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	स्टर्ड डाक ए. डी. द्वारा :- अपील (प्राइन संख्या) मूल आदेश ने / दिलांक/		
क	зифа /черя неш/ Appeal / File No.     не заде и / 0.10. No.     Date       V2/1/RAJ/2017     0381 55 55     40/D/AC/2016-17     23.11.2016       зибла: анден Ниски (Order-In-Appeal No.):     40/D/AC/2016-17     23.11.2016		
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	RAJ-EXCUS-000-APP-133-2017-18		
	आदेश का दिनांक / 05.12.2017 जारी करने की तारीख / 06.12.2017 Date of Order: 05.12.2017 Date of issue:		
	<b>कुमार संतोष</b> , आयुक्त (अपील्स), राजकोट द्वारा पारित / Passed by <b>Shri Kumar Santosh</b> , Commissioner (Appeals), Rajkot		
ग	, अपर आयुकत/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद कुल्का शेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरविश्वित जारी मूल आदेश से सुजित: / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tex,		
	Ansing out of above mentioned Ord issued by Addicated CelophyProceeding Control Contr		
ជ	M/s. AVR Valves Pvt Ltd.,, C-1/33, AJI Industrial Estate., Rajkot		
	इस आदेश(अपील) से व्यथित कोई व्यक्ति जिल्लातिखित तरीके में उपयुक्त प्रापिकारी / प्रापिकारण के समस अपील दायर कर सकला है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.		
(A)	बीमा शुरुक केन्द्रीय उत्पाद शुरुक एवं सेवाकर अपीतीय ल्यायाधिकरण के प्रति अपील, बेन्द्रीय उत्पाद शुरुक अधिनियम ,1944 की धारा 358 के अंतर्गत एवं. वित्त अधिनियम, 1994 की प्याप्त 86 के अंतर्गत निरनसिक्षिश्त जगह की जा सकती है ।/		
	Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 358 of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-		
(0	वर्गीहरण मुल्यांकन से सम्बन्धित तभी मामते सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं होवाकर अपीतीय न्यायाधिकरण की विश्वेष पैठ, देस्ट ब्लॉक में 2, आर. के, पुरम, सड़े दिल्ली, को की जानी चाहिए 17		
	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.		
(11)	उपरोकत धरिचछेद 1(a) में बताए गए अपीलों के असावा वेष लभी अधीतें तीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अधीतीय ल्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , दुखितीय तल, बहुमाली भवन असावों अहमदाबाद- ३८००१६ को की जानी पाड़िए U		
	To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2 <sup>rd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above		
(10)	अधीक्षीय स्थायांपीकरण के तसका अभीत प्रस्तुत करने के लिए केन्द्रीय उत्पाद गुल्क (अपील) लियसाकली, 2001, के लियस 6 के अंतर्गत निर्धायित किए गये प्राय EA-3 को पार प्रतियों में दर्ज किया जाना चाहिए । इतमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मॉम, स्थाज की मॉम और लगाया गंधा जुमोला, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है ले कमशा 1,000- हंपये, 5,000/- रुपये अथवा 10,000/- रुपये का विधोपित जमा थुल्क की पति संजयन करें। जिधीपत शुल्क का मुमताल, संबंधित अधीलीय न्यायायिकरण की शाख के संस्थाक रेजिस्टार के लाल से किलों भी लोगेजिनक क्षेत्र के द्वारा जारी रेखांकित बैंक ड्रायट द्वारा किया जाना चाहिए । संबर्धीत ड्रायट का शुमताल, बैंक की उस शाखा में होना पाहिए जहां संबंधित अपीलीय त्यायाधिकरण की शाखा क्रियत है । स्थमन आदेश (स्टे ऑर्डर) के लिए आवेदल-पत्र के लाथ 500/- रुपए का विधोपित शुल्क जमा करता होगा //		
	The appeal to the Appellate Tribunal shall be filled 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. 1,000r- 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/		
