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CROCK IN APPEAL ::

Mie Samost Starch Product (Now Mis. Banstst Bio-Polymers Ltd.), Samose' Dham Sukriper Read, Post - Morgar, Strachau (Kuich) (heremafter minimed to as 'appenant') filed present appes, against Order-m-Original No. SVDC/Amer-Shacheu/2017 15 cated 28.9 2017 (nereination referred to as 'impugned order') passed by the Deputy Commissioner, CGST Division, An(ar-Dhachau (nereination referred to as "the adjudicating authority"). -

The brief (acts of the case) as alleged in the SCN, are that the sepalart 2 exercised option on 25.5.2305 for FY 2005-00 and on 4.4.2006 for FY 2006 07 for recredition duty baid during the momin under consideration, other than by way of utilization. of Convationedit, in their account purrent in terms of Para 2A(a) of Notification Ko-39/2001-CE dated 31.7.2001, as smanded for FY 2004-25, after destance of the goods. and therefore re-cred?, of buty of Ra, Ba 2954 and Ra, 2,78,854/4 in account content. for the month of March 2005 and April, 2006 was inequiar in femis of Para 2A(b) of the ise dinotification. Show Cause Notice No. VM21-24/LAR-1824/07-08 dates 7.4.2010 was issued to the appellant proposing recovery of re-credit of Rs (3.76,150)- in terms of Para. 24(g) of poblication (big, and to incluse density under Rule 27 of Central Excise Rules. 2002. The lower adjudicating authority vide impligned order disallowed re-credit of duty. ot Hs (3,75,150)- and progrep receivery of the same linder Para 2A(q) of Notification No. 35/2001-CE dated 35 x 2001 as amended along with interest under Section 11AA of the Control Except Act, 1914 read with the said, notification and imposed penalty of Re. 5.020/ under Ruld 27 of Central Excise Rules, 2002.

3 Being aggreent with the Insugned order, appellant proferred the present appeal, *inter allo* on the following grounds. -

() The demand is hill by Initiation and is time barred as per Para 2A(e) of the said Notification since the period of disputalis March, 2005 and April, 2000 and impugned SCN was issued to 7.4.2010. That Para 2A(g) of the asid Notification read with Para 2A(g) of the asid Notification read with Para 2A(g) of the asid Notification regular refund will have to be made within, one year from 201 of the destinant during which credit was taken in respect of cloarancea made during the previous month; that the appellant milled or decempend of Parla Froducts Pvi, 4bt, reported as 2009 (207) ELT 572

(ii) The theor Assistant Commissioner of Central Exclave had quantified the eligible recred/. for the months of March 2005 and April, 2006 vice Cartificate dated 29.7,2006 and Reicredii Order No. 100(2007-28 dated 26.4,2007 respectively. Thus, the conducent of filing the option under Psta 2A(or of the said Notification had been conduced and dispensed with by hm/department as per Para 2A(e) of the said Notification. The

Pate No. 1 of A

impugned order amounted traview of orders passed eartor by the lower adjudicating authority niniself, which is not periorsible in law. The adjudicating authority cannot review ris own earter sanciloned orders, unless a specific authority granted nimits do as by the law and that too after 10 years of orders, which were accepted by the pepartment.

 The filing of option of re-predit is to be considered as procedural tapes and exemption available upper Notification No. 39(2001-CE cannot be cented for procedural tapes. The appellant relied on decision in the case Aditya Packaging reported as 2003.
 (245) EL1 543 (fr. - Debi).

(iv) Since the domand of dury is not logal proper and justiced, the domand of imerest, is to balact aside in the interest of justice.

(v) The appellant had not contravened Costral Excise Ac., 1644 and Rues framed thereander, therefore, not liable for penalty under Rule 2/ of Central Excise Rules. 2002: that penalty under Rule 2/ of Central Excise Rules. 2002 cannot be imposed for present of condition of exemption nutification.

4. Personal hearing to the matter was altended by S/Shri Amal P. Dava and Adiva, S. Thpatoi, both Advocates, who reteraned the grounds of appeal and emphasized that demand is time barred as SCN has been esued in 2010 demanding duty for the seriod 2005 & 2006; that SCN has mewhere alleged suppression of facts with intercito evade payment of duty, that the impugned order has also not discussed like secret even trough they had raised limitation of time in their reply to SCN; that on this basis, the impugned order be so; aside and appeal be allowed.

FINDINGS:

5. I have carefully gond through the taste of the case, impugned order grounds of oppoal and the audimisedons made during porsonal hearing. The issue to be decided in the creater case is as to whether the impugned order confirming recovery of secondit of Rs. 3,76,1504 taken in view of Nullification No. 39/2001-CE dated 317.2001 is time barres of null

6. The appellant has contended that the impugned SCN dated 4.4.2010 leitine barred as per Para 24(n) of the said Notification since the pended of dispute is March, 2005 and April. 2008. I find that Notification No. 32/2001-CE dated 31.4.2001 as amendee vice Notification Nn. 60/2002-CE dated 6.8.2003 reads as under -

in exercise of the powers conterned by sub-services (1) of zeution 58, of the Central Excise Act, 1944 (1 of 1944), reed with sub-services (2) of section 3 of the Additional Dullas of Finise (Coops of Epecial Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of ring Administry Dulias of Excise (Textiles and Textile Administ) Act, 1978 (40 of 1976). The Contral Ocyanistics being extistion that it is necessary in the public internet.

