



::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL 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



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल नम्बरा / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/3/GDM/2018-19	12/AC/2017-18	31-01-2018

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

KCH-EXCUS-000-APP-038-2019

आदेश का दिनांक /

Date of Order: 11.03.2019

जारी करने की तारीख /
Date of issue:

19.03.2019

कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by ShriKumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूजित: /
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 Appellant & Respondent :-

M/s Lakme Lever Ltd. (Formerly known as M/s Aquagel Chemicals Pvt. Ltd.), Survey No. 159, Varsana, Bhimsara- Padana Road,, Off. N.H. 8-A, Near Agarwal Automobiles, P.O. Padana, Gandhidham (Kutch) - 370240.

इस आदेश (अपील) से व्यथित कोई 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) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में 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 अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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 है। 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 अंतर्गत सेवाकर नियमवाली, 1994, के 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 है, 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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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 है। 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) और (2A) के अंतर्गत की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती है। साथ ही अपील के साथ उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति समस्त अपीलियों के लिए) और आर्यक 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 Form 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 अधिकरण (सेक्टर) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत विभाजन 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 का जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत मांग निम्नलिखित अपीलीय आदेशों के अंतर्गत 'मांग किया गया शुल्क' में निम्न शामिल है
 - (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किया गया शुल्क' में निम्न शामिल है
 - (ii) धारा 11 डी के अंतर्गत रकम
 - (iii) गेनवेट जमा की गयी गई रकम
 - (iv) गेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
 - बशर्ते यह कि इन धारा के प्रावधान विधियों (नं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होये। / For an appeal to be filed before the CESTAT, under Section 35E 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 Credit taken;
 - (iii) amount payable under Rule 6 of the Genvat 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 कोपुनरीक्षण आवेदन : Revision application to Government of India**
 इस आदेश की पुनरीक्षणयाविका निम्नलिखित नाममाता में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौकी नजेल, जीवन दीप भवन, नंसद 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 में दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह से 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 निर्यात में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिवेट) 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए एच ड्यूटी क्रेडिट 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 समयावधि पर या बाद में पारित किए गए हैं। / 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 उत्पाद 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 प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ 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। जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 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 आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ङग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य में बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
 - (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुच्छेदों 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-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 ओर 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.

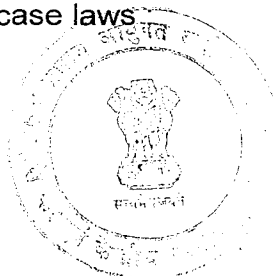
:: ORDER IN APPEAL ::

M/s Lakme Lever Ltd (Formerly known as M/s. Aquagel Chemicals P Ltd), Survey No.159, Varsana, Bhimasar- Padana road, Off. N.H. 8-A, Nr. Agarwarl Automobiles, P.O.Padana, Gandhidham (Kutch) -370240 (hereinafter referred to as "Appellant") has filed the present appeal against Order in Original No. 12/AC/2017-18 dated 31.1.2018 (hereinafter referred to as "the impugned order"). passed by the Assistant Commissioner, Central GST, Rural Division Gandhidham-, (Kutch) (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that the Audit found that Appellant had short paid service tax of Rs.11,74,923/- during the period from Oct,2013 to March,2014 and had filed revised ST-3 return for the period from April,2013 to September, 2013 on 27.5.2015 after 19 months and claimed excess payment of Service Tax made by them towards their service tax liability for the period from April, 2013 to Sep,2013. Show Cause Notice dated 19.4.2017 was issued to the Appellant demanding Service Tax of Rs.11,74,923/- under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act"), interest under Section 75 and also proposing imposition of Penalty under Section 70, Section 77 and Section 78 of the Act. The lower adjudicating authority vide the impugned order confirmed demand of Rs.11,74,923/- under Section 73 along with interest under Section 75 of the Act, imposed penalty of Rs.20,000/- under Section 70, penalty of Rs.10,000/- under Section 77 and penalty of Rs. 11,74,923/- under Section 78 of the Act.

