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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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं. / O.I.O. No.	दिनांक / Date
	V2/284/RAJ/2017	45/ADC/RKC/2016-17	21.03.2017

31/03/2017
20/3/2017

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

RAJ-EXCUS-000-APP-214-2017-18

आदेश का दिनांक / Date of Order:	06.02.2018	जारी करने की तारीख / Date of issue:	08.02.2018
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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 / गन्धिधाम द्वारा उपरोक्त ज्ञापित मूल आदेश से उत्पन्न /
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 Appellants & Respondent :-**
I.M/s. Metallic Industries, Prop. D.K. Patel, B/H Gokuldham, Opp : Dhara Gas Godown P.O. No. 1276 Gondal Road, Rajkot,-360004

इस आदेश(अपील) से व्यक्त कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग 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 वेच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग (विशेष) की विशेष क्षेत्रीय पीठ, , द्वितीय तल, बहामनी भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

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

(iii) अपील विभाग के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधायनी, 2001, के नियम 6 के अन्तर्गत निर्धारित फॉर्म एन-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, प्रयाज की सीमा और लगाया गया जुर्माना, सपा 5 लाख या उससे कम, 5 लाख सपा या 50 लाख सपा तक अथवा 50 लाख सपा 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 विभाग की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वोच्च बैंक के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील विभाग की शाखा स्थित है। न्यूनतम आदेश (एट्टी आदेश) 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 विभाग के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत निम्नलिखित विधायनी, 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 करें। इनमें से एक प्रति प्रमाणित होनी चाहिए और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, प्रयाज की सीमा और लगाया गया जुर्माना, सपा 5 लाख या उससे कम, 5 लाख सपा या 50 लाख सपा तक अथवा 50 लाख सपा 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 विभाग की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वोच्च बैंक के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील विभाग की शाखा स्थित है। न्यूनतम आदेश (एट्टी आदेश) 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) वित्त अधिनियम, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत दंडों की नयी अवधि, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा S.T.-7 में की जा सकती एवं उसके साथ अनुबन्ध, केन्द्रीय उत्पाद शुल्क अध्याय अनुबन्ध (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और अनुबन्ध दंडों सहित अनुबन्ध अध्याय अनुबन्ध, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील 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 अपील न्यायाधिकरण (सेस्टाट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35EE के अंतर्गत, जो कि वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करते समय उत्पाद शुल्क सेवाकर का जमा के 10 प्रतिशत (10%), जब मात्र 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 अपेक्षित देय प्रति 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) सेलैबट जमा की गई मात्रा प्रति
 (iii) सेलैबट जमा निवाराधारी के नियम 6 के अंतर्गत देय रकम
 - बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील न्यायाधिकरण के द्वारा विचारणीय मामला नहीं एवं अपील को लागू नहीं होवे। /
 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 पारंगम के अंतर्गत अर्पण करिए, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त विभाग, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद भवन, 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 परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह में या भंडारण में मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र 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) मात्र के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे मात्र के विनिर्माण में प्रयुक्त कच्चे मात्र पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो मात्र 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 मात्र 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) मुनिर्णित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो बुट्टी क्रेडिट इस अधिनियम एवं उसके विभिन्न प्रावधानों के तहत लागू की गई है और ऐसे आदेश जो अनुबन्ध (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई तारीख अथवा अन्तर्गत पर वा बाट में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
 (v) उपरोक्त आवेदन की दो प्रतियां धारा सहाय EA-8 में, जो कि केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्णित है, इस आदेश के संशोधन 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 साक्ष्य 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 अदायगी की जानी चाहिए।
 जहाँ संलग्न रकम एक लाख रुपये या उससे कम है 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 होने हुए भी कि विवाद पक्षों के बीच से बचने के लिए परामर्शित अपील 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 Appellate 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) न्यायाधिकरण न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं इच्छित आदेश की प्रति पर निर्धारित 8.50 रुपये का न्यायालय शुल्क टिकट 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. 8.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.
 (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमवली, 1982 में शामिल एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान आकर्षित किया जाना 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 अपील न्यायाधिकरण को अपील दायित्व करने से संबंधित साक्ष्य, विस्तृत और नवीनतम प्रावधानों के लिए, अपील 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. Metalic Industries, Prop. D K Patel, B/H Gokuldharm, Opp Dhara Gas Godown , P.O. No. 1276, Gondal Road, Rajkot Gujarat (*hereinafter referred to as 'the Appellant'*) filed the present appeal, against the Order-in-Original No.45/ADC/RKC/ 2016-17 dated 21.03.2017 (*hereinafter referred to as 'the impugned order'*) passed by the Additional Commissioner, Central Excise, Rajkot (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The brief facts of the case are that the Appellant during the period from 2002-03 to 2005-06 manufactured and cleared their finished goods, namely, Maize Milling Machine, Grinding Plates and other Parts on payment of duty and exported the goods under claim of rebate. Appellant had also availed Cenvat Credit during the period. Acting upon-intelligence that the Appellant was indulging in wrong availment of Cenvat Credit of inputs used in exempted goods, search was carried out by the officers of the Central Excise Divisions-1, Rajkot on 22.08.2005 and statements of Proprietor of the Appellant were also recorded. Investigation culminated into issuance of Show Cause Notice dated 01.03.2007, which proposed recovery of availed Cenvat Credit on inputs used in manufacture of the exempted goods which Appellant cleared for export on payment of duty and availed Rebate after being exported. The Show Cause Notice alleged that Appellant had paid Central Excise duty by wrongly classifying the Maize Milling Machine, an exempted finished goods and no cenvat credit of inputs used in the manufacture of this exempted finished goods was available to them. The adjudicating authority vide order dated 31.03.2008 confirmed the demand by disallowing Cenvat Credit of Rs.6,33,271/- along with interest and imposed equal penalty. Being aggrieved with the order, Appellant preferred Appeal before Commissioner (Appeal), Central Excise, Rajkot who vide order No. 253/ 2008/ COMMR (A)/RAJ dated 05.09.2008 set aside the order dated 31.03.2008 and remanded the case back to the Adjudicating authority for determination of classification of the exported finished goods. The Appellant aggrieved with the said Order-in-Appeal, preferred an Appeal before the CESTAT. Hon'ble CESTAT vide order No. A/ 11090/ 2016 dated 28.09.2016 remanded the case back to the lower adjudicating authority for deciding issues raised and allegations set out in the show cause notice. The lower adjudicating authority vide impugned order decided the matter afresh and again disallowed Cenvat Credit of Rs.6,33,271/- along with interest under Section 11A (1) and Section 11AB of the Central Excise Act, 1944, (*hereinafter referred to as "the Act"*) read with Rule 12 of the Cenvat

