::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL 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 / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date:
	V2/53/BVR/2018-19	AC/JND/ABNL/01/Prov.Assmt./2017-18	3/14/2018

ख अपीलआदेशसंख्या(Order-In-Appeal No.):

BHV-EXCUS-000-APP-160-2019

आदेश का दिनांक / Date of Order: **18.06.2019** जारी करने की तारीख / Date of issue: **19.06.2019**

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the **Appellants** & Respondent :-

1. **M/s Aditya Birla Nuvo Ltd (Now amalgamated with Grasim Industries Limited), Junagadh-Veraval Highway, Veraval-362266Dist.Gir SomnathGujarat.**

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

(A सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय 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) वर्गीकरणमूल्यांकनसेसम्बन्धितसभीमामलेसीमाशुल्क,केन्द्रीयउत्पादनशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणकीविशेषपीठ,वेस्टब्लॉकनं2,आरकेपुरम,नईदिल्ली,को कीजानीचाहिए।/
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 अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-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 dutydemand/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 अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-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/

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज 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 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 Commissionerauthorizing 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 अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों 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 अपीलीय प्राधिकरण 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 अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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 :
(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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/
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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers variousnumbers 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.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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 अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित 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 अपीलीय प्राधिकारी को अपील दाखिल करने मे संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER IN APPEAL ::

M/s. Aditya Birla Nuvo Limited (Unit- Indian Rayon), Indian Rayon Compound, Veraval (hereinafter referred to as 'appellant') filed present appeal against Order-In-Original No. AC/JND/ABNL/01/Prov.Assmt./2017-18 dated 14.3.2018 (hereinafter referred to as "the impugned order") passed by Assistant Commissioner, Central GST Division, Junagadh (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the appellant had status of LUT and was registered with LTU, Mumbai. The appellant vide their letters dated 8.3.2016 and dated 15.3.2017 requested for provisional assessment of their excisable goods 'Viscose Filament Yarn and waste' manufactured and cleared from their unit on stock transfer basis to their depots during April, 2016 to March, 2017 and April, 2017 to June, 2017 respectively, under Rule 7 of Central Excise Valuation Rules, 2002 (hereinafter referred to as 'the Rules) on the ground that value of clearance of the said goods could not be ascertained at the time and place of removal. Deputy Commissioner of Central Excise, LTU, Mumbai allowed provisional assessment of duty vide Order No. LTU/MUM/CX/GLT-6/B-2/ABN(IR)/VER/104/13 dated 31.3.2016 and dated 29.3.2017.

2.1 Appellant vide their letters dated 13.10.2017, dated 12.1.2018 and dated 15.2.2018 furnished final value of the said goods and original challans evidencing payment of differential central excise duty and interest with a request to finalize the assessment of duty for the period April, 2016 to March, 2017 and from April, 2017 to June, 2017. The appellant submitted that quantity discount on lifting of specific quantity of material was given to certain customers post issuance of central excise invoice through credit notes, however, they have discharged their central excise duty liability and have not taken into account the post invoice quantity discount and thus they have discharged central excise duty liability in excess which is refundable to them. The appellant requested to refund central excise duty of Rs. 75,70,090/- and furnished soft copy of invoice-wise and month-wise details of quantity discount offered to customers. The query memos were issued by the department vide letters dated 15.12.2017, dated 1.1.2018 and dated 18.1.2018 to submit quantity discount policy and documentary evidence to show that quantity discount policy was known to the customers on or before clearance of goods from depots; to submit original copies of credit notes and copies of corresponding invoices for FY 2016-17 and FY 2017-18 (up to June, 2017), copies of documents showing the transaction of the amount of credit notes to the corresponding customers and to submit certificate of the Chartered Accountant and copy of Balance Sheet for FY 2016-17 and FY 2017-18 (up to June, 2017) showing that excess duty has not been passed on to their customers and/or any other person. The lower adjudicating authority vide impugned order finalized the

assessment of the said goods and rejected the refund claim on the ground that the appellant had not informed the department about quantity discount offered to their customers at the time of request of provisional assessment; that no documentary evidences such as purchase order or policy agreement between them and their customer to substantiate that their customers were aware about the quantity discount policy at the time of sale was produced by the appellant; that the appellant failed to submit all credit notes along with corresponding invoices; that the appellant failed to submit certified copy of Balance Sheet of FY 2016-17 and FY 2017-18 (up to June, 2017) showing the refund amount as receivables.

