

- प्रमानकार्क (क्योर) का कामाको , एक १५ के । क्योर के एक अस्वरकः OAR THE PRINCIPAL CONDUSTIONER SAPPLALS, OF ACENTRAL LACISE.

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પીન્મરનોતામ, કેગાનગમુ∌ (અર્જિ), સાતાજા કુર્યો છે. ત

sans, dilike **Sheri Kurer Sentosh**, iki isa pali tambika isalah sangkeria), kajas t

ा । अस्तर प्राप्त र प्राप्त र प्राप्त स्थान । अस्तर क्षा अस्तर केलीन सम्बाद शुक्तर नेपादक कर प्राप्ति कर ।

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हत भारत्य स्वापन के समान कहा जाए समानाच्या नाम भाषा 1000 ध्राप्त । आध्यापन व सम्बद्ध भागा स्वापन प्रतास है है स्वापन के प्रतास के सम्बद्ध के प्रतास के सम्बद्ध

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राते । प्रेरपंतर १८६१ के एक प्रवास विकेश के बार माने प्रतिकार प्रकार के प्रवास के साथ प्रतिकार के किया है के प का करेक प्रकार की जिसे के प्रविक्त के एक समाने क्षेत्र का प्राप्त कर के प्रविक्ष के किया की जिसे के 4.11

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्राहित को तो भारतीय है जिसे कि सिंह कि का का क्ष्माना की पान भारता को कारण का का का का को को को को को को की हैं। अपने को को को को को की पान का मान नाम मान नाम मान का मान His substitution of the same of the sam 1-1-

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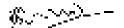
্তি হন যে বিভাগ বিভাগ কৰিছিল কৰিছিল সাহিত্যক কৰিছিল সাহিত্যক কৰিছিল কৰ :11

त्त्र स्वापन क्रिकेश है असे के देश कार्य के करिया किया है के अपने कार्य के अपने के लेगा की विभाग कार्यात अक्षेत्रक हुए के के किया प्रकार कुल कार्य किया के पार्ट के किया किया के स्वाप के किया कि किया कार्य अपने कार्य अपने कार्य कार्य के अध्यानक क्षेत्रक क् :::.

:: ORDER-IN-APPEAL ::

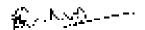
The present appeal No. V2/2/EA2/BVR/2018-19 has been filled by Assistant Commissioner, CG57 Division, Susendranagar on behalf of the Commissioner, Control G51 & Central Excise, Bhavnagar (heromafter referred to as "Department") in pursuance of the direction and authorization issued under sub-Section (2) of Section 35E of the Central Excise Act, 1944 against Order-in-Original No. 16/Demand/2018-19 dated 11.4.2018. (hereinafter referred to as "impugned order") passed by the Assi. Commissioner, Central Goods & Service Tax Division, Surend: anagar (hereinafter referred to as "lower adjubitating authority") in the case of W/s Mepro Pharmacouticals Pvt Ltd (Unit II). Surendranagar (hereinafter referred to as "Respondent").

- 2. The brief facts of the case are that the Respondent, holding Central, Excise Registration No. AABCM41776XM001, was engaged in the manufacture of P & P Medicaments falling under Chapter 30 of the Central Excise Tariff Act. 1985. During audit of the records of the Respondent, it was found by Audit that the Respondent had availed Cenvat credit of service tax gaid on various services. which were used in the manufacture of dutiable as well as exempted goods but the Respondent had not maintained separate accounts for receipt, consumption. and inventory of inputs and input services meant for use in the manufacture of i dutiable goods and exempted goods as envisaged in Rule 6 of the Convet Circlit. Rules, 2004 (hereinafter referred to as "CCR,2004"). Accordingly, the Respondent was altegedly required to pay an amount equal to 10% or 5% of value. of character of exemption groups during the period from 1.4.2007 to 31.10.2011. whereas stery reversed Convolucipalit of Rs. 1.29,3017- along with interest of Rs. 10,510/- on 16.1.2012, as informed by them to the jurisdictional Central Excise. Range Superintendent.
- 9.1 Show Cause Notice No. V/15-21/Drm/Hn/2012-13 dated 1.5.2012 was issued to the Respondent calling them to show cause as to why Rs. 12,87,262/-should not be recovered from them under Rule 14 of CCR, 2004 read with Section 11A(1) of the Central Excise Act,1944 (hereinafter referred to as 'Act') along with interest under Rule 14 of CCR, 2004 read with Section 11AC of the Act be imposed on them.
- 7.3 The above Show Cause Notice was adjudicated by the lower adjudicating authority vide the impugned order and dropped the proceedings initiated vide. Show Cause Notice dated 1.5.2012 molding that the Respondent had property