(8)	अपीलीय न्यायाधिकरण के समक्ष अपील, जिल्ल अधिनियल, 1994 की घारा 86(1) के अंतनेत सेवाकर नियमकली, 1994, के नियम 9(1) के लहत निर्धापित प्रथा 5.15 में चार प्रतियों में की जा सकेती एवं उसके लाथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में सलन्त करें (उनमें से एक प्रति प्रमाणित होनी पाहिए) और इतमें से कम रके कार्य जिस आदेश के विरुद्ध अपील की गया हो, उसकी प्रति साथ में सलन्त करें (उनमें से एक प्रति प्रमाणित होनी पाहिए) और इतमें से कम रके कार्य जिस आदेश के विरुद्ध अपील की गया हो, उसकी प्रति साथ में सलन्त करें (उनमें से एक प्रति प्रमाणित होनी पाहिए) और इतमें से कम रके कार्य जे के साथ, जहां सेवकर की मॉग अ्याज की मॉग और लगाण गया जूमोना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख स्पए तक अपता 50 लाख स्पए से अधिक है तो इन्सरा: 1,000/- रुपये, 5,000/- रुपये अधवा 10,000/- रुपये का निर्धापित जमा शुल्क की प्रति संतरन करें। निर्धापित शुल्क का मुंगतान, संबंधित अपीलीय न्यावाधिकरण की शाखा के सहागक रजिस्टार के लास से किसी भी सार्थजिनक क्षेत्र के बैंक दुवारा जारी रिधाकित बैंक ड्राफ्ट देवारा किया जाना धाईए । संबंधित ड्राफ्ट का मुंगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थमन आदेश (स्टे अंडेरा) के लिए अलेवत-पत्र के आध 500/- रुपए का सिर्धारित शुल्क जमा करना होगा ।/		
	The appeal under sub section (1) of Section 85 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 takhs but not exceeding Rs. FHY Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five takhs but not exceeding Rs. FHY Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five takhs rupees, in the form of crossed bank draft in favour of the Application Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated if Application resent for grant of stay shall be accompanied by a fee of Rs.500/-		
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- विरल अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवानी, 1994, के लियम 9(2) एवं 9(2A) के लहन निर्धारित प्रपत्र S.T.-7 में की जा सकेनी एवं उसके साथ आयुक्त, वेन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), वेन्द्रीय उत्पाद शुल्क द्वारा धारित आदेश की प्रतियाँ शलरन को (उनमें से एक प्रति प्रसाणित होनी वालिए) और अयुक्त दक्षारा सहायक आयुक्त अथवा अध्यक्त, केन्द्रीय उत्पाद शुल्क/ मेवाकर, को अपीलीय ल्यायाधिकरण को आवेदन दर्ज करने का जिदेश देने वाले आदेश की प्रति मी साथ में सलरन करनी होगी । /
  - The appeal under sub section (2) and (2A) of the section 88 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Exciser Service Tax to file the appeal before the Appellate Tribunal.
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय धाधिकरण (सेस्टेंट) के प्रति अपीलों के मायलों में केन्द्रीय उत्पाद शुल्क अधितियल 1944 की धारा 35एक के अंतर्गत, जो की खिलीय अधिनियल, 1994 की धारा 83 के अंतर्गत सेवाकर को वी लड़ की नई है. इस आदेश के प्रति अधिलेय प्राधिकरण में अपील करते समय उत्पाद शुल्करसेवा कर मांग के 10 प्रतिवत (10%), जब मांग एवं जुमांना तिवादित है. या जुमांना, जब केवल जुमांना तिवादित है. का मुशतान किया जाए, बशते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देव राशि दस करोड़ स्पए से अधिन न हो। (前)
  - केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्शन "सांग किए सए शुल्क" से जिस्स सामिल है
  - धता 11 डी के अंतर्गत रक्ष
  - संगवेट जमा की सी गई मसल हाति 60
  - (10) सेततेट जमा सियमावती के नियम 6 के अंतर्गत देव रक्स

