:: आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date:
V2/186/BVR/2018-19	R-50/Refund/18-19	16/11/2018

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

BHV-EXCUS-000-APP-223-2019

आदेश का दिनांक / Date of Order:	13.09.2019	जारी करने की तारीख / Date of issue:	17.09.2019

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Gopi Nath**, 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 :-

M/s.Nirma Limited,Chemical Complex,Village-Kalatalav.Tal. & Dist. Bhavnagar-364313

इस आदेश(अपील) से व्यथित कोइ 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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में 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 असार्वा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in 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 हैं । 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 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) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतगेत सेवाकर नियमवाली, 1994, कें नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में 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 हैं । 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 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 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 को पुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 समायाविधि 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 प्रतिया 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 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.

(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। /

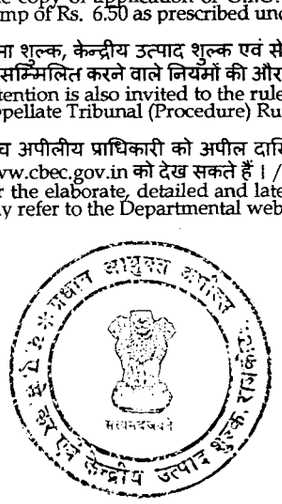
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(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 और 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 से 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 Nirma Ltd, Bhavnagar filed appeal No. V2/186/BVR/2018-19 against Order-in-Original No. R-50/Refund/18-19 dated 28.9.2018 (*hereinafter referred to as* 'impugned order') passed by the Asst. Commissioner, Central GST and Central Excise, Bhavnagar-1 Division, Bhavnagar Commissionerate (*hereinafter referred to as* 'Refund sanctioning authority').

2. The facts of the case are that the Appellant (holding Central Excise Registration No. AAACN5350KXM005) was engaged in manufacture of Soda Ash, Caustic Soda, Toilet Soaps and Cakes etc. The Appellant was following the procedure prescribed under Rule 6(3A) of the Cenvat Credit Rules, 2004(*hereinafter referred to as* "CCR,2004") and used to reverse Cenvat credit attributable to exempted goods on provisional basis every month by taking the clearance value of dutiable goods and exempted goods of the preceding financial year and at the end of financial year, final figures of Cenvat credit required to be reversed was determined on the basis of actual clearance value of dutiable goods and exempted goods.

2.1 On completion of F.Y. 2017-18, it was found by the Appellant that they excess debited Rs. 23,82,545/- from Cenvat credit of input account and excess debited Rs. 15,37,756/- from Cenvat credit of input service account during the period April, 2017 to June, 2017 but, due to implementation of GST w.e.f. 1st July, 2017, they could not re-credit the said excess debited amount and hence, they filed refund claim of Rs. 39,20,301/- under Rule 6(3A) of CCR, 2004 read with Section 11B of the Central Excise Act, 1944 (*hereinafter referred to as* "Act").

2.2 On scrutiny of refund claim, it appeared that the Appellant should have completed the exercise of finalization of provisionally debited figures immediately before filing return for the month of June,2017 and should have taken re-credit in the said return; that there is no provision in Section 11B of the Act to grant refund of Cenvat credit lying in balance due to reversal under Rule 6(3) of CCR, 2014. Hence, Show Cause Notice No. V/18-43/Ref-Nirma/2018-19 dated 12.9.2018 was issued to the Appellant calling them to show cause as to why their refund claim should not be rejected. The refund sanctioning authority rejected the refund claim vide the impugned order.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal on various grounds, *inter alia*, as below :-

(i) The adjudicating authority has erred in not appreciating the provisions of Rule 6 of CCR, 2004 and transitional provisions made under Section 140 of the CGST Act, 2017 and saving and repealed of the existing law as provided under section 174 of the CGST Act, 2017 and therefore, the rejection of refund claim is incorrect and contrary to the provisions of law and not sustainable and required to be quashed and set aside.

(ii) As per formula prescribed under Rule 6(3A)(b) of CCR,2004, Cenvat credit attributable to exempted goods is to be determined provisionally by taking the clearance value of exempted and non-exempted goods of the preceding year and thereafter, at the end of the year as per the formula prescribed under Rule 6(3A)(c) of CCR,2004, the final figures of amount required to be reversed is to determine on the basis of actual amount of Cenvat credit taken during the current year and the actual clearance value of the exempted and non-exempted goods of the current financial year. To deal with such adjustments arising due to short reversal or the excess reversal, it has been provided under Rule 6(3A)(d) that in case if the less amount is reversed provisionally then Appellant is required to pay the difference between the amount provisionally paid and the amount finally determined on or before 30th June of the succeeding financial year. Similarly, in case if the amount is paid in excess provisionally, compare to the amount finally determined in terms of Rule 6(3A)(c), then the Appellant can take re-credit of the amount so excess paid in terms of Rule 6(3A)(f).