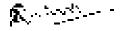
reversed Convat exacts attribute t = 0.655 . The blacks and therefore, domaind of amount equal to (0%) 50.07×10^{-1} and t broaded goods under Rule 6(3)(1) of 0.08, 2004 is not sustainable.

- 3. Tag impligned order ~ 0.000 ~ 0.000 Department and appeal was filled on various grounds. Later ~ 0.000
- The adjudicating account on a second policiting that since the entire Convar Credit on common input sociation strong relation to taxable as well as exempted services has been by it accounts to give assessee along with interest, the demand under Rule 5(3) of cool (co. 1). The sustainable iso far as the demand for the period 01.0%.2007 to 3.1 (co. 2) in a population.
- (ii) The Adjudicating Address (place above that in retying upon the amendment to Rule 6(3) of COS. 2004 by (but incompliant 1550). The said amendment was for the petitloment of penalog objects with the period from 19.09.2004 to 31.03.2008. In the present data the Iris in the resuled to assessee on 02.05.2017. The dispute arose only affect the present which the least the limit the assessee had been taking grantit of Convertion input the passes designed that the assessee had been taking grantit of Convertion input the passes designed accorded to the transfer of dutiable and exempted products without places as deas for their clearance of dutiable and exempted products without places as Robinsian accorded to the Finance Acc., 2010 is relevant in copping on the search corne by the adjudicating authority.
- (iii) The payment of an include, as indemnited under sub-rule (3A), the provisions of sub-rule are unally guest and aborefore, if the procedure set out in the said sub-rule is not followed, the refrect for proportional/full reversal at the behast of audit or on the assessment's commodition is not permissible. In such cases, the assessment corting to provide the the provisions of Rule 6(3)(6) or 6(3)(6) has no option but to pay an approximate applicable, on the value of the exempted goods and exempted in runor, his size case may be in Lemma of Rule 6(3)(6) itid and Department relief upon case law of Nicholas Pirama! (India) Ltd. reported at 2009 (244) E.L.: 3.75 (60m).
- (iv) Non-nampliance of the specialed procedures cannot be condoned as mere procedural tapse, the smuch as, the conoft and and procedures prescribed under fluid ((3A) of CCR, 2004 are substantive requirements for availing the benefit of Rule 6(3) (II) of CCR, 2004 and department relied upon case law of Tata Shoel and -2014 (333) STR 440 (Tri-Kulkatta). Since, the assessed has not followed the conditions and procedures mandated whose Rule 6(3A), they have no option except to pay an amount demanded in the Show Cause Nacco. Thus, the



actinuitisting authority has erred in Grapping the total demand of service tax amounting to Rs.12.87,2627- along with applicable interest and penalty.

