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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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/31/GDM/2017	13/AC/Anjar/2016-17	03.01.2017

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

KCH-EXCUS-000-APP-187-2017-18

आदेश का दिनांक / Date of Order:	20.02.2018	जारी करने की तारीख / Date of issue:	23.02.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अगर आयुक्त/ सयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जयनगर / गान्धीधम) द्वारा उपरोक्तितर जारी मूल आदेश से सुझित /
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. Kesri Oil Private Ltd.,Plot No. 7 & 8, Survey No.32,Village : Meghpar Borichi, Anjar Galpadar Road Taluka Gandhidham

इस आदेश(अपील) से व्यक्तित कोई व्यक्ति निम्नलिखित तरीके में 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 न्यायालय में 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 बलाए गए अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, भूमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhamaali 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) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, ब्याज की सीमा और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलग्न करे। निर्धारित शुल्क का भुगतान संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वेजिनिक होर के बैंक द्वारा जारी रेखांकित 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 आवेदन-पत्र के साथ 500/- रुपये 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) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, ब्याज की सीमा और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलग्न करे। निर्धारित शुल्क का भुगतान संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वेजिनिक होर के बैंक द्वारा जारी रेखांकित 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 आवेदन-पत्र के साथ 500/- रुपये 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) विल अपीलियम, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत देने 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 अपील, केन्द्रीय उत्पाद शुल्क अथवा अपील (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (उपरोक्त में एक प्रति प्रमाणित होनी चाहिए) और अपील द्वारा सहवक अपील अथवा अपील, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलार्थ न्यायाधिकरण को अर्पण 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 अपीलार्थ न्यायाधिकरण (सेन्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की विलीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलार्थ न्यायाधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपील देय रॉशिंस दस करोड़ रुपये 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) सेन्टेट जमा की गयी गई रकम राशि
(iii) सेन्टेट जमा नियमवली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विलीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलार्थ न्यायाधिकरण के समक्ष विचारणीय स्थिति नहीं एवं अपील को लागू नहीं होने। / 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 be before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतक के अंतर्गत अर्पण की जाये, भारत सरकार, पुनरीक्षण आवेदन इकाई, विल संसद भवन, राजसव विभाग, चौथी मंजिल, जीवन टॉप भवन, समेट मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.
- (i) यदि माल के किसी नुकसान के मामले में, 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 से 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 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 an 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) मुनिर्णित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इव्हीट्टी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अपील (अपील) के द्वारा विल अपीलियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा सहायविधि पर का बाट 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संघेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के तत्वच 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/O and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ 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 इन से किया जाना चाहिए। इस तथ्य के होते हुए भी की तिका पढी कारो से बाटने के लिए यथास्थिति अपीलार्थ न्यायाधिकरण की 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 excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथास्थिति 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 अपीलार्थ न्यायाधिकरण (हाई विधि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलार्थ न्यायाधिकरण को अपील टाकिस करने से संबंधित न्यायक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थ न्यायाधिकरण 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. Kesri Oil Pvt. Ltd., Plot No. 7 & 8, Survey No. 32, Village: Meghpar Borichi, Anjar Galpadar Road, Taluka: Anjar (Kutch), Pin: 370 201 (hereinafter referred to as 'the appellant') filed the present appeal, against Order-In-Original No. 13/AC/ANJAR/2016-17 dated 03.01.2017 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Central Excise Division, Anjar (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that audit revealed that the appellant had removed imported inputs 'as such' to another unit situated at Faridabad during the period from April, 2010 to June, 2010, August, 2010 to November, 2010, February, 2011 to March, 2011 and January, 2012 to March, 2012, without reversal / payment of cenvat credit of Additional Duty of Customs (SAD) @4% of Rs. 15,42,355/- which resulted into contravention of Rule 3(5) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR, 2004"). Show Cause Notice No. V.(27)/AR-V/Anjar/Joint.Commr./129/2015 dated 04.02.2016 demanded cenvat credit of Rs. 15,42,355/- under Rule 14 of the CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') and proposed to appropriate Rs. 15,42,355/- paid by them before issuance of the SCN and also to recover interest of Rs. 5,72,920/- under Rule 14 of the CCR, 2004 read with Section 11AA of the Act and to impose penalty on the appellant under Rule 15 of the CCR, 2004 read with Section 11AC of the Act. The said SCN was adjudicated by the lower adjudicating authority vide impugned order, wherein he confirmed demand of cenvat credit of Rs. 15,42,355/- under Rule 14 of the CCR, 2004 read with Section 11A(4) of the Act and appropriated Rs. 15,42,355/- already paid by the appellant; and ordered recovery of interest of Rs. 5,72,520/- under Rule 14 of the CCR, 2004 read with Section 11AA of the Act and imposed penalty of Rs. 15,42,355/- under Rule 15 of the CCR, 2004 read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the grounds as follows:

(i) There is no revenue loss as cenvat credit of duty paid by the appellant is available at another unit situated at Faridabad and hence issue was revenue neutral. Therefore, it cannot be said involvement of suppression, mis-statement etc. for evasion of central excise duty and hence extended period cannot be invoked and the demand hit by limitation.

