NATION TAX SANMARKET

न्यायालय (अपील) का आयोग,केन्द्रीय कर एवं सेवा कर अपील दफ्तर
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

दक्षिणी तल, जी एस टी भवन / 2 nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tel. Fax No. 0281 - 2477952/2411142

Email: cexappealsrajkot@gmail.com

अपील आदेश सं. और दिनांक :-

क	अपील / स्टाफ़ डायरी / Appeal / Staff Diary No.	OIO No.	दिनांक / Date
	V2(ST)83/GDM/2017	03/Dy.Comm./2017	31.01.2017

ख अपील आदेश संख्या (Order-in-Appeal No.):

RCH-EXCUS-000-APP-010-2018-19

आदेश का दिनांक / Date of Order:	17.04.2018	जारी करने की तारीख / Date of Issue	20.04.2018

Passed by Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.

अधिसूचना संख्या 26/2017-सेवा कर (नि.) दिनांक 17.10.2017 तथा आदेश संख्या 01/2017-18 दिनांक 20.11.2017 के अनुसार श्री सुनील कुमार सिंह, आयुक्त, केंद्रीय कर एवं केन्द्रीय उत्पाद शुल्क, गांधीनगर, को वित्त अधिनियम, 1994 की धारा 85 के प्रयोजन हेतु अपील प्राधिकारी के रूप में नियुक्त किया गया है

In accordance to Govt.'s Notification No. 26/2017-ST dated 17.10.2017 and order Vide Order No. 01/2017-18 dated 20.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, has been appointed as Appellate authority for the purpose of passing orders in respect of appeals under Section 85 of the Finance Act, 1994.

क इस अनुदेश अदालत अपीलकर्ता प्रत्यर्थी द्वारा अपील, प्रत्यर्थी द्वारा मूल आवेदन, आदेश / आदेशों, आदेश का दिनांक एवं अपीलीय प्राधिकारी का नाम निर्देश से सूचित ;
An appeal against the order-in-original, order-in-appeal may be filed by the Assistant/Deputy/Joint Commissioner or Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham / Bhavnagar :

ख अपील के इच्छुक व्यक्तियों का नाम एवं पता / Name & Address of the person(s) concerned :

M/s Aarvee Industries Ltd., Village - Dharoda, Dist : Kutch.

इस अनुदेश/अपील से संबंधित कोई व्यक्ति निम्नलिखित उचित के लिए आवेदन / अपील के संबंध में उचित प्राधिकारी / प्राधिकरण के समक्ष हो सकता है
Any person aggrieved may file an appeal to the appropriate authority in the following way

(A) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (1) के अंतर्गत अपीलीय न्यायाधिकरण के पीठ के समक्ष, उचित अपील फीस मूल प्राधिकारी को दिनांक 01.07.2017 के पहले या उसके बाद दायर की गई हो, जैसा कि सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (प्रक्रिया) नियमावली, 1982 के नियम 6 के अंतर्गत निर्धारित किया गया है ।
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 86(1) of the Finance Act, 1994 under Section 86 of the Finance Act, 1994 on appeal fee for

(B) अपीलकर्ता व प्रत्यर्थी के मामले में, जिनपर इस आदेश (स्टे ऑर्डर) के विरुद्ध अपील न्यायाधिकरण के समक्ष लंबित है, वे अपील की सुनवाई के लिए मांग किए गए शुल्क का 10% जमा करेंगे, जहाँ शुल्क अथवा शुल्क एवं दंड विवाद में है, या दंड जहाँ केवल दंड विवाद में है ।
The appellant & respondent, before whom this order is pending before the Appellate Tribunal, shall deposit 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute.

ग वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) के अंतर्गत सेवा कर अपीलीय न्यायाधिकरण के समक्ष अपील, सेवाकर अपील (एंसिल) को सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (प्रक्रिया) की नियमावली, 1982 के नियम 3 के अंतर्गत निर्धारित फार्म में चार प्रतियों में दायर की जाएगी ।
The appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 86(2) of the Finance Act, 1994 shall be filed in Form S.T.5 in four copies as prescribed under Rule 3 of the Service Tax (Appeals) Rules, 1982.

