2017 | 27 & 28/JC/2016 | 23.12.2016 |

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

KCH-EXCUS-000-APP-148-TO-149-2017-18

आदेश का दिनांक /
Date of Order: **03.01.2018** जारी करने की तारीख /
Date of issue: **10.01.2018**

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

ग अगर आयुक्त/संयुक्त आयुक्त/उप-आयुक्त/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 :-
1.M/s. PSL Limited, Sr. No. 307/1&2, Village Varsana, Bhachau - Bhimasar Road,, Taluka Anjar - Kutchh,
2. M/s PSL Limited, Pipe Coating Division-I, Post Box No.100, Kandla Road- Gandhidham- 370201

इस आदेश(अपील) से व्यक्त कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अपील 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) विशेष मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

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

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित फॉर्म एवं फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, ब्याज की राशि और जमावा राशि कुल, रुपए 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉम्बि बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवंटन-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/-.

(iv) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, ब्याज की राशि और जमावा राशि कुल, रुपए 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉम्बि बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवंटन-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/-.

(v) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, ब्याज की राशि और जमावा राशि कुल, रुपए 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉम्बि बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवंटन-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/-.

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 दायी गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकेंगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न कीं (जिसमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क सेवान्तर, को अपीलवीय न्यायाधिकरण को आवेदन देने वाले 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 अपीलवीय प्राधिकरण (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 अपीलवीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मात्र के 10 प्रतिशत (10%), जब मात्र एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस क्रॉड रूप 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) सेवक्रेडिट जमा की गयी गई राशि
(iii) सेवक्रेडिट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आगम से पूर्व किसी अपीलवीय प्राधिकारी के समक्ष विचारणीय स्थगन 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 को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारक के अंतर्गत उच्च सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, सराद झरने, 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 मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने से भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह में या भंडारों में मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र के नुकसान के कारणों 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 मात्र के विनिर्माण में प्रयुक्त कच्चे मात्र पर शरी 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 मात्र 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 इच्छी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मात्र की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लॉरेड अथवा सहायक विधि पर या बाद में पारित किए गये 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेष 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 अद्ययगी के सक्षय 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 अद्ययगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त देय से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न पंजी करों से बचने के लिए पर्याप्तिते अपीलवीय 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 in the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) पंचमसंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court-Fee Act,1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलवीय न्यायाधिकरण (कावे विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान अर्कषित 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 अपीलवीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलवीय विचारणीय वेबसाइट www.cbec.gov.in की 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 ::

The following appellants have filed the present appeals against the Order-In-Original Nos. as mentioned below (hereinafter referred to as '**impugned orders**'), passed by the Joint Commissioner, Central Excise & Service Tax, Gandhidham (hereinafter referred to as "**lower adjudicating authority**"):

| Sr. No. | Name and address of the appellant (M/s.) | Order-In-Original No. & Date | Appeal No. | Remarks |
|---------|--|------------------------------|----------------|-----------------|
| 01 | PSL Limited, S.No. 307/1&2, Village Varsana, Bhachau-Bhimsar Road, Taluka - Anjar, Kutchh, Gujarat - 370 201 | 27/JC/2016 dated 23.12.2016 | V2/35/GDM/2017 | Appellant No. 1 |
| 02 | PSL Limited, Pipe Coating Division-I, East of National Highway No. 8-A, Post Box No. 100, Kandla Road, Gandhidham, Gujarat - 370 201 | 28/JC/2016 dated 23.12.2016 | V2/36/GDM/2017 | Appellant No. 2 |