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Pace No. 1 of 1

in to do, howby exempts the goods specified in the First Schedule to the Central Except Tariff Act, 1965 (5 of 1986) other than goods specified in the Antexare appended to this maillingtion and cleared from a unit located in Kutch district of Gujarat from so much of the duty of excess or the edultional duty of excess or the case may be, leviable thereon under any of the said faits as is equivalent to the amount of duty paid by the monoficiation of goods other than the amount of duty paid by Utilitation of CENVAT credit under the CENVAT Credit Hules, 2001 :

Provided that in the case of a anti-having an original value of investment in plant and machinery installed in the factory below rupees twenty error on the data of commencement of communical production in that and, the exemption contained herministical apply only for the first dealerices that to an appreasile value not expeeding twice the value of such investment from the data of commencement of commenced production, in each year.

1A. In cases where all the goods produced by a manufacturer are eligible for examption under this polification, the examption ecolulized in this notification shall be available subject to the condition that, the manufacturer first utilized whold of the CENVAT aroant available to him on the last day of thermalith under consideration, for payment of duty on goods dealed during such month and pays only the belance emount to cells.

2 The exemption conterned in this pothisation shall be given efficient in inthe following meanser, namely: -

(9) The manufacturer shall submit a statement of the outy paid other than the amount of duty perci by unusation of CENVAT credit under the CENVAT Credit Rules, 2061, in the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, by the 7th day of the next month in which the duty has been so perd.

(b) The Assistant Commissioner or Departy Commissioner of Central Excision as the case may be, effect such vertication, as he may deem necessary, shall related the amount of duty paid attest than the amount of duty paid by utilization of CENVAT credit during the month ander consideration to me manufecturer by the 15th day of the next month.

Frowded that such refund shall not except the amount of daty paid less the emount of the CENVAT creatil availation, in respect of the daty paid on the impuls used in or in relation to the manufacture of goods desred under this holffication.

Provided that w cases, where the exemption contained in this notification is not applicable to some of the goods produced by a manufacturer, such retund shell not exceed the amount of duty paid than the emount of the CENVA i Credit evalued of, in respect of the duty paid on the impute used in or in rotation to the manufacture of goods cleared under tals notification.

(6) If there is likely to the any delay in such undiration, the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, shall rotund the encount on provisional basis by the 15th day of the rock month to the month under consideration, and thereafter may adjust the encount of refund by such amount as may be necessary in the subsequent rotunes admissible to the menofacturer.

24. Notwithsianding anything contained in paragraph 2, -

(a) The manufactures of his own option may take credit of the emount of only paid during the month under consideration, other han by way of allisation of CENWAT credit under the CENWAT Credit Rules, 2002, in his appoint current, maintenant in terms of Port V of the Excise Menual of Supprementary instruction issued by the Central Board of Excise and Chatains. Such removal credited in the account current may be utilised by

the menufactum for payment of duty, in the manner specified under fille 8 of the Control Excise Roles, 2962, in subsequent months, and such payment, should be deemed to be payment in cash;

Provided that where the exemption contained in tota optimistion is not supplicable to some of thergoods produced by a manufactures, the amount of such gradit shall not exceed the amount of duty paid less the smount of the CENVAT Credit availed of, in respect of the duty paid on the inputs used in or in relation to the manufacture of going channel under this multipation.

(b) the credit of duty paid during the month under consideration, other than by way of utilisation of CENVAT credit under the CENVAT Credit Rules, 2052 may be taken by the manufacturer in this account current, by the seconds day of the month following the month under consideration,

(c) a manufacturer who intends to avail the option under closed (a) what events his option in writing for evailing such option before effective the first clearance in any financial year and such option shall be offective from the aster of eventsee of the option and shall not be withdrawn during the completing part of the financial year.

Provided that, for the Intendial year 2003-04, a manufacturar can examine his option on before 30th day of September, 2008.

(d) the manufacturer shall short a statement of the duty paid, either then by way of utilisation of CENVAT credit under the GENVAT Credit Rules, 2002, along with the related amount which he has taken stedit and the calculation particulare of such credit taken, to the Assistent Commissioner of Cantral Excise of the Deputy Commissioner of Central Excise, as the case may be, by the 7th day of the rest month to the month under consideration;

(c) the Assistant Commissioner of Control Excess or the Depart Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the envolut correctly refundable to the manufacturer and infimate the same to the manufacture by 15th day of the next month to the month under consideration. In case, the condit taken by the manufacturer is in excess of the smouth determined, the manufacturer shall, within five days from the receipt of the solid introduction reverse the said excess credit from the said social current maintained by him, in case, the degrees credit from the said social current maintained by him, in case, the degree by the manufacturer is less than the emport returnd determined, the manufacturer shall to eligible to take credit of the bolinger amount.

