

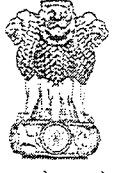


: प्रधान आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क :
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक/ Date
	V2/14/GDM/2018-19	24/DC/Anjar- Bhachau/2017-18	21-02-2018

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

KCH-EXCUS-000-APP-053-2019

आदेश का दिनांक / Date of Order:	30.04.2019	जारी करने की तारीख / Date of issue:	01.05.2019
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श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ मेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मृजित: /
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 Sumilon Polyester Limited, Plot No.43 P,NH 8A, Village Varsana, Anjar(Kutch).

इस आदेश (अपील) में व्यापक 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) माला शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यों के संबंध में सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के.पुरम, नई दिल्ली, को जाननी 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 बतलाए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमर्वा अहमदाबाद- 380016 का जाननी चाहिए। /

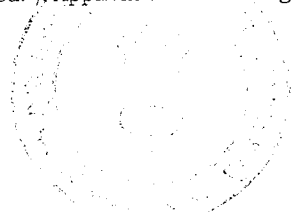
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(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, व्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 मेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिन आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इतने में कम से कम एक प्रति के साथ, जहां मेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 fee 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) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, मेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकने वाली एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उत्तरों में एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ मेवाकर, 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 of 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 मेवाकर अपीलीय प्राधिकरण (सेन्ट्रल) 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 मेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/मेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं मेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) नेटवेट जमा की ली गई गलत राशि
(iii) नेटवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विनियम (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किमी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतक के अंतर्गत अवर मन्दि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, मन्द मांग, 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 किमी नुकसान के मामले में, जहां नुकसान किमी माल को किमी कारखाने में भंडार गृह के पारगमन के दौरान या किमी अन्य कारखाने या किमी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किमी कारखाने या किमी 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 किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किमी 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 an 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 जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्यम के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ मूल रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि मूल 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 इन आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग में किया जाना चाहिए। इस तथ्य के होने हुए भी की लिखा पट्टी कार्य में वचन के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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, notwithstanding 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 अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर 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 में 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. Sumilon Polyester Limited, Plot No. 43P, NH 8A, Village – Vassana, Taluka – Anjar (Kutch) (hereinafter referred to as “the appellant”) has filed present appeal against Order-in-Original No. 24/DC/Anjar-Bhachau/2017-18 dated 21.02.2018 (hereinafter referred to as ‘the impugned order’) passed by the Deputy Commissioner, Central GST, Division – Anjar-Bhachau, Gandhidham (hereinafter referred to as “the lower adjudicating authority”).

2. Brief facts of the case are that CERA audit revealed that the appellant was manufacturing excisable goods, namely, Polyester Film – Plain and Plain Packaging falling under CETH 3920 6931 and 3920 6911 of CETA, 1985 availing cenvat credit under Cenvat Credit Rules, 2004 (hereinafter referred to as “the Rules”); that they availed service tax credit of Rs. 10,84,992/- on the basis of invoices issued by various service providers for the services provided to their unit at Surat (and not Gandhidham); that the appellant was not eligible for such cenvat credit of service tax as per Rule 2(l) of the Rules; that the appellant wrongly availed cenvat credit of service tax of Rs. 10,84,992/-, out of which they agreed and reversed credit of Rs. 4,65,152/- but the remaining amount of Rs. 6,19,840/- was not reversed by them.

2.1 Show Cause Notice No. CEX/GIM/SCN/SUMILON IND/LAR-1708/P-7/2017-18 dated 13.10.2017 was issued to the appellant to show cause as to why (i) cenvat credit of service tax of Rs. 6,19,840/- should not be recovered under Rule 14 of the Rules read with Section 11A of the Central Excise Act, 1944 (hereinafter referred to as “the Act”); (ii) Rs. 4,65,152/- reversed by them should not be appropriated; (iii) interest should not be recovered on total amount of Rs. 10,84,992/- under Section 11AA of the Act; (iv) penalty should not be imposed under Rule 15(2) of the Rules read with Section 11AC of the Act. The said SCN was adjudicated by the lower adjudicating authority vide the impugned order vide which demand of Rs. 6,19,840/- was confirmed under Rule 14 of the Rules read with Section 11A of the Act along with interest under Section 11AA of the Act; appropriated Rs. 4,65,152/- already paid by way of reversal of credit; imposed penalty of Rs. 10,84,992/- under Section 11AC of the Act with reduced penalty as provided under proviso to Section 11AC of the Act.

3. Being aggrieved by the impugned order, the appellant has filed the present appeal, *inter alia*, on the following grounds:

(i) The lower adjudicating authority has passed the impugned order without considering their submissions.

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(ii) The appellant did not agree to pay interest on the reversed amount on the ground that they had sufficient unutilized balance of the cenvat credit available in their cenvat credit account all the time.

(iii) Table – 2 of the SCN dated 13.10.2017 indicates that interest of Rs. 2,75,428/- has been paid vide Challan dated 26.01.2017.