2. Since issue involved in both appeals is intertwined, the same are taken up together for decision.

3. Briefly stated, the facts of the case are that Appellant No. 1 was holding Central Excise Registration No. AAACP2734KXM006 for manufacture of excisable goods, namely, Cement coating on Steel Pipes and Polyethylene coating on steel pipes falling under CETH 7304 & 7305 of the first schedule to the Central Excise Tariff Act, 1985. The Appellant No. 1 applied for cancellation of Central Excise registration on 05.03.2015 on the ground of transfer of factory to the factory of Appellant No. 2 who was holding Central Excise Registration No. AAACP2734KXM008 for manufacture of M.S. Pipes and transferred unutilized balance of cenvat credit through Journal Voucher for transfer of cenvat credit of inputs, capital goods and input services, along with stock of capital goods and inputs to Appellant No. 2 under Rule 10 of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") and declared the details in ER-1 return filed for the month of February, 2015. The Appellant No. 2 availed cenvat credit so transferred from Appellant No. 1 and declared details of availment of cenvat credit in their ER-1 return for the month of March, 2015. The Show Cause Notice alleged that Appellant No. 1 had neither shifted the site of their unit nor they had transferred the ownership/liabilities and wrongly transferred cenvat credit to Appellant No. 2 in contravention of Rule 10 of CCR, 2004 as none of the conditions of Rule 10 of CCR, 2004 was satisfied. SCN No. V/AR-II/Gnd/Commr/148/2016 dated 26.02.2016 issued to Appellant No. 1 proposed recovery of wrongly utilized and transferred cenvat credit of Rs. 75,84,634/- under Section 11A of Central Excise Act, 1944 read with Rule 14 of CCR, 2004; recovery of interest under Section 11AA of the Act read with Rule 14 of

CCR, 2004 and to impose penalty under Section 11AC of the Act read with Rule 15 of CCR, 2004. Show Cause Notice No. VIAR-IV/Gnd/Commr/147/2016 dated 26.02.2016 was issued to Appellant No. 2 proposing recovery of wrongly availed cenvat credit of Rs. 75,84,634/- under Section 11A of Central Excise Act, 1944 read with Rule 14 of CCR, 2004; to recover interest under Section 11AA of the Act read with Rule 14 of CCR, 2004 and to impose penalty under Section 11AC of the Act read with Rule 15 of CCR, 2004. The proposals made in SCNs were confirmed by the adjudicating authority vide the impugned orders wherein demand of cenvat credit of Rs. 75,84,634/- was confirmed against each of the appellants under Section 11A of the Act read with Rule 14 of CCR, 2004 and also confirmed recoveries of interest under Section 11AA of the Act read with Rule 14 of CCR, 2004 and imposed penalty of Rs. 75,84,634/- each on Appellant No. 1 & Appellant No. 2 under Section 11AC of the Act read with Rule 15 of CCR, 2004.

4. Being aggrieved by the impugned orders, the Appellant No. 1 & Appellant No. 2 filed the present appeals, *inter alia*, on the following grounds:-

(i) Rule 10(1) of CCR, 2004 would clearly show that if a manufacturer of the final products shifts its factory to another site, then the manufacturer shall be allowed to transfer cenvat credit balance to such transferred factory. The appellant relied on decision of Hon'ble CESTAT in the case of *Fabrico (India) Pvt. Ltd.* reported as 2012 (284) ELT 69 (Tri.) and submitted that the same was wrongly distinguished by the lower adjudicating authority. The decision in the case of *Fabrico* by the Division of Hon'ble CESTAT is subsequent to decision in the case of *Sheil Industries* reported as 2011 (263) ELT 436 (Tri.-Ahd.) which has been relied upon by the lower adjudicating authority.

(ii) The provisions of Rule 10(1) of CCR, 2004 would clearly show that the expression 'with the specific provision for transfer of liability in such business' would apply only to 'transfer of factory to joint venture'. For the reason that contingencies contemplated in Rule 10(1) of CCR, 2004 can be broadly divided into three categories- (a) when the manufacturer shifts his factory to another place without transfer of ownership of factory; (b) when the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation or lease, and (c) transfer of factory to a joint venture with specific provision for transfer of liability of such business. If the interpretation apprehended to be canvassed by the revenue were to be correct, there would have been a comma after the expression 'joint venture' in Rule 10(1), since there is no comma after the word 'joint venture', it shall not apply to all expressions preceding thereto. In any case, requirement of transfer of liabilities would not apply to the first category. The appellant relied on decision in the case of *Relene*

Petrochemicals Pvt. Ltd. reported as 2007 (215) ELT 254 (Tri.)