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

(i) They have made excess payment of Service Tax under Reverse Charge Mechanism for GTA services for the period from April, 2013 to September, 2013 and adjusted excess payment in subsequent half year from Oct,2013 to March, 2014 against payable service tax of Rs.37,59,655/- under Rule 6(4A) of Service Tax Rules, 1994 (hereinafter referred to as "STR,1994"); that excess payment is not disputed in the impugned order and hence, adjustment made by them in subsequent half year is correct; that they relied upon the following case laws



- M/s. Chola Business Service Ltd- 2017(47) STR 192 (T)
- State Bank Of Hyderabad- 2016 (43) STR 415 (T)
- M/s. Dell India P Ltd- 2016(42) STR 273 (T)
- M/s. Jubilant Organosys Ltd- 2015 (38) STR 1230 (T)

(ii) The revised return filed belatedly could not be denied for consideration by the Department as held by the Hon'ble CESTAT in the case of M/s. Ceolric Services reported as 2011 (23) STR 369 (T).

(iii) The demand is time barred as no ingredient for invocation of extended period under Section 73 exists in this case; that records were audited by the Audit Parties of the Department and no objections were raised by them; that it is not their conscious or deliberate withholding of any information and hence, invocation of extended period is incorrect as held in the following case laws:

- M/s. Pushpam Pharmaceuticals [1995(78)ELT 401 (SC)],
- M/s. Cosmic Dye Chemicals [1995(75) ELT 721 (SC)],
- M/s. Tamilnadu Housing Board [1994 (74) ELT 9 (SC),
- M/s. Chemphar durgs & Liniments [2989(40) ELT 276 (SC)],
- M/s Ugam Chand Bhandary[2004 (62)RLT 240 (SC) and
- M/s. Surat Textile [2004 (62) RLT 351 (SC).

(iv) No penalty was imposable upon them under Section 77 and Section 78 of the Act; that they relied upon following judgments of the Hon'ble High Courts and the Hon'ble Supreme Court in this regard:-

- M/s. Rajasthan Spinning & Weaving Mills- 2009 (238) ELT 3 (SC)
- M/s. JR Fabrics- 2009 (238) ELT 209 (P & H)
- M/s. Thrumala Ailoys Castings- 2009 (238) ELT 226 (Mad)
- M/s K P Pouches- 2008 (228) ELT 31 (Del)
- M/s. JCT Electronics Ltd- 2014 (34) STR 778 (T)

(v) It was their *bonafide* belief that *suomoto* adjustment is not barred as it is prescribed in Rule 6(4A) of STR, 1994; that Section 80 of the Act is applicable in their case as there is reasonable cause for failure to pay the service tax and hence, penalty is not imposable upon them; that penalty can not be imposed on them in absence of *mens-rea* as held in the case of M/s. UT Ltd reported as 2007(207) ELT 27 (P & H) and Kamal Kapoor reported as 2007(5) STR 251 (P

[Handwritten Signature]
11/12/2019

& H).

3. Personal Hearing in the matter was attended by Shri C.S. Biradar, Advocate, who reiterated the grounds of appeal and submitted that they have paid excess in many months and adjusted after 19 months or so; that they relied upon case laws of M/s. Dell India P Ltd 2016 (42) STR 273 (Tri-Bang) and M/s. Chola Business Service Ltd 2017 (47) STR 192 (Tri-Chennai) to say that excess paid by them needed to be allowed in next months returns; that revised return filed even after 60 days needed to be considered in terms of Rule 7(c) of STR, 1994; that CESTAT in the case of M/s. Ceolric Services reported as 2011(23) STR 369 (Tri-Bang) has decided the issue in their favour; that the Hon'ble CESTAT, Ahmedabad in the case of M/s. JCT Electronic Ltd reported as 2014 (34) STR 778 (Tri-Ahmedabad) though upheld demand but set aside penalty; that it is a case of service tax on GTA service under RCM and hence, a revenue neutral case.

