



एन सी ई आर टी ई का राष्ट्रीय शैक्षणिक अनुसंधान और प्रशिक्षण परिषद  
 NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING

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एन सी ई आर टी ई का राष्ट्रीय शैक्षणिक अनुसंधान और प्रशिक्षण परिषद



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संज्ञक संख्या: एन सी ई आर टी ई/...

1. **विषय:** ...  
**2. दिनांक:** ...  
**3. संदर्भ:** ...

**KEII-EXCIS-000-APP-004-2019**

अंशक संख्या: 23.01.2019, अंशक संख्या: 23.01.2019

कृपया नोट करें कि यह प्रस्ताव केवल सूचना के लिए है।  
 Please note that this is only for information.

1. **विषय:** ...  
**2. दिनांक:** ...

3. **संदर्भ:** ...

4. **विषय:** ...

5. **विषय:** ...

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7. **विषय:** ...

8. **विषय:** ...

9. **विषय:** ...

1. The first part of the document discusses the general principles of the law of contract, including the formation of a contract, the elements of a contract, and the enforceability of a contract. It also discusses the remedies available for breach of contract.

2. The second part of the document discusses the law of tort, including the elements of a tort, the defenses to a tort, and the remedies available for a tort. It also discusses the law of negligence and the duty of care.

3. The third part of the document discusses the law of property, including the elements of a property interest, the defenses to a property interest, and the remedies available for a property interest. It also discusses the law of real property and the law of personal property.

4. The fourth part of the document discusses the law of succession, including the elements of a will, the defenses to a will, and the remedies available for a will. It also discusses the law of intestate succession and the law of testate succession.

5. The fifth part of the document discusses the law of trusts, including the elements of a trust, the defenses to a trust, and the remedies available for a trust. It also discusses the law of express trusts and the law of implied trusts.

6. The sixth part of the document discusses the law of agency, including the elements of an agency, the defenses to an agency, and the remedies available for an agency. It also discusses the law of principal and agent and the law of sub-agent.

7. The seventh part of the document discusses the law of partnership, including the elements of a partnership, the defenses to a partnership, and the remedies available for a partnership. It also discusses the law of general partnership and the law of limited partnership.

8. The eighth part of the document discusses the law of joint tenancy, including the elements of a joint tenancy, the defenses to a joint tenancy, and the remedies available for a joint tenancy. It also discusses the law of tenancy in common and the law of life tenancy.

9. The ninth part of the document discusses the law of mortgage, including the elements of a mortgage, the defenses to a mortgage, and the remedies available for a mortgage. It also discusses the law of first mortgage and the law of second mortgage.

10. The tenth part of the document discusses the law of lease, including the elements of a lease, the defenses to a lease, and the remedies available for a lease. It also discusses the law of leasehold estate and the law of freehold estate.

ORDER IN APPEAL :

M/s. Samost French Product (Now, M/s. Sanats Bio-Polymers Ltd.), Sanats, Dhari, Sakpur Road, Post - Mangar, Bhachal (Kutch) (hereinafter referred to as 'appellant') filed present appes. against Order-in-Original No. 5/DC(Arja-dhachal)/2017 IB dated 25.9.2017 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, CGST Division, Arja-dhachal (hereinafter referred to as 'the adjudicating authority'). -

2 The brief facts of the case as alleged in the SGN, are that the appellant exercised option on 25.3.2005 for FY 2005-06 and on 4.4.2006 for FY 2006-07 for re-credit of duty paid during the month under consideration other than by way of utilization of Credit credit in their account current in terms of Para 2A(a) of Notification No. 32/2001-CE dated 31.7.2001, as amended for FY 2004-05, after clearance of the goods and therefore request of duty of Rs. 86,295/- and Rs. 2,78,954/- in account current for the month of March, 2005 and April, 2006 was irregular in terms of Para 2A(c) of the said notification. Show Cause Notice No. VI/21-24/LAR-1824/07-08 dated 7.4.2010 was issued to the appellant proposing recovery of re-credit of Rs. 3,78,150/- in terms of Para 2A(g) of notification (b), and to impose penalty under Rule 27 of Central Excise Rules, 2002. The lower adjudicating authority vide impugned order allowed re-credit of duty of Rs. 3,75,150/- and ordered recovery of the same under Para 2A(g) of Notification No. 32/2001-CE dated 31.7.2001 as amended along with interest under Section 11AA of the Central Excise Act, 1944 read with the said notification and imposed penalty of Rs. 5,000/- under Rule 27 of Central Excise Rules, 2002.