घ उक्त अपीलीय न्यायाधिकरण के समक्ष अपील करने के इच्छुक व्यक्ति को अपील के साथ केवल एक प्रति पर रु. 5/- का न्यायालय शुल्क टिकट लगाना चाहिए ।
To the West Regional Bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asarwa, Ahmedabad-380 016 in case of appeals other than as mentioned in para-2(A) above.

(A) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

[illegible]

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-35 ibid:

(ii) [illegible]

In case of any loss of goods, where the loss occur 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.

(B) [illegible]

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.

(C) [illegible]

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(D) [illegible]

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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(1) [illegible]

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.

(2) [illegible]

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

(3) [illegible]

In case, if the order covers a number 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.

(4) [illegible]

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.

(5) [illegible]

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) [illegible]

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.

(ii) अपीलीय न्यायाधिकरण के समक्ष अपील दायर करने के लिए फॉर्मेट [Format of Appeal to Appellate Tribunal] केंद्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 6(1) [Rule 6(1) of the Central Excise (Appeals) Rules, 2001] के अनुसार होना चाहिए। इसके साथ सभी आवश्यक दस्तावेज संलग्न किए जाने चाहिए। इसके साथ 5 प्रतियों में अपील ज्ञापन दायर किया जाना चाहिए। अपील ज्ञापन के साथ 5 प्रतियों में आदेश संलग्न किया जाना चाहिए। अपील ज्ञापन के साथ 5 प्रतियों में आदेश संलग्न किया जाना चाहिए। अपील ज्ञापन के साथ 5 प्रतियों में आदेश संलग्न किया जाना चाहिए।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in Form No. [illegible] as prescribed under Rule 6(1) of the Central Excise (Appeals) Rules, 2001 and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and such other documents as may be specified in the said Form. The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(iii) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(1) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(1) of the Finance Act, 1994 read with Rule 9(1) of the Central Excise (Appeals) Rules, 1944, to the Customs, Central Excise and Service Tax Appellate Tribunal shall be filed in quadruplicate in Form No. [illegible] and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(iv) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(2) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(2) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(v) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(3) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(3) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(vi) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(4) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(4) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(vii) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(5) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(5) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(viii) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(6) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(6) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(ix) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(7) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(7) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(x) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(8) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(8) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(xi) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(9) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(9) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(xii) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(10) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(10) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(xiii) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(11) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(11) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

(xiv) वित्त अधिनियम, 1994 की धारा 86 की उपधारा (2) एवं (2A) के साथ पठित केंद्रीय उत्पाद शुल्क अधिनियम, 1944 के नियम 9(12) के अनुसार सेवाकर के संबंध में अपील सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के समक्ष दायर की जाएगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी। इसके साथ आदेश की 4 प्रतियां संलग्न की जाएंगी।

The appeal under Section 86(12) read with Section 86(2A) of the Finance Act, 1994, shall be filed in quadruplicate in Form No. [illegible] of the Customs, Central Excise and Service Tax Appellate Tribunal, 1994 and shall be accompanied by four copies of the order appealed against (one of which shall be certified copy). The appeal should be filed within [illegible] days from the date of communication of the order appealed against. The appeal should be accompanied by a fee of Rs. [illegible] if the amount of duty, interest, fine, penalty or demand in dispute is [illegible] lakh or less; Rs. [illegible] if the amount is more than [illegible] lakh but not more than [illegible] lakh; and Rs. [illegible] if the amount is more than [illegible] lakh. The fee should be paid in the form of crossed bank draft in favour of the Registrar of the Appellate Tribunal [illegible] Application made for grant of stay or for rectification of mistake or for restoration of appeal should be accompanied by a fee of Rs. [illegible].

ORDER-IN-APPEAL

This order arises out of the appeal filed by the Deputy Commissioner, Central Excise, Division-Bhuj, Gandhidham (Kutch) (hereinafter referred to as 'the appellant') against the Order-in-Original No. 02/Dy.Commr./2017 dated 31.01.2017 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Central Excise, Division Bhuj, Gandhidham (Kutch) (hereinafter referred to as 'the adjudicating authority') in respect of M/s. Agrocel Industries Limited, Village - Dhrandh, District-Kutch (hereinafter referred to as 'the respondent') in pursuance of Review Order No. 07/2017-18 dated 03.05.2017 passed by the Commissioner of Central Excise & Service Tax, Gandhidham (Kutch) (hereinafter referred to as 'the reviewing authority') under the sub-section (2) of section 35E of the Central Excise Act, 1944.