(iii) They have complied with the provisions of Rule 10(3) of CCR, 2004. The appellant has transferred all capital goods, inputs and finished goods lying in stock at the time of shifting, which is not in dispute. They have also duly accounted for inputs and capital goods transferred and informed department. Rule did not provide for physical verification of inputs and capital goods and approval thereof. The failure on the part of department to verify the documents and stock of inputs and capital goods which were shifted from their Gandhidham unit to Varsana unit cannot be a ground to deny transfer of cenvat credit. The appellant relied on decision of Hon'ble Madhya Pradesh High Court in the case of Gift Pack Limited reported as 1994 (69) ELT 222 (MP).

(iv) There is no mandatory requirement of physical transfer of inputs or capital goods at the time of transfer of credit. If stock of inputs as such or in process or capital goods is available at the time of transfer of unutilized credit, the same should also be transferred to the new factory/new site. The transfer of credit cannot be denied on the ground that there were no inputs/capital goods available at the time of shifting of factory. The appellant relied on following decisions:

- Ispat Industries Ltd. – 2013-TIOL-565-CESTAT-MUM.
- Fabrico (India) Pvt. Ltd. – 2012 (264) ELT 69 (T)
- CESAT – 2008 (230) ELT 239 (Mad) affirmed by decision of Hon'ble Supreme Court reported as 2009 (237) ELT A43(SC)
- AAR AAY Products – 2003 (157) ELT 40 (T)
- New Chem Industries – 2005 (191) ELT 619 (T)
- Dr. Reddy's Laboratories – 2005 (191) ELT 660 (T) – Affirmed by High Court of Madras in a decision reported as 2011 (290) ELT A23 (Mad)
- Tera Cables India Pvt. Ltd. reported as 2010 (258) ELT 111 (T) – Affirmed by High Court of Gujarat in a decision reported as 2014 (299) ELT A61 (Guj)
- Kirloskar Oil Engines – 2014 (304) ELT 317 (T)
- Smithkline Consumer Health Care – 2007 (209) ELT 96 (T)

(v) The lower adjudicating authority has observed that the inputs on which cenvat credit was availed by Appellant No. 2 were never used for manufacture of finished goods, the capital goods on which cenvat credit was availed by Appellant No. 2 were never installed and used by Appellant No. 2 and input services on which cenvat credit availed by Appellant No. 2 were never used by them in their factory premises directly or indirectly in or in relation to manufacture of finished goods. The appellant submitted that it is not disputed in the SCNs or impugned orders that inputs, capital goods and input services in question were received by Appellant No. 1 and they have also used the same in relation to manufacturing activity. The eligibility of cenvat credit of Appellant No.

Handwritten signature

1 under Rule 2(a), Rule 2(k) and Rule 2(c) is also not in dispute. The admissibility to cenvat credit in dispute can be questioned at the end of Appellant No. 1 and conditions for availing cenvat credit in dispute have to be satisfied by Appellant No. 1 only. In the present case, it is not in dispute that Appellant No. 1 has correctly taken cenvat credit in question.

(vi) The lower adjudicating authority has disallowed the cenvat credit of Rs. 75,94,834/- on the ground that Appellant No. 2 has availed cenvat credit on the basis of journal vouchers issued by Appellant No. 1 which is not a document specified under Rule 9 of CCR, 2004. It is submitted that Appellant No. 1 has availed cenvat credit on the basis of invoices prescribed under Rule 9 of CCR, 2004, which is not in dispute. At the time of shifting of factory to Appellant No. 2 along with stocks, capital goods and finished goods lying in stock, cenvat credit lying in balance was also transferred to Appellant No. 2 through 3 journal vouchers accompanied with copies of invoices and delivery challans in case of capital goods/inputs on which cenvat credit was availed initially by Appellant No. 1. Rule 9 of CCR, 2004 does not provide for a situation where credit is taken on account of shifting of factory under Rule 10 of CCR, 2004. Therefore, findings of the lower adjudicating is not correct.