(iv) There is no case of suppression of facts as they filed returns regularly and departmental audit also conducted for the period under dispute. Extended period cannot be invoked as none of ingredients of Section 11A(1) of the Act is available. Hence, the demand is time barred. The appellant relied upon judgement of the Hon'ble Supreme Court in case of Continental foundation Jt. Venture reported as 2007 (216) ELT 177 (SC).

(v) The appellant has no manufacturing unit at Surat and their balance sheet for all units situated at various places is made at Surat only and hence, address appearing in invoices is of their Hdqrs. There are many judgements over the issue, that in such cases, cenvat credit taken should not be disallowed.

(vi) There is no suppression of facts on their part and hence, no penalty is imposable on them under Section 11AC of the Act.

4. Personal Hearing was attended by Shri Navin Gheewala, Consultant of the appellant, who reiterated the grounds of appeal and submitted a written synopsis stating that cenvat credit can't be denied only on the ground that invoices have addresses of their head office even though factory at Gandhidham; that they are entitled to get cenvat credit; that demand is time barred; on query to submit agreements and invoices they requested for 10 days to submit these.

4.1 The appellant vide letter dated 27.03.2019 has submitted written submission, *inter alia*, stating as under:

- The dispute is of service tax credit availed by the appellant on the invoices, which bear address of their H.O. at Surat.
- Total cenvat credit of Rs. 10,84,992/- availed by them but they paid Rs. 4,65,152/- by reversal of credit before issue of SCN.
- They have no factory at Surat. The balance sheets of their units are made one at their Head office at Surat, hence, invoices are addressed to their Head office but the services have been provided at Gandhidham unit.
- The appellant placed reliance on judgement in case of Endurance Technology (P) Ltd. reported as 2015 – T10L 137a – HC.Mum. – 55 Exh which held that rule does not say that input service must be received at the factory premises.

- Extended period invoked is not correct as they filed returns regularly and internal audit of the department also conducted audit for the period under dispute. Placed reliance on judgement in case of Continental Foundation Jt. Venture reported at 2007 (216) ECT 177 (SC); SDL Auto (P) Ltd. reported as 2013 (294) ECT 577 Exh and Ratnamani Metals & Tubes Ltd. reported as 2013 (293) ELT 674 Exh.

4.2 The appellant vide letter dated 01.04.2019 has submitted further submission, *inter alia*, as under:

(i) Copy of agreement 25.07.2011 made with the service provider, namely, Mott Macdonald Pvt. Ltd. and submitted that as per Para 4 of the said agreement due to land dispute, the appellant shifted plant to Gandhidham, which proved that the said services have been provided at Gandhidham.

Findings:

5. I have carefully gone through the facts of the case, the grounds of appeal as detailed in Appeal Memorandum, and submissions made during and after personal hearing. The issue to be decided in the present appeal is whether cenvat credit of input services availed on invoices issued having address of Head office and not factory premises was eligible or otherwise.

6. I find that cenvat credit of service tax paid on input services has been denied on the ground that the said services have been received at Head office Surat and not at Gandhidham and thus, the such services have not been used in or in relation to the manufacture of their finished product and clearance thereof upto the place of removal; that the appellant contravened the provision of Rule 2(l) of the Rules. Let us examine definition of "input service", which is as under:

(l) "input service" means any service, -

- (i) used by a provider of output service for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes, -

- (A); or
- (B); or
- (BA); or
- (C) *such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such*

services are used primarily for personal use or consumption of any employee;

(Emphasis supplied)

6.1 It can be seen from above that "input service" means any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance upto the place of removal.

6.2 I find that lower adjudicating authority has confirmed the recovery of wrongly availed cenvat credit of service tax paid in respect of following invoices:

Sr. No.	Invoice No. & Date	Actually, availed and reversed Cenvat Credit Rs.
1	297/31.12.2012	43,260
2	456/30.03.2012	71,852
3	455/01.08.2011	74,438
4	4/30.07.2011	7,615
5	275/30.11.2011	1,69,796
6	234/31.10.2011	1,10,830
7	359/31.01.2012	1,22,074
8	24/06.02.2015	14,840
	TOTAL	6,14,705

6.3 For invoices shown at Sr. No. 1 to 7 of the above Table, the appellant argued that due to land dispute, the appellant shifted the plant to Gandhidham, which proved that the said services have been provided at Gandhidham as reflected in Para 4 of the agreement 25.07.2011 entered with the service provider, namely, Mott Macdonald Pvt. Ltd. I would like to reproduce relevant portion of Para 4 of the said agreement as under:

"Initially, work has been started based on LOI dated 07.12.2010, at site (Village-Nandav, Kosamba, Surat) at lump sum fee of Rs. 66,00,000.00 (inclusive of 25 mandays visits as mentioned above) and IMM has provided necessary details for site execution including plot plan, main plant building foundations, Raw/Fire water tank, specifications for 66KVA Switch yard, Cooling tower, chillers, Compressor, HOG, HVAC details and layout, etc.

Afterwards, there was land dispute and now SPL wants to shift the plant to their existing facility at Gandhidham."