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

(i) The lower adjudicating authority has mechanically rejected submissions of the appellant; that the lower adjudicating authority has not taken into account various case laws cited and relied upon by the appellant and has not been distinguished the case laws; that the impugned order passed without issuing a show cause notice which is illegal since no provision in the Central Excise Act, 1944 provides adjudication without issuance of Show Cause Notice; that the appellant relied on decisions of the Hon'ble Supreme Court in the case of Madhumilan Syntex Pvt. Ltd. reported as 1989 (35) ELT 349 (SC) and Golak Patel Volkart Limited reported as 1987 (28) ELT 53 (SC) to substantiate their contentions.

(ii) The appellant at the time of request for provisional assessment, stated that Yarn and its waste was being sold through depots situated in different zones of India and the transaction value of the said goods was not known at the time of removal of goods from the factory gate. Hence, question of informing the department about the quantity discount offered to their customers at the time of request for provisional assessment could not have arisen.

(iii) During various correspondences exchanged with the department appellant stated that although they do not have any written policy of post invoice discount offered, the customers were well aware about such policy before purchase of goods and submitted declaration of the customers in this regard. It was also clarified that all the customers were communicated verbally about post invoice discount offered by the appellant. It is a well settled principle that discounts known prior to removal of goods has to be allowed as deduction from sale price of the goods. The appellant relied on decisions of the Hon'ble Supreme Court in the case of Bombay Tyres International Pvt. Ltd. reported as 1984 (17) ELT 329 (SC), Madras Rubber Factory reported as 1995 (77) ELT 433 (SC) and Addison & Co Ltd. reported as 2016 (339) ELT 177 (SC).

(iv) The appellant had issued 42,889 invoices and 1,228 credit notes relating to post invoice discount during the period under dispute. It may be appreciated that submission of all credit notes and invoices would be very voluminous and it would be practically impossible to submit copies of all credit notes and invoice and hence the appellant had submitted sample copies of credit notes and invoices. Further, appellant had submitted soft copy of month-wise details of Central Excise duty involved in the credit notes raised due to post invoice discount and informed the department about such submission vide letters dated 12.1.2018 and 15.2.2018. The said statement contained details of all the credit note numbers, date, net value and Central Excise duty involved and corresponding invoice numbers. Hence, for processing of refund claim and finalization of provisional assessment, it would be immaterial to submit copies of all invoices and credit notes. If the department had a specific query with regard to any of the credit notes/invoices, the same could have been communicated to the appellant and the appellant would have provided the same. However, rejecting the refund claim on this ground without giving the appellant an opportunity to represent their case is not proper.

(v) Section 4(1)(a) of the Central Excise Act, 1944 states that the value of goods on which the duty of excise is chargeable where the buyer and seller of goods are not related and the price is the sole consideration be the transaction value. In the present case, buyer and seller are not related and price is the sole consideration, the transaction value will be the value liable to excise duty. Further, there is no requirement that such transaction value must be same for all customers of the appellant. Hence, transaction value can be different for different customers based on the commercial considerations. The appellant relied on decision in the case of Ind-Sphinx Precision Pvt. Ltd. reported as 1994 (74) ELT 683 (Tribunal) wherein the Hon'ble CESTAT has held that trade discount need not be uniform but may vary from dealer to dealer, place to place and from time to time depending upon commercial exigencies.