(5) In case the manufacturer fulls to comply with the provisions of clease (a) to re), he shall forfelt the option. In take usedil of the annuat of duty during the month under consideration, other than by way of ullivation of CENVAT modif, under the CENVAT Credit Rules, 2002, while account current on his own, as provided for w clauses (a) and (c);

(g) The encount of the credit evolved imagulary or evelled of in excess of the amount determined contectly refundable under clause (e) and not reversed by the manufacturar within the pence specified in that assault shall be recoverable as if it is a recursity of duty of excise encously refunded. In case such imagular or excess credit is utilised for phymoni of excise duty on clearshoes of excisionin goods, the seld goods should be considered to have been cleared withight payment of duty to the extent of utilisation of such inequilar or excess good).

Explanation - For the purposes of Ittis nutification, duty paid, by utilisation of the emptot practiced in the eccount current, shall be taken we payment of duty by way other than utilization of CENVAT credit under the CENVAT Credit Rules, 2002. . 7 In view of above, I find that Notification No. 39/2001 CE dated \$1.7.2001, as smended, provides exemption from paymant of central excise duty on the goode speaked in the First Schedule to the Central Excise Tariff Act, 1955 (S of 1983) other then goods specified in the Annexure appended to this notification and eleared from a Unit socated in Kulon discinnof Gujaratios is equivalent to the amount of duty paid by the manutacturer of goods other than the empurit of duty paid by utilization of CENVAT credit in the mannor as presented in Para 2 and Para 2A of the said Notification; that manulacture: shall exercise option to take credit of the amount of outy paid during the moorn under consideration, other than by way of utilisation of CENWAT credit in his account current, that the manufecturer shall exercise his option in writing for avering such option before effecting the first clasmance in any financial year and such option shall be effective dom the date of everyise of the option and shall not be wither awn during the remaining dark of the Friandial year; that the manufacturer shall submit a statement of the duty paid along with the refund amount which he has taken uted't to the Assistant Commissioner of Central Excise on the Deputy Commissioner of Central Excee by the 7th day of the next month: that the Assistant Commissioner of Central Exclose of the Reputy Commissioner of Cantral Excise, after verification shall be entitie the amount correctly refundable to the manufacturer and internate the same to the manufacture by 15% day of the next month; that in case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shail, within five days from the specipt of the said intimation, reverse the said excess credit from the said account current mainterned by him, thet in case the manufacturer fails to comply with the provisions, he shall forful the option to take credit of the amount of duty during the more under consideration, other that by way of ottisation of CENVAT creat in the account current on it slown, that the amount of the credit availed in equilarly or availed of in excess of the animum detormined correctly refundable and not reversed by the manufacturer with 1 the specified period, ehad be recoverable as ¹ It is a recovery of duty of excise exchedually refunded. In case such irrequartion excess predit is utilised, for payment of excise duty on clearshoed of excleable goods, the said goods should be considered to have been dealed without payment of outy to the extent of utilisation of such irredular or exceasionable. والمعالم يكو

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The facts of the present case revealed that the appellant had taken re-oradii of duly guid during March, 2005 and during April, 2008 in his account current whereas option of re-oradinhad been exercised on 25.5.2005 for PY 2004-25 and on 4.4.2006 for PY 2006 57. The line, the proper jurisdictional Central Excise officer in terms of Para 2A(c) of Notification No. 39/2001-CE bated 31.7.2001, as smended, determined size returns amount without restricting the amount of re-oradit taken by the appellant and subsequently. SGN dated 7.4.2010 was assed to the appellant proposing recovery of re-oradited amount of Ra, 3,76 (55/-, 1) lind that in a case of enchances refund. SCN

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 was required to be issued within a year from the data of retund sa provided uncor-Soction 11A of the Central Excise Act, 1944. Since, in the cresent case SCN was issued on 7.4.2010 for rejection of duty re-credited for the month of March, 2005 and April, 2006. the contention of the appellant that the demand is time barred is correct. Therefore, the impligned order confirming recovery of re-gradited amount is not sustainable in law and is not legal, proper and correct.

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ŝ In view of above, I set aside the impligned order and a low appeal filled by the appellant

M/s. Sackesh Starch Product	मेसर्स सेनांड स्टार्च प्रॉंडल्ट,
(Now M/s. Sanetar Bic-Polymers Ltd.),	(अर्थ) संसदर बारहे-पोत्तीमेस तिभिन्द)
Santosh Dhem, Sukhpar Road,	संतीः धाम सदापर रोह
Post Morgar, Abachan (Kutch)	
_ ·- ·	गोरह मारगर, भवाऊ (क्वल)

Copy to:

By Speed Post

1; the Puncical Chief Commissioner, CGST & Central Excise,

Ahmodebed Zone, Ahmedabed for kind Information please.

2; The Commissioner, CGST & Central Exclae, Sandhidham Commissionerale, Gauchidham (Kutch) for necessary action.

31 the Deputy Commissioner Central GST Division. Anjar-Bhachau for necessary action 4r

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ત્રપ્ર ન આયુંતર (અપોલ્સ]