(vii) Penalty cannot be imposed on Appellant No. 1 under Rule 10 of CCR, 2004 since the clause under which penalty is sought to be imposed was not mentioned in the SCN. There is no contravention of CCR, 2004 and there is no denial of fraud, willful suppression or mis-statement of facts, etc. with intent to avail inadmissible credit. Both the appellants disclosed the fact of transfer of credit in the ER-1 returns filed by them, penalty cannot be imposed. The appellant relied on decisions in the case of Amrit Foods reported as 2005 (130) ELT 433 (SC) and Goodyear India Limited reported as 2002 (149) ELT 618 (Tn. Del.).

(viii) Since the demand of duty is not sustainable, the question of payment of interest thereon does not arise.

4. Personal hearing in the matter was attended to by Shri. Ishan Phati, Advocate and A.C. Abraham, General Manager, who represented Goods of Appeals and made a written submission compelling the case. The appellants also submitted copy of documents for shifting of Gandhidham site to Varsana unit and documents for transfer of stock of inputs and capital goods on which credit has been availed from Gandhidham site to Varsana site on payment of duty and documents evidencing in support of account for of goods by Varsana unit. No one appeared from the department despite P.H. notices issued to the the n.

FINDINGS:

5. I have carefully gone through the facts of the case, impugned orders, appeal memoranda and the written as well as oral submissions of the appellant. The limited issue to be decided in the present appeal is whether the transfer of unutilized balance of cervat credit by Appellant No. 1 or for Rule 10 of CCR, 2004 in the event of surrender of Central Excise registration, and availment of cervat credit thereof by Appellant No. 2 is proper or otherwise.

6. The lower adjudicating authority has observed that Appellant No. 1 had surrendered its registration and they had applied for new registration for transferring/carrying out the business activity at new site and Appellant No. 2 had also not applied for amendment in their existing operation for manufacture of goods being manufactured by Appellant No. 1 and therefore transfer of cervat credit was in contravention of Rule 10 of CCR, 2004 as none of the conditions of Rule 10 of CCR, 2004 was satisfied. The appellants contended that Rule 10(1) of CCR, 2004 provides that if a manufacturer of the final products shifts its factory to another site, then the manufacturer shall be allowed to transfer cervat credit balance to such transferred factory. For better appreciation of legal position, I would like to reproduce Rule 10 of CCR, 2004, which reads as under:

"RULE 10. Transfer of Cervat credit. (1) If a manufacturer of the final products shifts his factory to another site in the country as a result of a change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liability of such factory, the manufacturer shall be allowed to transfer the cervat credit being utilized in his accounts to such transferred site (right to carry forward unutilized credit).

(2) —

(3) *The transfer of the cervat credit balance to such transferred factory shall be allowed only if the stock of inputs as such or in process or the capital goods is also transferred along with the factory or business premises in the new and old ownership, and the inputs of capital goods, on which credit has been availed or are considered for the availed credit of the Deputy Commissioner or Central Excise Officer in charge may be the Assistant Commissioner of Central Excise.*

Arind

6.1 From Rule 10(1) of the Rules, it could be seen that a manufacturer of the final products is allowed to transfer cervat credit being availed in an account if he (i) 'shifts' his factory to another site and (ii) transfers the factory on account of sale, merger, amalgamation, lease or transfer of factory to a joint venture, with specific provision for transfer of liability of such factory. Thus, in these situations the manufacture of final products can definitely transfer cervat credit to such transferred, sold, merged, leased or amalgamated entity. The said transfer is subject to the conditions stipulated in sub-rule of the Rules which provides that such transfer is permitted only if the stock of inputs as such or in process or the capital goods is also

transferred along with the factory or business premises to the new site, on which credit has been availed of are only accounted up to the satisfaction of the Deputy Commissioner of Central Excise or as the case may be, the Assistant Commissioner of Central Excise.