FINDINGS

4. I have carefully gone through the facts of the case, the impugned order, written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether,

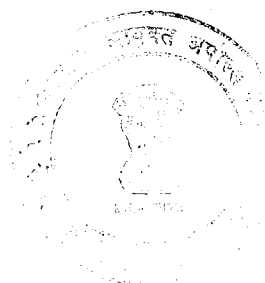
- (i) Adjustment of excess Service Tax paid by the Appellant in subsequent Half Year is correct or not?
- (ii) Whether revised return filed by the Appellant after 19 month is correct or not?
- (iii) Whether Penalty under Section 70, Section 77 and Section 78 imposed on the Appellant is correct or not?

6. I find that the adjustment of excess Service Tax paid is governed under Rule 6(4A) and 6(4B) of STR, 1994 which are reproduced below:-

"(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

(4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification."

(Emphasis supplied)



11/3/2019

6.1 I also find that Rule 6(4A) lays down restriction on adjustment up to succeeding month or quarter as the case may be. Thus, excess payment of service tax can be adjusted by an assessee next month or next quarter, as the case may. In view of such unambiguous provisions, the appellant's argument that they can adjust excess payment of service tax in next half year is not supported by provisions in the statute. I, therefore, hold that this argument of the Appellant does not sustain at all.

6.2 I further find that appellant has filed revised return after gap of 19 months that is well beyond the limit of 3 months prescribed in Rule 7B of the STR, 1994. The facts reveal that Appellant had filed refund claim for excess payment made by them, which was rejected on the ground of limitation of time. Thus, the Appellant attempted to get double benefit by filing of refund claim and also by short paying service tax of Rs.11,74,923/- for the period from Oct,2013 to March,2014. It is on record that the appellant had not informed department about short payment made by them during the period from Oct,2013 to March,2014. I, therefore, hold that appellant adjusted excess payment by filing revised return beyond time permitted in law and hence, the impugned order confirming demand of service tax of Rs.11,74,923/- as short paid is correct, legal and proper.

6.3 I find that the Hon'ble CESTAT in the case of M/s. JCT Electronics Ltd reported as 2014 (34) STR 778 (Tri-Ahmd) has held that *suo motu* adjustment in violation of Rules 6(4A) and Rule 6 (4B) is not justified and it confirmed the demand along with interest. Relevant portion of the Order reads as under:-

"4.2 It has not been denied by the appellant that above conditions were not fulfilled by them but has relied upon the case law of Single Member Bench in the case of Siemens Limited v. CCE, Pondicherry (supra). It is seen from the facts of the case that the value on which Service Tax was paid was determined as late as June 2007 whereas the duty as paid in 2006. In Para 6 of the order in the case of Siemens Limited, it has been discussed by the Bench on facts, as to how the appellant has provided reasonable explanation in the case. In the present case, there is no reasonable explanation from the appellant as to why appellant was not able to adjust excess Service Tax paid in the liability for the succeeding month or quarter. The words used in Rule 6(4B) is not 'Subsequent Months or Quarters'. It is a well settled proposition that when a procedure is prescribed by the legislation for availing an exemption/concession then that procedure has to be followed strictly in that fashion only. Accordingly the case law relied upon by the appellant is not applicable to the facts and circumstances of the present case. Confirmation of demand and interest has been correctly made by the first appellate authority which needs to be upheld."

(Emphasis supplied)

6.4 The order of the Hon'ble CESTAT in the case of M/s. Dell india P Ltd is not applicable in this case as in that case department had objected to *suo motu*

adjustment by the Appellant and decision was given with regard to applicability of Rule 6(3) of STR,1994, which is not the case here. I also find that case law of M/s. Chola Business Services Ltd can not be made applicable as the Hon'ble CESTAT decided the adjustment of excess payment disputed by the department on the ground that the adjustment was not as per Rule 6(3) of STR, 1994 as assessee had not refunded the value of taxable service. Thus, both the case laws relied upon by the appellant are not relevant to the issue of the instant case, which is adjustment beyond 90 days against the expressed provisions of Rule 6(4) of STR,1994.