3 Being aggrieved with the Impugned order, appellant preferred the present appeal, *inter alia* on the following grounds: -

(i) The demand is hit by limitation and is time barred as per Para 2A(e) of the said Notification since the period of dispute is March, 2005 and April, 2006 and impugned SGN was issued on 7.4.2010. That Para 2A(g) of the said Notification read with Para 2A(e) of the said Notification lead to the conclusion that the demand for irregular refund will have to be made within one year from 20<sup>th</sup> of the next month during which credit was taken in respect of clearances made during the previous month; that the appellant relied on decision in the case of Parla Products Pvt. Ltd. reported as 2009 (237) ELT 572

(ii) The then Assistant Commissioner of Central Excise had quantified the eligible re-credit for the months of March, 2005 and April, 2006 vide Certificate dated 29.7.2005 and Re-credit Order No. 100/2007-08 dated 25.4.2007 respectively. Thus, the conclusion of filing the petition under Para 2A(e) of the said Notification had been condoned and dispensed with by him/department as per Para 2A(e) of the said Notification. The

*[Handwritten signature]*

impugned order amounted review of orders passed earlier by the lower adjudicating authority himself, which is not permissible in law. The adjudicating authority cannot review his own earlier sanctioned orders, unless a specific authority granted him to do so by the law and that too after 10 years of original orders, which were accepted by the department.

(iii) The filing of application of re-credit is to be considered as procedural lapse and exemption available under Notification No. 38/2001-CE cannot be denied for procedural lapse. The appellant relied on decision in the case *Aditya Packaging* reported as 2005 (245) ELT 143 (F - Delhi).

(iv) Since the demand of duty is not legal proper and justified, the demand of interest is to be set aside in the interest of justice.

(v) The appellant had not contravened Central Excise Act, 1944 and Rules framed thereunder, therefore, not liable for penalty under Rule 27 of Central Excise Rules, 2002. No penalty under Rule 27 of Central Excise Rules, 2002 cannot be imposed for breach of condition of exemption notification.

4. Personal hearing in the matter was attended by S/Sri Ams. P. Dave and Aditya S. Tripathi, both Advocates, who reiterated the grounds of appeal and emphasized that demand is time barred as SCN has been issued in 2010 demanding duty for the period 2005 & 2006. That SCN has nowhere alleged suppression of facts with intent to evade payment of duty that the impugned order has also not discussed this aspect even though they had raised limitation of time in their reply to SOA; that on this basis, the impugned order be set aside and appeal be allowed.

#### **FINDINGS:**

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and the submissions made during personal hearing. The issue to be decided in the present case is as to whether the impugned order confirming recovery of re-credit of Rs. 3,70,150/- taken in view of Notification No. 38/2001-CE dated 31.7.2001 is time barred or not.

6. The appellant has contended that the impugned SCN dated 14.2.2010 is time barred as per Para 24(n) of the said Notification since the period of dispute is March, 2005 and April, 2006. I find that Notification No. 38/2001-CE dated 31.7.2001 as amended vide Notification No. 81/2002-CE dated 6.8.2002 reads as under -

*in exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (53 of 1957) and sub-section (3) of section 2 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (46 of 1978), the Central Government being satisfied that it is necessary in the public interest*

in to it, hereby exempts the goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) other than goods specified in the Schedule appended to this notification and cleared from a unit located in Kutch district of Gujarat from so much of the duty of excise or the additional duty of excise, as the case may be, leviable thereon under any of the said Acts as is equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004 :

Provided that in the case of a unit having an original value of investment in plant and machinery installed in the factory below rupees twenty crore on the date of commencement of commercial production in that unit, the exemption contained herein shall apply only for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year.

14. In cases where all the goods produced by a manufacturer are eligible for exemption under this notification, the exemption contained in this notification shall be available subject to the condition that, the manufacturer first utilizes whole of the CENVAT credit available to him on the last day of the month under consideration, for payment of duty on goods cleared during such month and pays only the balance without interest.

2. The exemption contained in this notification shall be given effect to in the following manner, namely :-

(a) The manufacturer shall submit a statement of the duty paid other than his amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004, 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 paid.

(b) The Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, after such verification, as he may deem necessary, shall refund the amount of duty paid other than the amount of duty paid by utilization of CENVAT credit during the month under consideration to the manufacturer by the 15th day of the next month.

Provided that such refund shall not exceed the amount of duty paid less the amount of the CENVAT credit availed of, in respect of the duty paid on the inputs used in or in relation to the manufacture of goods cleared under this notification.

Provided that in cases, where the exemption contained in this notification is not applicable to some of the goods produced by a manufacturer, such refund shall not exceed the amount of duty paid less the amount of the CENVAT Credit availed of, in respect of the duty paid on the inputs used in or in relation to the manufacture of goods cleared under this notification.

(c) If there is likely to be any delay in such verification, the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, shall refund the amount on provisional basis by the 15th day of the next month to the month under consideration, and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refunds admissible to the manufacturer.

24. Notwithstanding anything contained in paragraph 2, -

(a) The manufacturer at his own option may take credit of the amount of duty paid during the month under consideration, other than by way of utilization of CENVAT credit under the CENVAT Credit Rules, 2004, in his account current, maintained in terms of Part V of the Excise Manual of Supplementary instruction issued by the Central Board of Excise and Customs. Such amount credited in the account current may be utilized by

the manufacturer for payment of duty, in the manner specified under rule 8 of the Central Excise Rules, 2002, in subsequent months, and such payment should be deemed to be payment in cash;

Provided that where the exemption contained in this notification is not applicable to some of the goods produced by a manufacturer, the amount of such credit shall not exceed the amount of duty paid less the amount of the CENVAT Credit availed of, in respect of the duty paid on the inputs used in or in relation to the manufacture of goods cleared under this notification.