2. Briefly, the facts are that a show cause notice dated 29.01.2015 was issued to the respondent alleging that they were engaged in exempted service viz. trading activity in addition to manufacturing goods falling under CETH 28 and 29 of the first schedule to the Central Excise Tariff Act, 1985 and had availed CENVAT credit in respect of common input services but has failed to maintain separate accounts as stipulated in Rule 6 of the CENVAT Credit Rules, 2004 (CCR). This notice was issued based on Revenue Para 2 of FAR No. 53/2013-14 dated 16.02.2013 and proposes for recovery of amount of Rs. 18,78,929/- in terms of Rule 6(3)(i) of CCR for non maintenance of separate accounts for taxable and exempted goods / service for the period from April, 2011 to May, 2013 with interest and penalty. Vide the impugned OIO dated 31.01.2017, the adjudicating authority dropped the aforementioned show cause notice wherein he dropped the demand along with interest and penalty.

3. Being aggrieved, the appellant has filed this appeal on the following grounds:

- That the adjudicating authority has overlooked the fact mentioned below Rule 6(3) of the CCR, 2004 which stipulates that if the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year and in this case, it is not in dispute that the option were given at the end of the year whereas the option were required to exercise at the beginning of the year;
- That as per Rule 6(3A)(a) fn (i) of the CCR, 2004, it is mandated that this option has to be exercised in writing and intimation has to be given to the

jurisdictional Superintendent of Central Excise, with further stipulation that the Cenvat credit attributable to the exempted services has to be paid provisionally every month. Only thereafter the amount finally determined has to be paid at the end of the financial year;

- That the conditions and the procedure to be followed under the Rule are mandatory in nature and are required to be followed scrupulously. The word '***Shall***' in the aforesaid Rule 6(3) of the CCR, 2004, signifies the mandatory nature of the stipulation, incorporated therein. In this regard, the Hon'ble Bombay High Court, in the case of Malaysian Airlines Vs. UOI 2010(260) ELT 191 (Bom.) has inter-alia, observed as: '*Para 52. .... The use of word "**Shall**" in the statute, ordinarily speaking, makes the statutory provision is mandatory. It is construed as such, unless there is something in the context in which the word is used, which would justify departure from that meaning....*'
- That the non following of the mandatory conditions / procedures laid down under Rule 6 of the CCR, 2004 should not be treated as a mere procedural lapse. The, not giving any option under Rule 6(3) of the CCR, 2004, the Department cannot be faulted for raising the demand in terms of Rule 6(3)(i) of the CCR, 2004, that at no point of time the assessee disclosed the material facts to the Department regarding non maintenance of separate accounts and it is facts came on record only during audit.
- That the Hon'ble Supreme Court in the case of M/s. Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner as reported in 1991 (55) ELT 437 (SC) observed that- '*Distinction is to be made between a procedural condition of a technical nature and a substantive condition. Non-observance of the former is condonable, while that of the later is not condonable, as it is likely to facilitate commission of fraud and introduce administrative inconveniences.*'
- That the Tribunal's observations that, '*Rule 6 is not enacted to extract illegal amount from the assessee*' appears to be entirely improper and unwarranted in the facts and circumstances of this case, inasmuch as in the absence of any option under Rule 6(3) of the CCR, 2004 at the beginning of the year, the Department has no option but to issue the demand in terms of Rule 6(3)(i) of CCR, 2004. That the Hon'ble Bombay High Court in the case of CCE, Thane-I Vs. M/s. Nicholas Piramal (I) Ltd. as reported in 2009 (214) ELT 327 (Bom.) in para 21 of its judgment has observed that- '21. ...*We may only mention that hardship cannot result in giving a go-by to the language of the rule and making the rule superfluous. In such a case it is for the assessee to represent to the rule making authority pointing out the defects if any. Courts cannot in the*

quest of interpretation take upon themselves the task of taking over legislative function of the rule making authorities. In our constitutional scheme that is reserved to the legislature or the delegate. It is not open to countenance such an argument as the Finance Minister while providing for a presumptive tax under Rule 57CC had resolved this difficulty. This presumptive tax has been continued in Rule 6. Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative. At the highest it would be a matter requiring reconsideration by the delegate. ..... On a reading of Rule 6(1) and Rule 5(2) it is not possible to say that the construction now given would result in manifestly unjust results or render the rule absurd. It is never possible for the legislature to conceive every possible difficulty. An isolated provision or a rule can occasion hardship to a few, that cannot result in the rule being considered as absurd or manifestly unjust. ..... '