(vi) The appellant has submitted certificate of Chartered Accountant certifying that for FY 2016-17 and FY 2017-18 (up to June, 2017), the excise duty on post invoice discount has not been recovered by the appellant from their customers; that the said amount is lying in the books of accounts under the head 'Excise duty claim recoverable' and that the refund amount claimed do not form part of the finished goods. The appellant vide letter dated 12.1.2018 submitted copy of ledger 'Excise duty claim recoverable. The appellant relied on decision in the case of Saint Gyproc India Ltd. reported as 2016 (335) ELT 120 (Tri. – Del.) and submitted that duty amount on account of discount has not been recovered from the dealers/customers and thus, the appellant had not passed on the duty incidence to the dealers/customers or any other person. The appellant had also submitted certificates from customers certifying that

they have not availed cenvat credit of Central Excise duty charged by the appellant in their invoices and that final payment on account of goods have been made to the appellant after adjusting the amount mentioned in the credit notes raised by them.

4. Personal Hearing in the matter was attended to by Shri Ashok Herma, AGM – Indirect Taxation who reiterated the grounds of appeal and submitted that their customers were aware of discount policy; that credit notes had included Central Excise duty portion and hence, refund is required to be allowed; that the judgments of the Hon'ble Apex Court in the cases of Bombay Tyres International Pvt. Ltd. reported as 1984 (17) ELT 329 (SC) and MRF Ltd. reported as 1995 (77) ELT 433 (SC) are applicable in this case and hence, appeal may be allowed.

FINDINGS: -

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and oral submissions made during the personal hearing. The issue to be decided is whether the impugned order, in the facts of this case, are:

(i) Whether final assessment of goods ordered by rejecting deduction on account of quantity discount offered to the customers, from the assessable value of goods cleared to various dealers/customers during FY 2016-17 and FY 2017-18 (up to June, 2017) is correct or not; and

(ii) whether rejection of refund claim of excess duty paid by the appellant arose as a result of payment of Central Excise duty by the appellant without considering the deduction of amount of quantity discount, is correct or not.

6. It is a fact on record that the appellant vide their letters dated 8.3.2016 and dated 15.3.2017 requested for provisional assessment of their excisable goods 'Viscose Filament Yarn and waste' manufactured and cleared from their unit on stock transfer basis to their depots during the period from April, 2016 to March, 2017 and from April, 2017 to June, 2017 under Rule 7 of the Rules on the ground that value of clearance of the said goods could not be ascertained at the time and place of removal. I find that there was no sale of goods at the time of removal of goods from the factory gate to their depots and transaction value of the goods was not available. In such a situation, central excise duty would be payable in terms of Rule 7 of the Rules read with Section 4(1)(b) of the Central Excise Act, 1944 and thus, Appellant resorted to provisional assessment which was also allowed by the jurisdictional Deputy/Assistant Commissioner of Central Excise.

6.1 The dispute arose when the appellant submitted the details and documents for finalization of provisional assessment and simultaneously filed refund claim on the

ground that they had paid excess duty of Rs. Rs. 75,70,090/- for the clearances of the said goods during FY 2016-17 and FY 2017-18 (up to June, 2017), without considering deduction of quantity discount from the assessable value of goods sold to their dealers/customers. The lower adjudicating authority denied deductions of such discounts from the assessable value and finalized the assessments and rejected refund of differential central excise duty claimed by the appellant.

7. Appellant has contended that the impugned order was passed without issuing show cause notice. I find that it is on record that the appellant was specifically requested vide query letters issued by the department to submit certain documents in order to substantiate their refund claim failing which the refund can't be sanctioned. Hence, this plea of the appellant is not correct and hence, not acceptable.

7.1 Appellant has also contended that the customers were well aware about their discount policy before purchase of the goods and submitted declaration of few customers in this.regard; also that discounts known to the customers prior to removal of the goods has to be allowed as deduction from sale price of the goods. I find that the appellant was specifically requested by the lower adjudicating authority to provide copy of discount policy for FY 2016-17 and FY 2017-18, however, the appellant failed to produce the same. Hence, I find that the appellant failed to provide any written discount policy for FY 2016-17 and FY 2017-18 before the proper officer and also failed to produce evidences before him that they have verbally informed their customers about the quantity discount structure and to the effect that quantity discount was uniformly offered to all the customers and the customers were knowing about the quantity discounts prior to removal of the goods by them. In view of this factual position, I find that the goods were cleared to the dealers/customers on invoice value as per effective price list at the material time where there is no mention of quantity discounts at all. I also find that the appellant at the time of request of provisional assessment of the said goods vide their letters dated 8.3.2016 and dated 15.3.2017 had specifically stated that the transaction value of the goods was not known at the time of removal of the goods from factory gate to their depots. The appellant has now submitted copy of declarations given by few of their customers stating that they were aware about the quantity discount at the time of removal of the goods from depot to their premises, however, I find that the submission of these declarations from few selected customers is an afterthought to negate the position of law and cannot be accepted, also because the declarations are undated declarations and hence, cannot be considered as valid evidences to establish that the customers were knowing about the quantity discounts on or before removal of the goods from their depots. Hence, the arguments of the appellant fail on all counts and I am not able to accept their argument that quantity discounts were known to dealers/buyers (non-related parties) at the time