- बधर्ते यह कि इस धारा के भावधान वित्तीय (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीतीय पाधिकारी के समक्ष विधाराधील स्थगन अली एवं अपील को लागू नहीं होगे।

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 :
  - amount determined under Section 11 D.
  - amount of erroneous Cenval Credit taken; ④
  - (iii) amount payable under Rule 5 of the Cenval Credit Rules

provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appollate authority prior to the commencement of the Finance (No.2) Act. 2014.

## मारत सरकार को पुनक्तिण आवेदन : (C)

Revision application to Government of India: इस आदेश की पुनरीक्षण गाविका जिम्मासिखिन मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के जंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, जिल मंत्रालय, राजस्व विमान, घौधी मजिल, जीवन दीप भवन, संसद मार्थ, नई दिल्ली-110001, को किया जला सहिए।

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 Dethi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-358 ibid.

यदि माल के किसी मुकसान के मानने से, जहां नुकसान किसी माल को किसी कारखाने से अंडार गृह के पारममन के दौरान या किसी अन्य कारखाने वा फिर किसी एक अंडार गृह से दूसरे अंडार गृह पारमनन के दौरान, या किसी अंडार गृह में या अंडारण में आज के प्रसारकरण के दौरान, किसी कारखाने या किसी अंडार गृह में मान के नुकसान के मामने 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 (0)

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

- भारत के बाहर किसी राष्ट्र या क्षेत्र को नियांत कर रहे माल के विजिसोण में प्रयुक्त कथ्ये माल पर मरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के (11) मानले में बहर किसी राष्ट्र या होई को नियोत 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.
- यदि उत्पद शुल्क का भुगतान किए बिना भारत के बाहर, नेपान या भूटान को माल नियोत किया गया है। (iii) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- सुनिधियत उत्पाद के उत्पादन शुल्क के मुमतज के लिए जो शुमूटी केवीट इस अधिनियम एवं इसके विभिन्न धावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अधीत) के दुवारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के दुवारा निवत की गई तारीक्ष अधवा समायाविधि पर वा बाद में पारित किए नए है।/ (iv)

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- उपरोक्त आवेदन की दी प्रतियां प्रभव संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुरूक (अपीस) नियमावती, 2001, के नियम 9 के अंतर्गत विनिदिष्ट है, इस आदेश के संप्रेषण के 3 माल के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संसरम की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुरूक अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुरूक की अदरयंगी के साक्ष्य के तौर पर TR-6 की प्रति (v) संतरन की जानी साहिए। / 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) 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.
- यदि इस आदेश में कई मूल आदेशों का समागेश है तो प्रत्येक मूल आदेश के लिए कुल्क का मुगताल, उपदेक्त दंग से किया जाला पाहिये। इस लध्य के होते हुए भी भी खिखा पहीं कार्य से क्यंग्रे के लिए प्रधारियति अपोलीय लगाखिबरण की एक अपील था कैर्ट्रीय सरकार को एक आवेदल किया जाला है । / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each. (D)
- वधाशशोधित त्याचालय शूल्क अधिनियम, 1975, में अनुसुधी। के अनुसार मूल उन्देश एवं स्थमन आदेश की पति पर निर्धारित 6.50 श्वथे का (E) runaned type ICR-c rin plan unitor / 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.
- सीमा शुल्क, बेन्हीय उत्पद्ध शुरुक एवं सेवाकर अपीक्षेय ल्यायाधिकरण (कार्य विधि) नियलावली, 1982 में वर्णित एवं अल्य संबन्धित मामलों को इम्ट्रिसर्वित करने वाले लियलों की और भी ध्यान आकर्षित किया जाता है। / (F) Attention is also invited to the rules covering mesa and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982
- उच्च अपीर्शिय प्राप्तिकटी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और सरीनतम प्रार्थपानी के लिए, अपीलायी विश्वानीय वेषशाहट (G) www.cbec.gov.in #1 ctrr ##1 # 1 / 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

1.