- That the OIO decided on the decision of Hon'ble CESTAT in case of M/s. Mercedez Benz (I) Pvt. Ltd., Mumbai Vs. Commissioner of Central Excise, Pune-II, has not been accepted by the department and an appeal has been filed before the Hon'ble High Court of Mumbai vide Appeal No. CEXA No. 162/2016.
- The appellant has requested that the OIO is therefore not legal and proper and unsustainable on law and requested to set aside the impugned order.

4. The respondent filed reply / cross objection on 26.08.2017 as under:

- That while filing of appeal, Hon'ble Deputy Commissioner has completely overlooked this important fact of the case that the company has already filed information as per Rule 6(3A) with department for the period 2012-13 & 2014-15 and reversed Cenvat Credit of Rs. 10,274/-, hence the demand on that ground needs to be set aside.
- That they had already reverse Cenvat Credit of Rs. 35,336/- as per Rule 6(3A) for the period April, 2011 to November, 2012 on 23.01.2013 (paid period).
- That the payment of 5% / 6% and payment of pro-rata service tax are two different options and they having the option to go for the option under Rule 6(3A) if separate accounts are not maintained. There is no bar in the rules that option under Rule 6(3A) cannot be opted once when no such option is opted, the assessee cannot be compelled to go for option under Rule 6(3)(i). They are free to choose between two modes of payment and department cannot mandate to follow a particular mode of

payment favourable to the Department merely because they have not followed the procedural requirement.

- That they are following the procedure laid down in the rules before opting for proportionate reversal and there is no bar that such procedure cannot be followed after the audit was conducted or show cause notice was issued. Intimation and following the process laid down is merely a procedure part as against the legal part of proportionate reversal of Cenvat Credit.
- That CBEC Circular No. 868/8/2008-CX dated 09.05.2008 states that if an assessee is not maintaining separate accounts for CENVA credit for dutiable and exempted outputs, there are two options available.
- That the Hon'ble Tribunal of Chennai in the case of Sun Standard Co. Ltd. Vs. Commissioner of Central Excise reported in 2010 (262) ELT 785 (Tri-Chennai) has held that *Amendment for April, 2008 to Rule 6 of Cenvat Credit Rules, 2004 by Finance Act, 2010 allowing option of reversing of proportionate credit where separate accounts were not kept, was procedural / retrospective in effect, and assessee was entitled to its benefit.* The said order has been affirmed by Madras High Court as reported in 2013 (295) ELT 67 (Mad.).
- That the Hon'ble Bombay High Court in the case of Mercedes Benz India (P) Ltd. Vs. Commissioner of Central Excise, Pune-I ruled out the judgment passed by Tribunal and remanded back the case to Tribunal with clear instructions to decide on the issues of calculation and formula to be accepted in case of Rule 6(3) of Cenvat Credit Rules, 2004.
- That there is no specific time frame specified in the rule for giving an intimation and time frame for submission of intimation is only date of exercising the option for a financial year.
- That the department's allegation that the credit was not reversed at relevant time is contradictory because there is no time limit prescribed by law for reversal of the credit.
- That they have identified the common input credits and have reversed such Cenvat credit amounting to Rs. 40,620/- as per formula mentioned in Rule 6(3A) of Cenvat Credit Rules, 2004. Although there is a requirement to intimate the concerned officer for such proportionate reversal; however, considering these lapse as a procedural lapse, requested to set aside the demand as raised in the SCN for the F. Y. 2011-12 being a procedural lapse.
- That no interest is recoverable.
- That no penalty is imposable.

Contd...

5. Personal hearing in the matter was held on 22.01.2018. Shri Rashmin Vaja, Chartered Accountant, appeared on behalf of the respondent and pleaded that the ground of appeal is itself not proper as there are many provisions which support the course of action followed by the respondent and order-in-original issued by AC. He reiterates the points and citations taken in his cross examination and requested to uphold the impugned order-in-original.