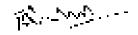
- 3.1 The Respondent vide letter dated 5.9.2018 submitted Memorandum of Cross Objections, inter-alia, submitting as under:
- The Department energy in taking pleak that the Respondent cannot opt for the option under Rule 6(3)(ii) merely because they had not submitted intimation under Rule 6(3A) to the Department. The submission of intimation enables the Department to the understand the option exercised by manufacturer for verification pergrave and it is uply for administrative convenience of the Department. This condition has no impact on amount of credit to be reversed by the manufacturer. Hence, it is submitted that hun submission of intimation cannot amount to non-eligibility to reverse credit as prescribed under Rule 6(3A) and relied woon following case laws:
- (a) Aster Pvt Ltd- 2016(43) STR 411;
- [15] Cranes E. Structural Engineers 2017 (347) ELT 112;
- ic) Bhingar Urban Co-op Bank (td- 2016 (41) STR 673;
- (d) Prinstige Modal System (f) Pvt Ltd: 2017(349) ELT 347.
- (ii) The issue is no longer resilintegra and the Hon'ble CESTAT has accepted the reversal of Convat credit under Rule 6(3)(iii) even when intimation was not fixed by the manufacturers as held in the following case taws:
- (a) Circn Orugs 在 Phayma Pvt Ltd 2016-TIOL-1415-CESTAT-MUM.
- (h) Sahyadri Starch & Jadustmal Pvt Ltd- 2016-TiQL-615-CESTAD-MUM.
- (iii) Rule 6(3A) provides manner of reverse, of Convet credit and lays down procedure to reverse the Cenvat credit. Hence, this Rule is procedurat in nature and non-observation of conditions specified in Rule 6(3A) would not make them incligible to claim incredit of Rule 6(3)(ii) of CCR, 2004.
- (IV) Once credit is reversed on exempted goods, it is deemed that credit has not been taken and therefore, provisions of Rule 6(3) read with Rule 6(2) of CCR, 2004 would not apply and they relied upon case law of £) A Technologies Pvt Ltd-2010-TIQL 569-HC-KAR.
- IV) The impugned order passed by the adjudicating authority is just and tegat and requires to be uphete. The adjudicating authority has considered entire legal position prior to dropping of compact.
- 3.2 In Peterolei Hearing, no one opposited on behalf of the Department whereas Shri Maruj Chauhan, C.A. appeared on behalf of the Respondent and submitted compiletion of case taws and tagal position evidencing amendment in



Bute 6(3) of CCR, 2004 by Pases of the Period 19 18AA) and (8AB) whelf, 1.4.2016 stipulating that an assessed complete (1) is confidented to in chause (ii) of sub-Rule (3) calculated for each and 3 in the 1971. Withsuse (i) of sub-Rule (3A) along with interest cot58 p.a. and 8 is not that they have paid the 19 game is each with interest and this has not been disputed by the Department of the 2012. So the CESTAT, Mumbal in the case of IG Potrochemics sequence on 1, 50470 is 35%-CESTAT-MUM has allowed such mistekes to be treated as order (1) 3 is not and repected Capacitmental appeal vide their Order disted 20. 1, 8, 10, 10 is a Sew of above facts and legal position, the appeal of the Department of the Report of the Reported.

Findings:

- 4. I have rawfully grad (identity) the soul of the case, the impugned order, the contentions made by the Advantage of its the Appeal Memorandum and the submissions made by the Respective of the increased on Cross-Objections as well as written and oral submissions during Physics i Rearing. The issue to be decided in the present appeal is twicebox in the laptageed order drapping demand of Cenvet credit of Rs. 12,87.262 (19 cm inc.), equal and process or conservice.
- find that the proceedings were conjuted against the Respondent on the 5. ground that the Respondent has analysis derival credit of service tax paid on various services which were perd in our chandlacture of dubable as well as exempted goods but the Resource and out maintained separate accounts for receipt, consumption and investigity or repairs and input services meant for use in the manufacture of dutrable goods are reconsided goods as envisaged in Rule 6 of CCR,2004 and hence, the Respondent was allegedly liable to pay an amount equal to 10% or 5% of value of dispressor of exempted goods runing the period from 1,4,2007 to 31,10,201). The adjusticating authority dropped the demand by holding that the Responsent bas subsequently reversed Convat condit attributable to exempted goods bad therefore, demand of anyonic equal to 10% 7.5% of value of exempted groups under Rule 6(3)(1) of CCR, 2004 is not sustainable. The Department filed appeal on the ground that the adjudicating purposity gainst an impring upon the amendment in the Rule 6(3) of CCR. 2004 by the Finance Act, 2010 which was for the settlement of pending dispute for the perped 10,09,2004 to 31.03,2006 and hence, not applicable: that the assessee not catchig to procedure prescribed UA167 Rule 6(3)(ff) or Rule 6(3)(ff) of CCR, 2004. Nasing cotton but to pay an agrount as applicable on the value of the exampled games in terms of Rule S(3)(i) ibid; shall non-compliance of the specified procedures cannot be contiened as were procedural tapse, inasmuch