## :: ORDER-IN-APPEAL ::

M/s. AVR Valves Pvt. Ltd., Unit-2, Plot No. 2317-2318 & 2329, GIDC, Metoda, Taluka: Lodhika, Dist.: Rajkot holding Central Excise Registration No. AAFCA6746FXM002 (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No. 40/D/AC/2016-17 dated 22/23.11.2016 (hereinafter referred to as 'the impugned order'), passed by the Assistant Commissioner, Central Excise Division-1, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the appellant is engaged in the manufacture of excisable goods falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The scrutiny of Cenvat credit register revealed that they had availed Cenvat credit of Rs. 36,709/- vide RG23A Entry No. 38 dated 04.05.2012 on the basis of Invoice No. 1129 dated 25.04.2012 of M/s. Eaton Industrial Systems Pvt. Ltd., Ahmedabad. The said invoice had been raised on account of rejected material returned to the appellant, however, as request to provide details regarding rejected material and processes they had undertaken and clearance of this material after processing on payment of duty, the appellant failed to provide any such details. In absence of any such records of further processing of such rejected material and payment of duty, Cenvat credit on such rejected material is not available to them in terms of Rule 16 of the Central Excise Rules, 2002 (hereinafter referred to as "the Rules"). Browne

2.1 The Show Cause Notice F. No. CEX/AUDIT-III/CIR-II/DC-10/2015-16 dated 24.05.2016 was issued by the Deputy Commissioner, Circle-IV, Central Excise, Audit-III, Rajkot proposing recovery of wrongly availed Cenvat Credit of Rs. 36,709/- alongwith interest under Rule 14 of Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR,2004) read with Section 11A/11AA of the Central Excise Act, 1944 (hereinafter referred to as "the Act") and penalty on the appellant under Rule 15 of the CCR,2004 read with Section 11AC of the Act. The said show cause notice was adjudicated by the lower adjudicating authority vide impugned order, who disallowed the Cenvat Credit of Rs. 36,709/- under Rule 14 of the CCR,2004 read with Section 11A of the Act and asked to pay interest under Rule 14 of the CCR,2004 read with Section 11AA of the Act and also imposed penalty of Rs. 36,709/- under Rule 15 of the CCR,2004 read with Section 11AC of the Act and asked to pay interest under Rule 14 of the Act on the appellant.



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 Being aggrieved by the impugned order, appellant preferred the present appeal mainly on the following grounds:

(i) The observations of the lower adjudicating authority in para 17 onwards for confirmation of demand is bad in law and is liable to be set aside.

(ii) The lower adjudicating authority erred in confirming the demand ignoring the fact that for availment of credit under the provisions of Rule 16 only requirement is to receive the material with duty paying documents and to account for the same in statutory which admittedly is complied with and hence any other condition imposed or read in the respective provision would amount to rewriting of the provision which is not legal and correct and is liable to be set aside.

(iii) The lower adjudicating authority has erred in confirming the demand by reading something in the provision as also by applying the circular issued by the Board. The circular issued is not applicable to the present case and hence the proceeding initiated is liable to be dropped.

 (iv) The lower adjudicating authority erred in imposing the penalty on the ground as mentioned in the order as also on the ground as mentioned herein above. The ground raised for setting aside the demand may be treated as part of the ground raised for setting aside the penalty imposed.
(v) The lower adjudicating authority also erred in imposing the penalty

ignoring the fact that the applicant has complied with all the conditions prescribed under the provisions of Rule 16 and hence the order under consideration is liable to be set aside.

3.1 A personal hearing in the matter was attended by Shri Paresh Sheth, Advocate, who reiterate grounds of appeal and submitted that they have followed conditions of Rule 16(1) of the Rules. No one appeared from the Department, though personal hearing letter was sent to them.