6. I have gone through the facts of the case, the appellant's ground of appeal, respondents cross objection dated 25.05.2017 and submissions made by the respondents during the course of personal hearing. The issue to be decided is whether the demand of Rs. 18,78,929/- under Rule 6(3)(i) of CENVAT Credit Rules, 2004 for the period from 01.04.2011 to 31.12.2015 dropped along with interest and penalty is correct or otherwise.

7. The dispute as is evident revolves around Rule 6 of the CCR, 04, which is extensively quoted and discussed in the impugned order dated 31.01.2017. The text of the rule is therefore, not re-produced. The adjudicating authority while dropping the proceedings has observed that the respondent has failed to file the option for the year 2011-12 which being a procedural lapse but has paid the proportionate amount as determined under Rule 6(3A) along with interest and intimated the same to the jurisdictional range superintendent on 24.01.2013 and for the remaining period the intimation have been filed well within the concerned financial year and payment of proportionate amount has already been made hence question of payment under Rule 6(3)(i) would not arise.

8. Rule 6(1) of CCR, 2004, clearly states that CENVAT credit shall not be allowed on input service used in manufacture of exempted goods or provision of exempted services except in the circumstances mentioned in sub rule(2). Rule 6(2), ibid, puts an obligation on a manufacturer who avails CENVAT credit in respect of inputs and input services, used in both dutiable and exempted final products, to maintain separate records. Rule 6(3), ibid, a non-obstante clause, gives a facility to a manufacturer, opting not to maintain separate accounts to either

[a] pay an amount of 6% of the value of exempted goods; or
[b] pay an amount as determined under rule 3A; or
[c] maintain separate accounts and take CENVAT credit as per conditions therein and thereafter, pay an amount as per sub rule 3A of CCR '04.

9. The undisputed fact is that the respondent was engaged in trading activity also. There is also no dispute as far as the allegation of non maintenance of separate accounts, is concerned. It was imperative on the respondent, to either, not take CENVAT credit in respect of input service used in

trading activity or maintain separate accounts as per Rule 6(2), ibid. However, as already mentioned, the respondent took CENVAT credit in respect of input service used in trading activity and also failed to maintain separate accounts. It is also not in dispute that the respondent has not filed the option to pay an amount as per Rule 6(3)(ii) of CCR, 2004 from 01.04.2011 for the year 2011-12 but vide letter dated 24.01.2013 the respondent has intimated the payment of proportionate amount as per Rule 6(3)(i) of CCR, 2004 along with interest. The contention of the appellant that the adjudicating authority has overlooked the Explanation-I below Rule 6(3) of CCR, 2004 is careless because it is observed that the respondent has filed the option to pay amount as per Rule 6(3)(ii) of CCR, 2004 for the year 2012-13 on 07.02.2013, for the year 2013-14 on 05.04.2013 and for the year 2014-15 on 29.04.2014 before the Superintendent of Central Excise, Range-I, Bhuj Division.

10. It is further observed that the respondent contended that they have identified the common input service credits and have reversed such Cenvat credit amounting to Rs. 40,610/- as per formula mentioned in Rule 6(3A) of CCR, 2001 and the lapse of intimation may be considered as procedural lapse for the F. Y. 2011-12. It is observed that the adjudicating authority has clearly held that the respondent has already paid the amount as per Rule 6(3A) along with applicable interest for the period 2011-12 to 2014-15 and the delay in filing of intimation under Rule 6(3A) for the year 2012-13 and not filing of intimation for the year 2011-12 are procedural lapses which are condonable on the ground that substantial benefit cannot be denied for procedural lapses as held by various judicial authorities. It is further observed that the Hon'ble Tribunal, Mumbai in the case of M/s. Hindustan Antibiotics Ltd. - 2016 (42) STR 387 (Tri.-Mumbai)] and the Hon'ble Tribunal, Hyderabad in the case of M/s Aster Pvt. Ltd. [2016 (43) STR 411 (Tri.-Hyd.)] has allowed proportionate reversal of credit and held that the failure if any is only procedural lapse of not filing declaration of availing option.

11. It is further observed that in view of amended provisions of Rule 6(3) of CCR, 2004, the Joint Secretary (TRU) has issued a letter No. 334/8/2016-TRU dated 29.03.2016 which states that:

> "(i) while Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the rules without altering the established principles of reversal of such credit.
>
> (ii) sub-rule (3) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in relation to manufacture of exempted goods and exempted services. The rule then directs that the procedure for calculation of credit not allowed be provided in sub-rules (3) and (3A) for different situations.