Page 6 of 12

as, the conditions and procedures prescribed under Rule 6(3A) of CCR,2004 are substantive requirement for availing the benefit of Rule 6(3) (ii) of CCR, 2004. The Respondent filled Memorandum of Cross Objections contesting that the issue is no longer restinatogra and the Hon'ble CESTAT has accepted the reversal of Cervat credit under Rule 6(3)(iii) even when intimation was not filed by the manufacturer; that Rule 6(3A) is procedural in nature and non observation of condition specified in Rule 6(3A) would not make them ineligible to claim benefit of Rule 6(3)(ii) of CCR, 2004; that once credit is reversed up exempted games, it is deemed that credit has not been taken and therefore provision of Rule 6(3) read with Rule 6(2) of CCR, 2004 would not apply.

6. I would like to reproduce Rule 6 of CCR. 2004 prevailing at the material time, which reads as under:

Rule 6. Obligation of manufacturer of dutlable and exempted goods and provider of texable and exempted services.

(1) The CENVAT credit shall not be allowed on such quantity of local ment in or in relation to the manufacture of exempted goods of provision of exempted services, or most service used in an in relation to the manufacture of exempted quods and they clearance upon the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule(2):

Previded

- (2) Where a manufacturer or provider of culput service evalls of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such miliput service which are chargeable to duty or fax as well as exempted goods or services, then, the manufacturer or ordinar of cutput service shall majoritan separate accounts for consign consumption and inventory of input and input service meant for use in the manufacture of dutahlic trial products or in providing output service and the quantity of input means for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutable goods or in providing output service on which service texts payable.
- (3) Notwinsi<u>ending snything contellined in sub-rules (1) and (2)</u>, the manufacturer of goods or the provider of output socious, opting text to maintain researche accounts. <u>Analy follow any one of the following portons, as applicable to him, namely:-</u>
- (ii) pay an amount agual to aix percent of value of the exempted services; or

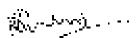
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- (34) For determination and the mass of popular payable under clause (ii) of sub-rule (3), the appropriate of goods of the provider of cutput service shall fellow the fall of the approaches and conditions, namely:
- (a) ...
- (b) the maintacturer of the ise of provider of cultust service shall, defermed to be only provisionally, for every modify,
 - *(i)*
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 - The amount additionals, in it is serviced used in or in relation in mentional defined at a security and provided under the second at the constance upto the silent of provision of provided at a district of definition of provided at a district of definition of provided at a district of definition of exampled by St. where it is an about the total value of exampled goods manufactured and at a whole of during the proceeding linearital year. If an over a second during the proceeding serviced and total value of definition and average disposts manufactured and numerical, during the preceding linearitation on input services auting the second.
- (c) The manufacturer or groups or the provider of output service.

 shall determine firstly the support of CENVAT, are stable to exempted general and exempted services for the symbols finensity your in the following manner corrects:
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 - (ii) the amount ethnicitable in injust services used in or in relation to monothic minimum of executives goods and their clearance upto the place of exempted and exempted services provided plus are total value of exempted services provided plus are total value of exempted services provided plus are total value of exempted goods manufactured and removed during the financial year, it denotes into value of output and exempted services provided, and rotal value of duties of exempted advices provided, and rotal value of duties of exempted duties and exempted goods manufactured and exempted during the financial year, and it denotes total CENVAT credit taken on input segrices during the financial year.
- 6.1 I him: That Ride 6 of CCR, 2004 cests obligations upon manufacturer of dublable and exempted graph insamuch as Rule 6(1) of CCR, 2004 disallows Cervat credit on input service used to manufacture of exempted goods except in