6.2 In the instant case, Appellant No. 1 after surrendering of Central Excise Registration has transferred the cenvat credit utilized in their accounts and informed jurisdictional Central Excise authority and has declared the details in ER-1 return for the month of February, 2015. Similarly, Appellant No. 2 has also informed the jurisdictional Central Excise authority that they have availed such cenvat credit and details thereof had been declared in ER-1 return for the month of March, 2015. The Appellant No. 1 has contended that they have transferred the unutilized cenvat credit on account of shifting of their factory to new site where the inputs, semi-finished goods, finished goods and capital goods lying in stock were also transferred, in view of above facts, I find that neither Appellant No. 1 nor Appellant No. 2 has contravened the provisions of Rule 10 of CCR, 2004 and cenvat credit lying utilized is correct and is in accordance with Rule 10 of CCR, 2004.

7. The adjudicating authority has observed that Appellant No. 2 has availed cenvat credit on the basis of journal entries which are not valid for availment of cenvat credit under Rule 9 of CCR, 2004. The appellant vehemently argued that admissibility of cenvat credit is not subject to Rule 9 of CCR, 2004 as they have availed cenvat credit on the basis of invoices generated under Rule 9 of CCR, 2004 and that Rule 9 of CCR, 2004 does not provide for a situation where credit is taken on account of shifting of factory under Rule 10 of CCR, 2004. I find the arguments of the appellant is valid and acceptable. Hence the admissibility of cenvat credit otherwise can be questioned at the end of Appellant No. 1 who has transferred unutilized balance of cenvat credit lying in their accounts to Appellant No. 2 under Rule 10 of CCR, 2004 on account of shifting of their factory to a new site. However, such allegation of SCN issued to Appellant No. 1 about the admissibility of cenvat credit under Rule 9 of CCR, 2004.

8. The adjudicating authority has also observed that Appellant No. 1 had surrendered its registration and their registration was not applied for new registration for transferring/carrying out the business at new site. Appellant No. 2 also had not applied for amendment in their existing Registration for manufacture of goods being manufactured by Appellant No. 1 and therefore inputs, capital goods or input services cannot be qualified under Rule 10 of CCR, 2004. Rule 20a of CCR, 2004 at the end of Appellant No. 2 and hence, failure of cenvat credit was in contravention of Rule 10 of CCR, 2004. I find that the admissibility of cenvat credit is required to be determined at

the unit which transferred unutilized balance of Cenvat credit on its account, which has not been disputed in the impugned order. I further find that Rule 10 of CCR, 2004 does not mandate that appellants should carry on same business at new premises. Hence, there is no requirement under the said Rule to continue with same business activity at new site. My above views are strengthened by a decision of the Hon'ble High Court of Madras in a recent decision in the case of *Fluorocarbide Products PVT. Ltd.* reported as 2017 (353) ELT 439 (Mad) which on appeal filed by the respondent having identical grounds has been dismissed by the Hon'ble High Court. The relevant portion of the said judgment dated 28-04-2017 is reproduced as under:

Cenvat credit - Unit moved and Registered - Goods - Imported - Unutilized credit - Transfer to another unit of respondent - Rule 10 of Cenvat Credit Rules 2004 enables assessee to transfer unutilized credit from a unit of manufacturing factory from one site to another. This action is not illegal though for different reasons. [para 15 of 19/17]

Interpretation of statute - Words with meaning as the tenor of Rule 10(i) of Cenvat Credit Rules, 2004, as amended, would include the place where unit was and thereafter transferred and vice versa. [5 of 15/17]

7. *My Hon'ble learned friend, Mr. Justice Rajendran, in the order of the Tribunal, is of the view that the manufacturing activities at the place of the said Rules.*

7.1 According to the learned counsel for the respondents who also when there is either a transfer or supply of goods or services, which are covered by sale through amalgamation, lease or franchise, or through a joint venture, being the sole operator.

7.2 The said criteria, particularly, the requirement, "shall include trade in or use of 2004 Rules cannot be carried over, since, they are embodied in the form and the Registration Certificate placed on file in the department which is not in the said case.

7.3

12.3 One would have had to surmise, from the facts, bearing in reference to it, circumstances, as in this case, where the respondents had never intended to business after completing the process of setting up the new plant at 2004/09.

12.4 The appellants' contention that, "Section 10(i) of the Cenvat Credit Rules, 2004, as amended, would include the place where unit was and thereafter transferred and vice versa" is not correct. The said provision would include the place where unit was and thereafter transferred and vice versa, but it would not include the place where unit was and thereafter transferred and vice versa, unless the unit is transferred and vice versa.