(Emphasis supplied)

6.4 In view of above, I find that the service provider Mott Macdonald Pvt. Ltd. had started work of site execution including plot plan, main plant building foundations, Raw/Fire water tank, specifications for 66KVA Switch yard, Cooling tower, chillers, Compressor, HOG, HVAC details and layout, etc. at site situated at Nandav, Surat as per LOI dated 07.12.2010. I, therefore, find that the service provider had already provided services at Surat and not at Gandhidham.

6.5 I also find from the invoices mentioned at Sr. No. 1 to 7 of the above Table that the said invoices shown description of service as "..... detail engineering & consultancy service for Sumilon, 90 TPD Bopet line Plant, Surat, as per your LOI dated 7th December 2010 & revised agreement dated 25th July 2011". I find that the service provider had provided these services to Sumilon, 90

TPD Bopet line Plant, Surat and not to the factory at Gandhidham.

6.6 I also find that the lower adjudicating authority had issued Order-in-Original No. 22/DC/2017-18 dated 21.02.2018 holding that they cleared Polyester Film Plain to its sister unit M/s. Sumilon Polyester Ltd., Surat for their further captive use. Thus, I find that the services have been provided Surat unit and not Gandhidham unit and thus, their argument that they have no unit other than Gandhidham is actually not correct. The appellant did not have ISD registration of their head office and hence, cenvat credit of input service credit can't be distributed among their units.

6.7 The appellant relied upon case law of Endurance Technology (P) Ltd. reported as 2015 – T10L 137a – HC. Mum. wherein it held that rule does not say that input service must be received at the factory premises. I find that the said judgement has been pronounced by the Hon'ble Bombay High Court in matter of cenvat credit on maintenance or repair services of wind mills located away from the factory, whereas in the instant appeal, the appellant availed cenvat credit of service tax on such invoices which were issued in name of other unit situated at Surat and hence, the said case law is not applicable in this case.

6.8 In view of above, I find that the services as per invoices shown in Table at Para 6.2 above, were not received by the appellant at their Gandhidham unit and hence, cenvat credit of service tax paid on such input services cannot be allowed in terms of Rules 2(l) of the Rules to the appellant. Accordingly, I have no option but to uphold the impugned order correct, legal and proper.

7. The appellant argued that there is mistake in the impugned order as demand confirmed should be Rs. 6,14,705/- and not Rs. 6,19,840/-; that the lower adjudicating authority did not consider their submissions while passing the impugned order. I find force in the argument of the appellant as the respective invoices; Tabel-1 & Table-2 of the impugned order and Cenvat Credit Account indicate that the appellant had availed cenvat credit of Rs. 497/-, Rs. 692/- and Rs. 4,092/- instead of Rs. 1,987/-, Rs. 2,768/- and 5,661/- respectively in respect of Invoices No. 116/31.10.2012, 120/01.12.2012 and UE/122-14-15/07.01.2015 respectively and thus, there is difference of Rs. 5,135/-. I find that the appellant actually availed cenvat credit of Rs. 10,79,857/- and not Rs. 10,84,992/- during the disputed period and thus, cenvat credit wrongly availed comes to Rs. 6,14,705/- and not Rs. 6,19,840/-. I accordingly modify the impugned order.

8. The appellant has further contended that there is no suppression of facts in this case as the appellant had filed returns regularly and department has also

conducted audit regularly and also for the period under dispute; that extended period cannot be invoked as none of the ingredients is available to invoke extended period. I do not find force in this argument of the appellant. I find that the appellant has contravened the provisions of Rule 2(I) of the Rules with intent to evade payment of duty as discussed before also and these facts were not disclosed to the department in any manner by the appellant. The said facts have been unearthed during audit of the records of the appellant. The appellant has deliberately suppressed these facts from the department even when reports were submitted with intent to avail ineligible cenvat credit. It is established that the appellant has availed cenvat credit in defiance of rules on input services in contravention of Rule 2(I) of the Rules and thus, they are liable to penalty under Rule 15 of the Rules read with Section 11AC of the Act. Accordingly, I also hold that the appellant is liable to penalty of Rs. 6,14,705/- under Rule 15 of the Rules read with Section 11AC of the Act.

9. In view of above, I modify the impugned order as above and allow appeal to this extent only.

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

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

सत्यापित,
 11/5/19
 आर. पी. शाह
 अधीक्षक (अपील्स)

(कुमार संतोष)
 प्रधान आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Sumilon Polyester Limited, Plot No. 43P, NH 8A, Village - Vassana, Taluka - Anjar (Kutch)	मे. सुमिलोन पॉलियेस्टर लिमिटेड, प्लॉट नं. ४३पी, एनएच ८ए, गाँव-वास्साना, तालुका-अंजार(कच्छ)
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प्रति:

- (1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।
- (2) आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम को आवश्यक कार्यवाही हेतु।
- (3) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल-अंजार, गांधीधाम को आवश्यक कार्यवाही हेतु।
- (4) गार्ड फाइल