(ii) Penalty is not imposable due to non-availability of ingredient of fraud, suppression, willful mis-statement etc. on the part of the appellant as case is revenue neutral.

(iii) The appellant had already reversed credit of Rs. 15,42,355/- before issuance of the show cause notice and hence, the show cause notice was not required to be issued as per Section 11A of the Act.

(iv) The appellant submitted that at the relevant time, they had balance in their cenvat credit account more than the amount demanded and they had reversed amount demanded from the cenvat credit account and hence interest should not be levied under Rule 14 of the Cenvat Credit Rules, 2004.

4. Personal hearing in the matter was attended by Shri Paresh Koka, Accountant of the appellant and reiterated the grounds of appeal; that he had nothing more to submit in the issue.

Findings:

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and submissions made by the appellant. The issues to be decided in the present appeal are (i) whether the impugned order confirming recovery of cenvat credit of Additional Duty of Customs (SAD) @4% is proper or otherwise and (ii) whether recovery of interest and imposition of penalty by invoking extended period are correct or not.

6. I find that the appellant is a manufacturer of excisable goods viz. Transformer Oil falling under CETSH No. 27101990, is registered with central excise department and is availing facility of cenvat credit under the Central Excise Rules, 2004. I find that the appellant has availed cenvat credit of Additional Duty of Customs (CVD), Special Additional Duty of Customs (SAD) @4%, Education Cess and S&H Secondary Education Cess paid on imported inputs. The cenvat credit of the duties paid on imported inputs and used in, or in relation to, the manufacture of the final products is available as per the provisions of Rule 3(1) of the CCR, 2004.

7. I find that the appellant had removed said imported inputs 'as such' to another unit situated at Faridabad. I find that when inputs were removed as such, the appellant was required to pay an amount equal to cenvat credit availed in respect of such inputs in accordance with Rule 3(5) of the CCR, 2004, the relevant portion of said rule is as under:

"(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

.....

....."

(Emphasis supplied)

7.1 In view of the above, it is very clear that the appellant had to pay an amount equal to the cenvat credit availed on imported goods when removed as such from their factory premises at the time of removal. In the present case, I find that the appellant had removed imported inputs 'as such' from their factory premises but had not paid/reversed Rs. 15,42,355/- which they had availed as cenvat credit of Additional Duty of Customs (SAD) @4% at the time of import of said inputs. Therefore, I find that the appellant has wrongly retained cenvat credit of Rs. 15,42,355/-, which resulted into contravention of Rule 3(5) of the CCR, 2004.

7.2 I also find that the appellant has not defended their case and not produced any supporting document neither before the lower adjudicating authority nor before the undersigned. I also find that the appellant has not at all contested wrong availment of cenvat credit of duty paid on inputs and they agreed with the observation and reversed wrongly availed cenvat credit of Rs. 15,42,355/- on 26.02.2013 in their cenvat credit account. Thus, it is not disputed that the appellant had wrongly availed cenvat credit of duty paid on inputs, which was not admissible to them. Accordingly, the impugned order passed by the lower adjudicating authority confirming demand of wrongly availed cenvat credit, is correct, legal and proper.

8. The appellant has contended that ingredient/element of evasion of central excise duty by way of suppression, mis-statement etc. not found and hence extended period cannot be invoked. As discussed above *supra*, I hold that the wrongly/excess availed cenvat credit of additional duty of customs paid on inputs and thereby the appellant has contravened the provisions of the Cenvat Credit Rules, 2004. The appellant had at no point of time disclosed the material fact to the department in any manner that they had cleared imported inputs as such without reversal of cenvat credit of additional duty of customs. I also find that the material facts came into knowledge of

the department at the time of audit. Hence, required ingredients for suppression of facts with intent to evade payment of central excise duty for invoking extended period is existing in this case. Under these circumstances, I am of the considered view that the demand invoking extended period of time is correct. I also find that the appellant has not paid any amount towards interest and penalty at appropriate rate as provided under Central Excise Law. Therefore, the appellant has rendered themselves liable to penal action under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. However, I find that the transactions are recorded in their specified records and therefore, penalty @ 50% of disputed cenvat credit is liable to be imposed in accordance with proviso to Section 11AC(1)(c) of the Act and not Rs. 15,42,355/-. I find that SCN has been issued on 04.02.2016 and the amended provisions of Section 11AC of the Act are to be made applicable in the present case also, according to which, option of reduced penalty @ 25% of confirmed demand is required to be given available to the appellant in terms of Section 11AC (1) (e) of the Act, which has not been granted by the lower adjudicating authority. For the ease of reference, relevant provisions of Section 11AC of the Act are reproduced as under:-

"SECTION 11AC:-.