(i) sub-rule (3) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for clearance up to the stage of removal or a service provider who exclusively provides exempted services shall pay a reversal the entire credit and shall not be eligible for credit of any input and input services used.

(ii) sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures both dutiable as well as exempted goods for the stage of removal, dutiable, exempted goods and final products excluding exempted goods or when a provider of output service provides both taxable as well as exempted services, Page 30 of 38 then the manufacturer or the provider of the output service shall exercise one of the two options namely, to pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or to pay an amount as determined under sub-rule (3A).

(iii) The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken as is attributable to the exempted goods or exempted services and under no circumstance this part can be greater than the whole credit."

The amendment to CENVAT Credit Rules, 2004 reflects the interpretation and intent of the Government. In fact Joint Secretary himself states that the rules are being recasted with the objective of *simplifying and rationalizing the same without altering the established principles of reversal of such credit*. Even otherwise to demand an amount under Rule 6 which is more than the CENVAT credit availed would clearly be against the spirit of reversal.

12. In view of above discussion, I hold that there is no dispute regarding the trading activity carried out by the respondent in falling within the meaning of 'exempted service' as defined under Rule 2(e) of CCR, 2004. Further, it is also undisputed fact that the respondent had availed Cenvat credit on input services which were used in relation to both dutiable and exempted activity (trading). Therefore, it was imperative on the respondent, to either, not to take CENVAT credit in respect of input service used in trading activity or maintain separate accounts as per Rule 6(2) of CCR, 2004 for the input services used for trading activity as well as for manufacturing of dutiable goods. However, as is already mentioned, the respondent took Cenvat credit in respect of input services used in trading activity and also failed to maintain separate accounts for the same. Therefore, the provisions of Rule 6(3) of CCR, 2001 clearly attracts in respondent's case. Nowhere the quantum of Cenvat credit taken on input services used for trading activity has been disputed by the department. Rule 6(3) provides options either (i) to pay an amount @ 6% of the value of exempted goods or, (ii) to pay an amount as determined under Rule 6(3A) or, (iii) to maintain separate accounts and take CENVAT credit as per conditions therein and thereafter pay an amount as per Rule 6(3A). In the present case, I find that the respondent have availed the provisions of Rule 6(3)(ii) and have followed the procedure as laid down under Rule 6(3A) of CCR,

2004 by filing declarations, as required under Explanation to Rule 6(3) of CCR, 2004 belatedly or within time limit for the financial year 2012-13, 2013-14 & 2014-15 except for the financial year 2011-12 and also paid an amount of Rs. 49,310/- with interest in compliance of Rule 6(3A) ibid. Further, belatedly filing or non-filing of such declarations is merely a procedural lapse as held by various judicial authorities. Hence I condone the same, in absence of any substantive and scrupulous notice in respondent's case.

13. Therefore, I hold that the adjudicating authority has correctly held that the question of payment under Rule 6(3)(i) of CCR-04 would not arise inasmuch as the intimations have been filed in the relevant financial year and payment of proportionate credit had already been made under Rule 6(3)(ii). Hence, and accordingly, I uphold the impugned order and dismiss the appeal filed by the Department.

14. The appeal is accordingly disposed off in above terms.

(Sunil Kumar Singh)
Commissioner (Appeals)/
Commissioner,
CGST & Central Excise,
Gandhinagar

By Regd. Post AD
F. No. V2/04/PAC/GDM/2017 Date: 17.04.2018

To,
The Commissioner,
Customs and Central Excise,
"Central Excise Bhawan"
Plot No. 82, Sector-8, Opposite Ram Lila Maidan,
Gandhidham-370201.

Copy to:
(1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
(2) The Commissioner (Appeals), CGST & Central Excise, Rajkot.
(3) M/s. Agrocel Industries Limited, Village – Dhordo, District-Kutch.
(4) The Deputy Commissioner, CGST & Central Excise, Division: Bhuj.
(5) The Assistant Commissioner (Systems), CGST & Central Excise, Rajkot.
(6) The Superintendent, CGST & Central Excise, Range-III, Division: Bhuj.
(7) PA to Commissioner of CGST & Central Excise, Gandhinagar.
(8) Guard File.