FINDINGS:

4. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made by the appellant including during personal hearing.

5. The issue to be decided in the present case is as to whether the

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5

appellant was eligible for Cenvat credit of goods returned back as rejected by the buyer, in terms of Rule 16 of the Rules even though details of its further processing are not known/available, or not.

6. I find that the appellant vide their Invoice No. 001/02.04.2012 had sold 2000 Nos. of Auto Engine Valves valued at Rs. 99,000/- involving Central Excise duty of Rs. 12,237/- (BED: 11,880/- + Ed. Cess 238/- + SHE Cess 119/-) to M/s. Eaton Industrial System Pvt. Ltd., Ahmednagar. Like wise, the appellant vide Invoice No. 195/29.03.2012 had sold 4000 Nos. of Auto Engine Valves valued at Rs. 1,98,000/- involving Central Excise duty of Rs. 24,473/- (BED 23760/- + Ed. Cess 475/- + SHE Cess 238/-) to M/s. Eaton Industrial System Pvt. Ltd., Ahmednagar. The buyer vide their Invoice No. 1129 dated 25.04.2012 had returned all 6000 Auto Engine Valves valued at Rs. 2,97,000/- involving Central Excise duty of Rs. 36,709/- to the appellant with remark: "Rejected material return to party ref. your invoice No. 001/02.04.2012 & 195/29.03.2012.

6.1 In the backdrop of above, let us examine provisions of Rule 16 of the Rules as detailed below:

Rule 16. Credit of duty on goods brought to the factory. -

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under subsection (2) of section 3 or section 4 or section 4A of the Act, as the case may be.

Explanation. - The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.

(3) If there is any difficulty in following the provisions of sub-rule (1) and subrule (2), the assessee may receive the goods for being re-made, refined, reconditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Commissioner.

6.2 On reading of the above provisions, it is found that the goods on which duty had been paid at the time of removal and brought back to factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and they would be entitled to take Cenvat credit of the duty paid as if such goods are received as inputs under CCR,2004 for making final-products.



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6.3 I find that the goods were rejected on the ground of quanlity control but the appellant failed to establish as to what had happened to the rejected goods and whether these goods were re-made or refined or re-conditioned or any other treatment was given to it. It is not on record that the appellant had re-made, refined, re-conditioned and the said rejected goods received were sent back to the said buyer or to some one else.

6.4 The said returned goods are required to be treated as inputs and Cenvat credit will be admissible only when the appellant is able to establish that these goods were subjected to further processing and final products were cleared on payment of Central Excise duty. The appellant is required to show that these goods were further used or subjected to further processing and the appellant failed to establish any such thing. In absence of any such records, I concur with the findings of the lower adjudicating authority.

6.5 In view of above, I hold that the appellant is not eligible to take Cenvat credit in this case and accordingly, reject the appeal and uphold the impugned order.

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

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

सत्यापित. 611110 (स. चोरांचा) अमीक्षक (अपोल्स)

(कमार सतीष) आयुक्त (अपील्स)

By R.P.A.D. To.

M/s. AVR Valves Pvt. Ltd., Unit-2, Plot No. 2317-2318 & 2329, GIDC, Metoda, Taluka: Lodhika, Dist.: Rajkot	मे. एवीआर यूनिट-॥, प्ल जी.आई.डी.र
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मे. एवीआर वाल्वस प्राइवेट लिमिटेड, यूनिट-II, प्लॉट सं. २३१७-२३१८ एवं २३२९, जी.आई.डी.सी. मेटोडा, तहसील: लोधीका, जिल्ला: राजकोट.

## Copy to:

 The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad der Kunder miller Miller Pt.

- The Commissioner, GST & Central Excise, Rajkot.
- The Assistant Commissioner, GST & Central Excise, Division I, Rajkot.
- A) The Superintendent, GST & Central Excise, Range-III, Rajkot.
- 5) Guard File.

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