7. As regards invocation of extended period and imposition of penalty under Section 78 of the Act, I find that while confirming demand of Rs.11,74,923/- at Para 13 of the impugned order, the lower adjudicating authority has recorded his findings as under:-

"On being called for reason of short-payment, noticee stated that, he had made excess payment of Service Tax during 1st half year (April 2013 to Septemeber 2013) hence, to set off the excess payment; they have paid short service tax for the material period. They also shown refund claim submitted to Dy. Commissioner, Service Tax, gandhidham for Rs.7,32,102/- for claiming the excess payment. The same was rejected by the authority on the ground of Time Barred."

The noticee had shown total service tax payable after abatement was Rs.37,59,655/- in the revised ST-3 return for the period Oct,2013 to march, 2014 and the noticee had made payment of Service Tax of Rs.25,84,732/- against payable of Rs.37,59,655/-. This has resulted in short payment of Service Tax amounting to Rs.11,74,923/-."

7.1 I find that the refund claim of the Appellant was for Rs.7,32,102/- whereas amount to be adjusted in Revised Return filed beyond permissible time is Rs.11,74,923/- ! I further find that the lower adjudicating authority also recorded that excess payment could not be proved before him. Appellant had not furnished any details either before the lower adjudicating authority or in the present appeal proceedings to substantiate their claim of excess payment. Thus, the Appellant has failed to justify their claim and their contention that there was reasonable cause for short payment of service tax. Therefore, I hold that the extended period is rightly invoked for demand of Rs. 11,74,923/- and penalty is also imposable on them under Section 78 of the Act. I find that the demand show cause notice has been issued to the appellant on the basis of recorded transactions in their books of Accounts. Therefore, penalty @50% of demand can only be imposed under proviso to Section 78 of the Act. Hence, I reduce penalty to Rs.5,87,462/- on them under proviso to Section 78 of the Act.

[Handwritten signature]
11/9/2019

8. I find that the Appellant failed to assess their service tax liabilities correctly and did not pay service tax as per Section 60 of the Act read with Rule 6 of the Service Tax Rules, 1994. Therefore, imposition of penalty of Rs.10,000/- under Section 77 of the Act is justified. The case law of M/s. JCT Electronics Ltd. relied upon by the appellant for non imposition of penalty is not applicable in this case as the waiver was granted under Section 80 of the Act before 14.5.2015 whereas Section 80 has been omitted w.e.f. 14.5.2015 and it no longer exists under the Act now.

8.1 Appellant has not contested late fee of Rs.20,000/- imposed under Section 70 of the Act and hence, I refrain from giving findings on it.

9. In view of above, I hold that the Appellant is liable to pay Service Tax of Rs.11,74,923/- along with interest at applicable rates under Section 75 of the Act and penalty of Rs.5,87,462/-, under Section 73 of the Act is imposable on the Appellant along with penalty of Rs.20,000/- under Section 70 of the Act and penalty of Rs.10,000/- under Section 77 of the Act.

९.१ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 The appeal filed by the Appellant is disposed off as above.

सत्यापित,
स्मितेश रूपरेलिया
अधीक्षक (अपील्स)

(कुमार सतोष)
प्रधान आयुक्त(अपील्स)

By Regd. Post AD.

To,

M/s Lakme Lever Ltd (Formerly known as M/s. Aquagel Chemicals P Ltd), Survey No.159, Varsana, Bhimasar- Padana road, Off. N.H. 8-A, Nr. Agarwarl Automobiles, P.O.Padana, Gandhidham (Kutch) -370240	मेसर्स लेकमे लीवर लिमिटेड (पुराना मेसर्स एकवजेल केमिकल्स प्रा ली) सर्वे नं १५९, वरसाना, भीमासर- पड़ाना रोड, ऑफ नेशनल हाई वे ८-ए, अगरवाल औटोमोबाइल के पास पोस्ट पड़ाना ,गांधीधाम - ३७०२४० (कच्छ)
--	---

प्रति,

- १ प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- २ आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, कच्छ आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- ३ सहायक आयुक्त, केन्द्रीय वस्तु एवं सेवा कर, इरल डिवीजन, गांधीधाम को तुरंत

✓ ४. आवश्यक कार्यवाही हेतु।
गार्ड फाइल