12.5 The words "shall include" in Section 10(i) of the Cenvat Credit Rules, 2004, as amended, would include the place where unit was and thereafter transferred and vice versa, but it would not include the place where unit was and thereafter transferred and vice versa, unless the unit is transferred and vice versa. Any other finding would be in favour of the respondents.

12.6 The appellants' contention that, "Section 10(i) of the Cenvat Credit Rules, 2004, as amended, would include the place where unit was and thereafter transferred and vice versa" is not correct. The said provision would include the place where unit was and thereafter transferred and vice versa, but it would not include the place where unit was and thereafter transferred and vice versa, unless the unit is transferred and vice versa. The learned counsel for the respondents who also when there is either a transfer or supply of goods or services, which are covered by sale through amalgamation, lease or franchise, or through a joint venture, being the sole operator, would not include the place where unit was and thereafter transferred and vice versa, unless the unit is transferred and vice versa. The appellants' contention that, "Section 10(i) of the Cenvat Credit Rules, 2004, as amended, would include the place where unit was and thereafter transferred and vice versa" is not correct. The said provision would include the place where unit was and thereafter transferred and vice versa, but it would not include the place where unit was and thereafter transferred and vice versa, unless the unit is transferred and vice versa.

the rule, there may be a withdrawal of the goods from the premises of the factory from one day to another. The question is, how do we interpret the rule? It is laid down in the Board Case, *Estates Ltd v Asher*, (1949) 2 AC 571, 575 (CA). There is also a Board Case, *Shri. R. Thakur v. Thakur* (1949) 11 TC 109, 110 (CA). In *Shri. R. Thakur v. Thakur*, the Board held that the rule is to be interpreted in favour of the assessee.

12.7 This having been the case, the Board is of the opinion that the assessee is entitled to a refund of the tax paid on the goods which were taken out of the factory from one day to another.

13. At this juncture, it is pointed out that the Board of Revenue has issued orders under the 2004 Rules, regarding the withdrawal of goods from the premises of the factory, as and when the goods are taken out of the factory from one day to another.

14. Accordingly, the Board is of the opinion that the assessee is entitled to a refund of the tax paid on the goods which were taken out of the factory from one day to another.

Yours faithfully,

9. In view of above, I have no objection to the orders of the Assessing Officer and to hold that Appellant No. 1 is entitled to a refund of the tax paid on the goods which were taken out of the factory from one day to another. Accordingly, I set aside the impugned orders and allow the appeal.

९.१. सर्वोच्च न्यायालय की ओर से आदेश के अनुसार, अपीलकर्ता को कर का वापस कर देना है।

9.1. The appeal is allowed and the tax paid is to be refunded to the assessee.


 दिनांक: 3/11/2018
 आयुक्त (अपील)

BY R.P. A.D.

To

- (i) PSL Limited,
 S No. 307/182, Village Varnava,
 Bhacha - Bhimsar Road,
 Taluka - Anjar,
 Kutchh, Gujarat - 363501.
- (ii) PSL Limited,
 Pipe Coating Division,
 East of National Highway No. 8,
 Post Box No. 100,
 Kandla Road,
 Gandhidham, Gujarat - 370 200.

- (i) आयुक्त (अपील),
 टि. ए. नं. 307/182, वार्नवा,
 भक्षा - भिंसार रोड,
 तालुका - अंजर,
 कुच्छ, गुजरात - 363501.
- (ii) आयुक्त (अपील),
 पाइप कोटिंग डिवीजन,
 राष्ट्रीय राजमार्ग नं. 8 के
 पूर्व, पोस्ट बॉक्स नं. 100,
 कान्दला रोड,
 गन्धिधम, गुजरात - 370 200.

Copy to :-

1. The Chief Commissioner, U.P. & C. Taxes, Gandhinagar, Ahmedabad.
2. The Commissioner, GST & General Excise, Gandhinagar, Gandhidham.
3. The Deputy Commissioner (U.P. & C. Taxes), Gandhinagar, Gandhidham.
4. Guard File.