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Credit Rules, 2002 and Rule 14 of the Cenvat Credit Rules, 2004 and also imposed penalty of Rs.6,33,271/- under Section 11AC of the Act with Rule 13 of Cenvat Credit Rules, 2002 and Rule 15 of the Cenvat Credit Rules, 2004.

3. Being aggrieved with the impugned order, Appellant preferred the present appeal on the following grounds:-

(i) Appellant has manufactured Casting and Cast articles classifiable under Chapter 73 and not Maize Machine and Parts as observed by the lower adjudicating authority.

(ii) Department has neither produced any evidence to prove the allegation nor proposed to modify the classification of the goods cleared by them. Therefore demand confirmed by classifying the finished goods under Chapter 84 is not justified. The adjudicating authority in his order has not discussed the investigation carried out and what are the evidences to prove the allegation.

(iii) Rebate is sanctioned by the proper officer which is not appealed; the rebate was sanctioned on the ground that the products are classifiable under Chapter 73; that department has not challenged the classification claimed therein; that cenvat credit availed on inputs which are used in the said exported finished goods under rebate, classification of which is not challenged and hence appellant has correctly availed cenvat credit; that by availing Cenvat Credit appellant has foregone the exemption available to the finished goods; that Rebate is also available otherwise under Notification 21/2004-CE (NT) dated 06.09.2004 as Cenvat Credit is availed for input used in manufacturing of exported final products.