the circumstances specified in sigh-rule (2); that Rule 6(2) of CCR, 3004 provides that the manufacturer /service provider shall maintain separate accounts of inputs and input services meant for use in manufacture of dutiable and exempted goods to for providing taxable service and exempted service and take CENVAT credit only on that input/ input service, which is intended for use In manufacture of dutiable goods or for providing taxable service; that Rule 6(3) provides an option to such manufacturer / service provided on to pay amount at the rate of 5% of value of exempted input/ service provided on to pay amount attributable to input/input service used in or in relation to manufacture of exempted goods/ providing of exampted service as per formula prescribed under Rule 6(3A) of CCR, 2004, if the manufacturer/service provider does not opt to maintain separate records.

6.7 I find that intent and object of legislation behind above Rule 6 of CCR. 2004 is not to allow Convet provit on input / input service, which is used in manufacture of exempted goods / graviding exempted service and to deal with the situation where Cenvat credit is availed on inputs/input service, which are used in manufacture of dutiable goods? exempted goods or (or providing both) taxable and exempted services and no separate records are maintained, the legislation has provided option to pay amount at the percentage specified in Rule $\delta(3)(i)$ of CCR, 7004 or to pay amount attributable to input services used mproviding exempted services under Rule 6/3A) of CCR, 2004 and framed formula. to arrive at Cenvat credit attributable to provision of exempted services so as toachieve the objectives of Convat Credit Scheme. In the instant case, the Respondent has availed Cenval credit on input services which were commonly used for both dutiable and exempted goods, however, they had not given option. available under Rule 6(3)MI) to sollow Rule 5(3A) of ECR, 2004. It is settled principle of law that when statute provides certain procedure to be performed in a particular way, it is not open for the assessed to ignore such procedure and non compliance of such procedure cannot be condone as gracedural tapse. My views are supported by the Judgement passed by the Hon'ble Supreme Court Inthe case of Ansbay Cements reported as 2004 (178) F.C. L. 55 (S.C.), wherein it has been held that,

P36. Whenever the statute prescribes that a particular act is to be done in a particular matter and also lays down that factors to countly with the said requirement loads to severe consciousness, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a cardinal thing should be done in the manual provides that a cardinal thing should be done in the manual provides are not in say other way. It is also settled talk of

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interpretability that where a state of the first is the character, it must be strictly construct and followed discussions the strictly observation for instance case, of observations and potential at the strictly observation and potential to the same must result in concelling and the same must result in concelling and the case of the respondencial potential.

The Respondent replace of these in this of sub-rule (3AA) in Rule 6(3) of CCR. 2004 week. 1.4.2016 has been now a released in retrospectively by virgue of sub-rule (3AB) of CCR, 2004; these has been described the amount as envisaged in Rule 6(3)(ii) along with internal of the has not been disputed by the Department, if find it is pertined in a section sub-rule 3(AB) of CCR, 2004, which has a sub-rule 3(AB) and CCR, 2004, which has a sub-rule 3 as ender:

(SAA). Where a montehanistic situation is, of output service has failed to exercise the option taster suckeds (2) and thinwe the procedure provided under subset of (SA), the Central Exercise off and is exercise to adjusticate a case based on amount of CENVAT in the (notion), they allow such manifoldation on provider of output service in Arithmetic sucketters and pagent augment, referred to in clause (ii) of submide (a), to be a class of the months, we make measurements (iii) of submide (a), to be a class of the months, we make measurements of clause (iii) and clause (iii) and clause (iii) and clause (iii) and submide (a), to be a first submide (a) and provide a first submide (a) and the rate of fill-decreption could per union those for size date for payment of amount for each of the month, till the sixts of payments and the

(BAB) Assessed who has reliable paying second coder clause (ii) or clause (iii) of sub-rule (O) in the slace claiment CDE (6, shall pay the amount along with interest or table coalition in sacidification that year interest of clauses (c), (d), (e), (f), (g), (h) or (f) of sub-rule (O/a), as sleep provisions shall be (general to be an existence till the 30th flux, 2045).