(1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows :-

(a)

(b)

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined.

Provided *that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined;*

(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions

referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;

(e) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (c) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined, subject to the condition that such reduced penalty is also paid within the period so specified.

.....

....."

8.1 It is on record that Rs. 15,42,355/- was reversed by the appellant much before issue of the SCN. Under the circumstances, the lower adjudicating authority was duty bound to give option of reduced penalty as per clause (e) of Section 11AC (1) of the Act, clearly stating that if the appellant pays interest as well as reduced penalty also within 30 days from the receipt of the impugned order, then penalty would get reduced to 25% of Central Excise duty so determined as per CBEC Circular F. No. 208/07/2008 – CX – 6 dated 22.05.2008 read with Hon'ble Apex Court judgment in the case of R. A. Shaikh Paper Mills P. Ltd. reported as 2016 (335) E.L.T. 203 (S.C.). Had it been done by the lower adjudicating authority, the appellant could have availed benefit of reduced penalty @25% of confirmed demand on payment of full interest and reduced penalty within 30 days of the receipt of the impugned order. Since not done in the impugned order, the appellant is being given that option now and they can avail the option of reduced penalty @25% of duty confirmed vide impugned order on the condition of payment of interest in full as well as 25% reduced penalty within 30 days of receipt of this order as per ratio of the judgement of the Hon'ble High Court of Gujarat in the case of M/s. G P Prestress Concrete Works reported as 2015 (323) ELT 709 (Guj).

9. The appellant has argued that the SCN/demand is barred by limitation as whatever central excise duty had been debited by the appellant is available for cenvat

credit to another unit situated at Faridabad and hence revenue neutral. I find that the cenvat credit scheme has been designed to offset and neutralize the duty or tax incidence and duty paid by the appellant would be available as credit to their downstream buyer and not to the appellant and therefore per se it cannot be called a revenue neutral proposition. This apart, availability of credit to the downstream buyer would be dependent upon many factors. Therefore, I reject this plea of the appellant.

10. The appellant has contended that they had paid Rs. 15,42,355/- before issuance of the show cause notice and hence, the show cause notice as well as the impugned order were not required to be issued as per Section 11A of the Act. I find that the appellant has reversed wrongly availed cenvat credit when pointed out by audit. However, they have not paid any amount towards interest and penalty and therefore, department has correctly issued SCN for appropriation of amount paid towards wrongly availed cenvat credit and for recovery of interest and imposition of penalty.

11. The appellant pleaded that interest should not be levied under Rule 14 of the CCR, 2004 as they had sufficient balance in their cenvat credit account. I find that the period of dispute is from April, 2010 to March, 2012. During the material period, Rule 14 of the CCR provided that interest is required to be recovered for cenvat credit wrongly taken or utilized. I find that CBEC vide Circular No. 942/3/2011-CX., dated 14-3-2011 also clarified that the interest shall be recoverable when credit has been wrongly "taken", even if it has not been utilized. Hence, the contention of the appellant can't be accepted. I would like to produce Rule 14 of the CCR, 2004, prevailing at the material time, which reads as under:

"RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. – *Where the Cenvat credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries".*

11.1 I find that while confirming the demand of interest on wrongly availed cenvat credit, the lower adjudicating authority has given his findings and I find no reason to interfere with that.

12. In view of above, I modify the impugned order in respect of penalty as stated in Para 8 and Para 8.1 above and retain demand and interest of the impugned order.

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

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

(कुमार संतोष)
(अपील्स) आयुक्त

By R.P.A.D.

To,

M/s. Kesri Oil Pvt. Ltd., Plot No. 7 & 8, Survey No. 32, Village: Meghpar Borichi, Anjar Galpadar Road, Taluka: Anjar (Kutch), Pin: 370 201.	मेसर्स केसरी ऑइल प्रा. ली., प्लॉट नं. ७ एवं ८, सर्वे नं. ३२, गाँव: मेघपर बोरिची, अंजार गलपादर रोड, तालुका: अंजार (कच्छ), पिन: ३७० २०१.
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Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Gandhidham.
- 3) The Assistant Commissioner, CGST & Central Excise Division – Anjar, Gandhidham.
- 4) Guard File.