of removal of the goods from the depots of the appellant.

7.2 The appellant relied on decisions of the Hon'ble Supreme Court in the case of Bombay Tyres International Pvt. Ltd. reported as 1984 (17) ELT 329 (SC), Madras Rubber Factory reported as 1995 (77) ELT 433 (SC) and Addison & Co Ltd. reported as 2016 (339) ELT 177 (SC). I find that reliance on the said decisions is of no help to the appellant as all these decisions clearly held that if discounts are known to the customers at the time of removal of goods and incidence of duty has not been passed on, then only these discounts would not form part of the assessable value. In the present cases, the dealers/customers of the appellant were not aware about the various quantity discounts and the goods were cleared from depots to their dealers/customers on normal transaction value determined in terms of Rule 7 of the Rules and therefore, claim of the appellant that they had later on passed on quantity discounts through credit notes cannot be accepted in view of the factual and legal position of this case.

8. The lower adjudicating authority has also held that the appellant has not submitted copy of Balance Sheet for FY 2016-17 and FY 2017-18 showing the refund amount as receivables. The appellant contended that they have submitted certificate of Chartered Accountant certifying that for FY 2016-17 and FY 2017-18 (up to June, 2017), the excise duty on post invoice discount has not been recovered by the appellant from their customers. I find that the certificate dated 12.1.2018 given by the Chartered Accountant cannot be relied upon in view of the fact that the appellant has no written discount policy and it changes from month to month and the appellant has failed to establish that their dealers/customers were aware of quantity discounts offered by the appellant prior to lifting of the goods and that the discounts were given to all customers uniformly, as per their approved policy, post removal of the goods through credit notes. In such a situation, I am of the considered view that the appellant was required to produce party-wise ledger showing accounting entries at the time of removal of goods and at the time of issuance of credit notes as the appellant had initially received sale proceeds on the basis of invoice value. However, the appellant had neither produced party-wise ledger nor produced copy of audited Balance Sheet for FY 2016-17 and FY 2017-18 (up to June, 2017) showing refund amount as receivables and hence, there is sufficient reason to follow provisions under Section 12B of the Act that the incidence of Central Excise duty (for which refund was claimed) has been passed on to the dealers/customers of the appellant and is not borne by the appellant.

9. I find that the impugned order finalizing assessment of the said goods in terms of Rule 7 of the Rules rejecting the claim of the appellant for deduction of quantity

discounts from the assessable value and rejection of refund claim of excess Central Excise duty is legal, proper and correct.

10. In view of above factual and legal position, I uphold the impugned order and reject this appeal of the appellant.

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

11. The appeal filed by the Appellant is disposed off in above terms.

18/6/2019
(कुमार संतोष)
आयुक्त (अपील्स)

18/6/19

By Speed Post

To,

M/s. Aditya Birla Nuvo Limited (Unit- Indian Rayon), Indian Rayon Compound, Veraval, District – Junagadh – 362 266	मे. आदित्य बिरला नूवो लिमिटेड (यूनिट – इंडियन रायोन), इंडियन रायोन कम्पाउण्ड, वेरावल, डिस्ट्रिक्ट – जूनागढ़ – ३६२ २६६

प्रति:

(1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु ।

(2) आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।

(3) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर मण्डल, जूनागढ़ को आवश्यक कार्यवाही हेतु।

(4) गार्ड फ़ाइल