7.1 I find that Rule 6(3AA: provises that is manufacturer or service provider who failed to give prior intimation, may by alknowed to follow the procedure and pay arranged as referred in Rule 6(3)(ii) 21 CCR, 2004. I find that this provision was inserted in Rule 6 of CCR, 2004 w.c.d. 1.4.2016 and the same is prospective in nature and applicable with refrespective effect only for F.Y. 2015-16 and hence, not applicable to the period of this appeal. I find that Rule 6(3AH) is applicable to these assesses who exercised option for following procedure prescribed under Rule 6(3)(ii) or Rule 6(3)(iii) for the financial year 2015-16. This sub-rule provides that morning Rule 6 of CCR, 2004 would continue to be in operation (iii) 30.6.2016. The period strooved in the present appeal is from 1.4.2007 §2.31.10.2011 and hence, this sub-rule is not applicable to the present

case. My views are supported by the clarification issued by CBKC vide Circular. No. 334/8/2016-TRU dated 29.7.2016 as under :

- A new sub-role (BAA) is being precised to provide this a magafacturer. or a provider in output service who lies failed to follow the procedure of giving: prior intimation, many be allowed, by a Central Tixcisc officer, computent to adjudicate such case, to follow the procedure and pay the amount prescribed authest to become not interest colombated of the rate of pitteen per configer. **பட**ாபரு.
- A grow publicula ($3\Delta B$) is being inscript as g_{ab} subject p_{ab} in p_{ab} provide that the existing rule 6 of CCR would continue to be in exerction upon 40-6-2016, for the units who gre pagained to discharge the obligation in respect <u>nf (inancial year 2015, 16</u>7)

(Emphasis supplied)

- Ř. In view of above, I am of the considered view that the Respondent is not cligible to may amount attributable to input services used in or in relation to manufacture of exempted goods under Rule 6(3)(3) of CCR, 2004 to absence of any outlon given and the Respondent is required to pay amount at the rate of 10% 7.5% of value of exempted services under Rule 6(3)(1) of CCR, 2004. The lower adjudicating authority has wrongly dropped derived proceedings. I, therefore, have no obtion but to allow Departmental appear to confirm demand. of Rs. 12,87,2627-, along with interest, under Rule 14 of CCA, 2014.
- P. 1 I find that the Respondent was segistered with Central Excise and was aware of the provisions of Central Excise Law and even then the Respondent had availed Cenval credit on Input services which were commonly used in the manufacture of publishie and exempled goods and did not follow Rule 6 of CCR. 2004. The Respondent had suppressed the facts of availment of Cenvat credit. and use of input services in the manufacture of dutable and exempted goods. with intent to evace payment of coty and therefore, the Resoundent is liable to penalty of Rs. 12,87,262/- under Rule 15 of CCR. 2004.
- 9. In view of above, I set aside the Impugned order and allow the Appeal. filed by the Department,
- विभाग द्वारा दर्ज की गई अपील का जिपहास उपरोक्त तरीके के किया जाता है। **9.1.**
- **5.1.** The appeal files by the Department is disposed off as above.

प्रधान आयुक्त (अपील्स)।

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•	ेळ्डा , ६४०सम्बर्धः <u></u>

<u>प्रति:-</u>

- प्रधान मुख्य आयुक्त वक्षु १५ २० २० एवं केन्द्रीय उत्पाद युक्त, युक्तम क्षेत्रअहमदाबाद का आदाराधार्थः
- 2) आयुक्त, तस्तु ६० शेव। कर २० २०६/६ २५२० शुक्क, **भावनग**र आयुक्तालय**ः भावनगर** को आवश्यक कर्षताही हेलु!
- 3) महायन्त्र आयुक्त, ११तु १६ २० ०० 🐃 अशीय उत्पाद शुक्त, गुरैन्द्रनगर अण्डल ् वर्ग आवश्यक कार्रवाही हेतु।
- ूर्क) याई फ्राइल।