(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, 2002 may be taken by the manufacturer in his account current, by the seventh day of the month following the month under consideration;

(c) a manufacturer who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year;

Provided that, for the financial year 2003-04, a manufacturer can exercise his option on or before 30th day of September, 2003.

(d) the manufacturer shall submit a statement of the duty paid, other than by way of utilisation of CENVAT credit under the CENVAT Credit Rules, 2002, along with the refund amount which he has taken credit and the calculation particulars of such credit taken, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, by the 7th day of the next month to the month under consideration;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the amount correctly refundable to the manufacturer and intimate the same to the manufacturer by 15th day of the next month to the month under consideration. In case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the receipt of the said intimation, reverse the said excess credit from the said account current maintained by him. In case, the credit taken by the manufacturer is less than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount.

(f) in case the manufacturer fails to comply with the provisions of clause (e) to (e), he shall forfeit the option to take credit of the amount of duty during the month under consideration other than by way of utilisation of CENVAT credit under the CENVAT Credit Rules, 2002, to his account current on his own as provided for in clauses (e) and (f);

(g) the amount of the credit availed irregularly or availed of in excess of the amount determined correctly refundable under clause (e) and not reversed by the manufacturer within the period specified in that clause shall be recoverable as if it is a recovery of duty of excise erroneously refunded. In case such irregular or excess credit is utilised for payment of excise duty on clearances of taxable goods, the said goods should be deemed to have been cleared without payment of duty to the extent of utilisation of such irregular or excess credit.

Explanation - For the purpose of this notification, duty paid, by utilisation of the amount credited in the account current, shall be taken as payment of duty by way other than utilisation of CENVAT credit under the CENVAT Credit Rules, 2002.

7 In view of above, I find that Notification No. 39/2001 CE dated 31.7.2001, as amended, provides exemption from payment of central excise duty on the goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1985) other than goods specified in the Annexure appended to this notification and cleared from a unit located in Kutch district of Gujarat as is equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT credit in the manner as prescribed in Para 2 and Para 2A of the said Notification; that manufacturer shall exercise option to take credit of the amount of duty paid during the month under consideration, other than by way of utilisation of CENVAT credit in his account current, that the manufacturer shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year; that the manufacturer shall submit a statement of the duty paid along with the refund amount which he has taken credit to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise by the 7th day of the next month; that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, after verification shall determine the amount correctly refundable to the manufacturer and intimate the same to the manufacturer by 15th day of the next month; that in case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the receipt of the said intimation, reverse the said excess credit from the said account current maintained by him; that in case the manufacturer fails to comply with the provisions, he shall forfeit the option to take credit of the amount of duty during the month under consideration, other than by way of utilisation of CENVAT credit in his account current or his own; that the amount of the credit availed irregularly or availed in excess of the amount determined correctly refundable and not reversed by the manufacturer within the specified period, shall be recoverable as if it is a recovery of duty of excise erroneously refunded. In case such irregular or excess credit is utilised for payment of excise duty on clearances of excisable goods, the said goods should be considered to have been cleared without payment of duty to the extent of utilisation of such irregular or excess credit.

8 The facts of the present case reveal that the appellant had taken re-credit of duty paid during March, 2005 and during April, 2008 in his account current whereas option of re-credit had been exercised on 25.3.2005 for FY 2004-05 and on 4.4.2006 for FY 2006-07. I find that the proper jurisdictional Central Excise officer in terms of Para 2A(c) of Notification No. 39/2001-CE dated 31.7.2001, as amended, determined the refund amount without restricting the amount of re-credit taken by the appellant and subsequently SCN dated 7.4.2010 was issued to the appellant proposing recovery of re-credited amount of Rs. 3,75,150/-. I find that in a case of erroneous refund, SCN

was required to be issued within a year from the date of refund as provided under Section 11A of the Central Excise Act, 1944. Since, in the present case SCN was issued on 7.1.2012 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 impugned order confirming recovery of re-credited amount is not sustainable in law and is not legal, proper and correct.

§ In view of above, I set aside the impugned order and allow appeal filed by the appellant.



(कुमार स्त्री)  
अधीन आयुक्त (अपील)

**By Speed Post**

To:

M/s. Sankesh Starch Product  
(Now M/s. Sanetar Bio-Polymers Ltd.),  
Santosh Dham, Sakinagar Road,  
Post - Moigar, Bhachau (Kutch)

मेसर्स संतोश स्टार्च प्रोडक्ट,  
(अधुना संसेतर बायो-पोलिमर्स लिमिटेड)  
संतोश धम, सुखनगर रोड,  
पोस्ट मोरगर, भवाच (कच्छ)

**Copy to:**

- 1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
- 2) The Commissioner, CGST & Central Excise, Gandhidham Commissionerate, Gandhidham (Kutch) for necessary action.
- 3) The Deputy Commissioner, Central GST Division, Anjar-Bhachau for necessary action.
- 4) Guard File.