(iv) Availment of Cenvat credit and clearance of final product was known to the department and therefore, demand is barred by limitation and penalty not imposable on the above grounds.



4. Personal hearing in the matter was attended by Shri Paresh Sheth, Advocate on behalf of the Appellant who reiterated the grounds of Appeal and also submitted that Hon'ble CESTAT has directed in impugned order to decide in lines of SCN; that there is no issue of classification raised in the SCN; that the impugned order can't travel beyond SCN, more so, when Hon'ble CESTAT has specifically directed however, adjudicating authority in the impugned order has decided classification and then rejected Cenvat Credit, which is not correct, legal

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& proper.

FINDINGS

5. I have carefully gone through the facts of the case, Hon'ble CESTAT's orders, appeal memorandum, written as well oral submissions of the Appellant and records of personal hearing. The issue to be decided in the matter is whether adjudicating authority is right in holding that finished exported goods was classifiable under CETH 84379090 attracting NIL rate duty and hence Appellant was not eligible to claim CENVAT credit of inputs used or not.

6. I find that Appellant has contested the impugned order on two grounds (i) the Adjudicating authority has travelled beyond the scope of show cause notice as change of classification of finished goods was not proposed and also no evidence was/is produced in this regard (ii) Rebate on exported finished goods was sanctioned by the proper officer, which was not challenged and hence Classification of the exported finished goods stands accepted.

7. I find that the show cause notice was based on the search carried out by the departmental officers under Panchnama proceedings and proprietor of the Appellant, Shri Damjibhai Khodabhai Patel, under the Panchnama dated 22.08.2005, has categorically accepted that they were exporting finished goods, namely, (i) 1A Grinding Machine classifiable under Chapter Heading No.84043290 and (ii) 2A Grinding Machine classifiable under Chapter Heading No. 84043290. I also find that Proprietor of the Appellant in his statement dated 22.08.2005 has accepted that they were manufacturing 1A Milling Machine and 2A Milling Machines, which were being used for Grinding & Milling of Maize into Corn Flour. In his statement dated 30.11.2005, he again confessed the manufacturing of milling machines and accepted the correct classification of Machines under Chapter Sub Heading No. 84379010 / 84379090 attracting NIL rate of duty. Thus, investigation by the department was directed towards the issue of classification and show cause was issued denying Cenvat credit based on this proceedings & evidences which was properly incorporated and discussed along with Chapter Note 7 of Chapter 84 of the Central Excise Tariff Act (*hereinafter referred to as "CETA, 1985"*) while proposing the change in classification to deny CENVAT credit availed by the Appellant. Thus, I find no merit in the argument of the Appellant that the Adjudicating Authority has travelled beyond the scope of Show Cause Notice. I further find that appellant has not contested the content of Panchnama and Statements of the Proprietor of

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Appellant evidencing manufacturing Milling Machines meant for Milling and Grinding of Maize by the Appellant. Appellant has also not contested the classification of Maize Mill Machine discussed by the Adjudicating authority but challenged the re-classification of finished goods by denying that no 'machines' were manufactured by them. Appellant submitted that they were manufacturing only Casting and Cast articles which is in contradiction to the evidences before me e.g. Panchnama and Statements wherein it is accepted by the proprietor of the Appellant that Appellant manufactured and exported 1A Milling Machines and 2A Milling Machines. Appellant has rebutted these evidences by simple one line submission that they were manufacturing only Castings and Cast articles without adducing any evidence. I find that Hon'ble CESTAT in the case of M/s. Bharat Enterprises reported as 2002 (139) ELT 321 (Tri-Del) as under:-

"6. This Rule 2(a) extends the scope of a heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished subject to the condition that it has the essential character of the complete or finished article. The Adjudicating Authority has given a specific finding that the product in question had the essential character of the Milling Machine which was not controverted by the Appellants by adducing any evidence. Even in the present appeal, they have not rebutted the finding of goods having the essential character of the finished die by bringing any evidence on record. The Appellants have only contended that semi-finished die is not marketable. The product in question is held chargeable to excise duty by virtue of the provisions of Rule 2(a) of the interpretative Rules according to which any reference to goods in a Tariff Heading shall include a reference to incomplete or unfinished goods having the essential character of the finished goods. It is not the case of the Appellants that die/mould is not marketable. Accordingly we hold that the goods in question are chargeable to Central Excise duty and uphold the demand of duty. However, we agree with the learned Advocate that no penalty is imposable in view of the facts and circumstances of the case. Accordingly the penalty is set aside."