(iii) In the present case, the period involved is from April,2017 to June,2017 and they correctly followed the procedure prescribed under Rule 6 for the said period and reversed the amount provisionally on monthly basis based on the clearance value of preceding year and thereafter, in terms of the provisions of Rule 6 (3A)(c) after the finalization of the figures at the end of the financial year 2017-18, Appellant finally determined the actual amount of Cenvat credit attributable to exempted goods as required, and also intimated to the department.

(iv) It has been provided under Section 174 of the CGST Act, 2017 that though the Central Excise Act, 1944 and Finance Act, 1994 are repealed but certain rights and obligations under the existing law are saved. Accordingly, repeal of the said Act shall not affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder or affect any right, privilege, obligations, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended

Act. Therefore, for the period upto 30.06.2017, they were required to discharge all the obligations and follow the prescribed procedure under the existing law and also any right or privilege which was provided under the existing law is saved and therefore, they are legally entitled for the same. Therefore, the findings that Appellant has not finalized the provisionally debit figures immediately before filing the return for the month of June,2017 and not took re-credit in the said return appears to be incorrect. Even otherwise the provisions of Cenvat credit Rules provides that for the financial year 2017-18, the final adjustment can be done upto 30th June, 2018 and by virtue of Section 174 of the CGST Act, 2017, the provisions to that extent is saved. Therefore, the impugned order is incorrect and contrary to the law and therefore, required to be set-aside.

(v) The adjudicating authority erred in observing that there are no provisions to refund the Cenvat credit. The adjudicating authority failed to take notice that to deal with such cases of refund, there are provisions made under Section 142(3) of the CGST Act, 2017.

(vi) in similar set of facts involving other assesses falling under the jurisdiction of Central GST, Ahmedabad North and & Central GST, Gandhinagar, the jurisdictional Dy Commissioner has held that Cenvat credit paid/reversed in excess under Rule 6(3A), refund is admissible and sanctioned the refund vide Order-In-Original No. 55/REFUND/2018 dated 11.09.2018 & Order No. 19/Ref/S. Tax/AC/2018-19 dated 24.10.18.

4. In Personal Hearing, Shri M.A. Patel, Consultant and Shri V.S. Jhala AGM appeared on behalf of the Appellant and reiterated submissions of Appeal Memorandum and produced copy of Order-in-Original passed by the Assts. Commissioner, Central Excise and Central GST, Division-VII, Vadodara on the similar issue and requested to allow their appeal.

Findings:

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 39,20,301/- is correct, legal and proper or not.

6. I find that the Appellant had filed refund claim of Rs. 39,20,301/-on the ground that they had excess debited their Cenvat credit account while fulfilling obligation under Rule 6(3A) of CCR, 2004 for the period April, 2017 to June, 2017 and due to implementation of GST w.e.f. 1st July, 2017, they were not in a position to take credit of said excess debited amount in their Cenvat credit account. The refund claim was rejected by the lower adjudicating authority on the ground that the Appellant should not have waited till June, 2018 to finalize provision reversal of Cenvat credit for the period from April, 2017 to June,2017, as turnover for the subsequent months i.e. July, 2017 to March, 2018 was not relevant for the calculation as provided in Rule 6(3) of CCR, 2014; that since the Appellant failed to claim excess reversal in the return of June, 2017 and through TRAN-1, the said amount became lapsed ITC and refund of such lapsed ITC cannot be refunded under Section 11B of the Act. The Appellant contended that As per provisions of Section 174 of the Act, they were required to discharge all the obligations and follow the prescribed procedure under the Central Excise Act, 1944 for the period upto 30.06.2017 and any right or privilege which was provided under the existing law is saved and therefore, they are legally entitled for the same.; that provisions of Cenvat credit Rules provides that for the financial year 2017-18, the final adjustment can be done upto 30th June, 2018 and by virtue of Section 174 of the CGST Act, 2017, the provisions to that extent is saved. Therefore, the impugned order is incorrect and contrary to the law and liable to be set-aside.

7. I find it is pertinent to examine provision contained in Rule 6(3A) of CCR, 2004, which are reproduced as under:

> "(3A) For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-
>
> ...
>
> (b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely :-
>
> ...
>
> (c) the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely :-

...

(d) the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, [{A(Annual) + D(Annual)} – {(A+D) aggregated for the whole year)}], where the former of the two amounts is greater than the later;

....

(f) the manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, [{(A+D) aggregated for the whole year)} – {A(Annual) + D(Annual)}], where the former of the two amounts is greater than the later;"

7.1 In the case before me, the Appellant provisionally reversed Cenvat credit of inputs/services every month during the period from April, 2017 to June,2017 considering turnover of dutiable and exempted goods for the previous year i.e. 2016-17 as per the obligation casted under Rule 6(3A)(b) of CCR, 2004. On completion of F.Y. 2017-18, the Appellant determined total turnover of dutiable and exempted goods for the whole year of 2017-18 in terms of Rule 6(3A)(c) of CCR, 2004, which showed that the Appellant had excess debited their Cenvat credit account during the said period and consequently, the Appellant became eligible to make adjustment in their Cenvat credit account in terms of Rule 6(3A)(f) of CCR, 2004.

7.2 I find that the impugned order is not disputing about eligibility of the Appellant under Rule 6(3A)(f) of CCR, 2004 but, it rejected the refund claim on the ground that the Appellant should have finalized provisional reversal of Cenvat credit by taking turnover for the period from April, 2017 to June,2017. I find that provisions contained in Rule 6(3A)(c) of CCR, 2004 casted obligation upon the Appellant to consider turnover of dutiable and exempted goods for the whole financial year 2017-18. Under the circumstance, the Appellant could not, *suo moto,* consider turnover only for the period from April, 2017 to June,2017. The refund sanctioning authority has not brought on records any provisions of the Act/Rules or any Circular/Instruction that required the assessee to consider turnover of dutiable and exempted goods only for the period upto June, 2017, bypassing provisions contained in Rule 6(3A)(c) of CCR, 2004. On the contrary, the Appellant was under obligation to follow provisions contained in Rule 6(3A) of CCR, 2004 even after 1.7.2017, in view of Section 174 of the Central GST Act,

2017, which is reproduced herein under:

> "SECTION 174. Repeal and saving. — (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.
>
> (2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not —
>
> (a) revive anything not in force or existing at the time of such amendment or repeal; or
>
> (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts :
>
> ... ..."
>
> (Emphasis supplied)

7.3 In view of above, I am of the considered opinion that the Appellant correctly followed and fulfilled obligations casted upon them under Rule 6(3A)(c) of CCR, 2004 by considering turnover of dutiable and exempted goods for the whole F.Y. 2017-18. The Appellant could not take credit in their Cenvat credit account after implementation of GST. So, the Appellant has no other option but to file refund claim of excess amount debited as determined under Rule 6(3A)(f) of CCR, 2004. I, therefore, find no infirmity in the act of the Appellant.

8. Regarding findings of the refund sanctioning authority that reversal of Cenvat credit is not duty of excise and hence, refund claim is not maintainable under Section 11B of the Act, I find that Section 3 of the Act deals with levy and collection of duty and under that Section, it has been specified that there shall be levied and collected a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods which are produced or manufactured in India. So, CENVAT is nothing but duty of Excise and hence, refund of Cenvat credit is covered under Section 11B of the Act.

9. Regarding findings of the refund sanctioning authority that there is no

provision in the CGST Act, 2017 to refund Cenvat credit availed under erstwhile Cenvat Credit Rules, 2004, I find that as per Section 142(3) of the CGST Act, 2017, refund of any amount of Cenvat credit shall be paid in cash in accordance with the existing law. The provisions of Section 142(3) *ibid* are reproduced as under:

> "(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) :"
>
> (Emphasis supplied)

10. In view of above, I hold that the Appellant is eligible for refund. I set aside the impugned order and direct the refund sanctioning authority to process the refund claim in pursuance of the provisions contained in Rule 6(3A) of CCR, 2004.

11. I set aside the impugned order and allow the appeal.

13/9/19

सत्यापित,

(Gopi Nath)
Commissioner(Appeals)

विपुल शाह
अधीक्षक (अपील्स),

By R.P.A.D.

To, M/s Nirma Ltd Chemical Complex, Village Kala Talav, District Bhavnagar.	सेवा में, मे॰ निरमा लिमिटेड, केमिकल कॉम्प्लेक्स, काला तलाव, जिल्ला भावनगर ।

प्रति:-

1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।