7.1 I, therefore, find that the argument of the Appellant that they were not manufacturing Mill Machines advanced by the Appellant are feeble to justify their claim especially when all other evidences are on the other side as discussed hereinabove. Therefore, I hold that Milling machines were manufactured and exported by Appellant by declaring it as Castings as Cast articles. Appellant has also not contested their plea with alternate classification for Milling Machines and contested the product itself and hence classification of exported goods under CETH 84378090/ 84379090 discussed by the Adjudicating authority in the impugned order hold good.

7.2. I also find that excisable goods classifiable under CETH 8437 attracts NIL rate of duty and hence no cenvat credit of Excise duty paid on inputs used for manufacture of such finished goods is available to the appellant and hence I find no reason to interfere with the impugned order.

8. Appellant argued that their rebate claims were sanctioned and not appealed against by the department and hence classification of the exported goods stands accepted. I find that sanctioning of Rebate claim by the Jurisdictional Authority on the basis of self assessed documents has nothing to do with the physical verification of Products carried out during the search and hence classification of finished products suppressed by the Appellant and fact was revealed only during the course of search. I find that Hon'ble CESTAT Mumbai, in the case of M/s. Eminence Equipment Pvt Ltd reported as 2015 (330) E.L.T. 344 (Tri. - Mumbai) held as under:-

"9.2 The appellants have submitted that they have exported certain consignments of the goods in question and even in the export consignments they have declared the same classification and rate of duty and no objection was raised by the Revenue. Hence the department itself has accepted the classification. We do not see any force in this argument. The goods exported from India are not charged to excise duty. If the goods are exempted, no duty is chargeable. Even if the goods are chargeable to duty, either goods are exported under bond where no duty is levied or duty paid at the time of export is refunded in the form of rebate, thus overall no duty is collected by Revenue for export goods. Thus, in connection with export, the leviability of the duty is of no consequence. Moreover, the Central Excise officer at the time of export does the function of Customs officer and the examination is only to check that the goods being stuffed in the container or packages are as per the packing list, invoice, etc. The officers are not expected to examine the issues raised in the present show cause notice. The appellant's contention is therefore rejected."

[Handwritten signature]

8.1 Therefore, I am of the view that the argument of sanctioning Rebate is mere a technical plea to contest the demand and bears no merit. I find that appellant is registered assessee and is well aware about the rules, regulations and liability under the law. Therefore, classification of a machine as Castings and article do not justify their bonafide and hence I hold that extended period is rightly invoked.

8.2. I also find that Appellant has wrongly availed the Cenvat Credit on inputs used for manufacture of finished goods attracting nil rate of duty and not proved their bonafide as discussed hereinabove. Therefore, adjudicating authority is

bonafide as discussed hereinabove. Therefore, adjudicating authority is correct in imposing penalty under Rule 13 of Cenvat Credit Rules, 2002 and Rule 15 of the Cenvat Credit Rule, 2004 read with provisions of Section 11AC of the Act.

9. In view of the above discussions, I reject the Appeal filed by the Appellant and uphold the impugned order.

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

9.1 The appeal stands disposed off in above terms.

(कुमार संतोष)
6/2/2018
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Metallic Industries, B/H Gokuldharm, Opp Dhara Gas Godown , P.O. No. 1276, Gondal Road, Rajkot	मेसर्स मेटलीक इंडस्ट्रीज गोकुलधम के पीछे धारा गेस गोडाउन के सामने पी ओ नं १२७६ गोंडल रोड , राजकोट .
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Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & C Excise Division-I, Rajkot.
4. Guard File.