



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 एम बी भवन, / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइल संख्या /
Appeal / File No. **V2/43/GDM/2018-19** दिनांक /
Date **28-06-2018**
मूल आदेश सं /
O/O No. **02/2018-19**

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

KCH-EXCUS-000-APP-056-2019

आदेश का दिनांक /

Date of Order:

03.05.2019

जारी करने की तारीख /

Date of issue:

06.05.2019

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/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

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 Industries Limited, S.No. 61, N.H. 8A, Varsana, Tal: Anjar-Kutch, .

इस आदेश (अपील) से व्याधित कोई व्यक्ति निम्नलिखित तरीके में उपरोक्त प्राधिकारी/प्राधिकरण को 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 प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 का धारा 86 के अंतर्गत निम्नलिखित जगह को 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 मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को भी 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 बताए गए अपीलों के अलावा शेष सभी अपीलें नाम: शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को भी 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, 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। स्वयं 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 का 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 सकती है एवं उसके साथ जो आदेश के विरुद्ध अपील की गयी हो, 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। स्वयं 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 30 की प्रवृत्तियों (2) (A) के अंतर्गत की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 के द्वारा माल के उद्देश्य से, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रतियाँ केन्द्रीय उत्पाद शुल्क अथवा आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को अर्पित करनी होंगी। प्रतियाँ केन्द्रीय उत्पाद शुल्क/सेवाकर को अपील की प्रतियाँ भी साथ में संलग्न करनी होंगी। / The appeal under sub section (2) and (2A) of the section 30 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 सेवाकर अपीलीय न्यायाधिकरण (अपील) के अंतर्गत अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 35E के द्वारा, सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मूल के 10% (10%) अंश का भुगतान जमा करना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा के अभाव में अपीलकर्ता को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किया गया शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत जमा
- बशर्ते यह कि इस धारा के प्रावधान विनियम (नं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्थात् अपील को लागू नहीं होंगे। /
- For an appeal to be filed before the CBESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 33 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथा तलक, जीवन दीप भवन, संसद 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:
- 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 से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में 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
 - भारत के बाहर किसी 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 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.
 - 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.
 - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए ऑन 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.
 - 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 ही 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ 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.
 - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से 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, 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.
 - यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 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-I in terms of the Court Fee Act, 1975, as amended.
 - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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.
 - 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 Sumilon Industries Ltd, Kutch (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/43/GDM/2018-19 against Order-in-Original No. 2/2018-19 dated 28.6.2018 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, CGST Division Anjar-Bhachau, Gandhidham Commissionerate (*hereinafter referred to as "lower adjudicating authority"*).

2. The brief facts of the case are that the Appellant having Central Excise Registration No. AADCS3567LXM004 was engaged in manufacture of Polyester Film-plain and Polyester Film-Metallized falling under CETH 39206931,39206911 of the Central Excise Tariff Act, 1985, respectively. During the course of Audit, it was found that the Appellant had availed Cenvat credit of Rs. 18,93,385/- in February, 2017 on the invoices issued during the period from February, 2014 to February,2016. The Audit was of the view that since Cenvat credit was availed beyond one year from the date of issue of the invoices, the Cenvat credit was not admissible to the Appellant in terms of proviso to Rule 4(1) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*).

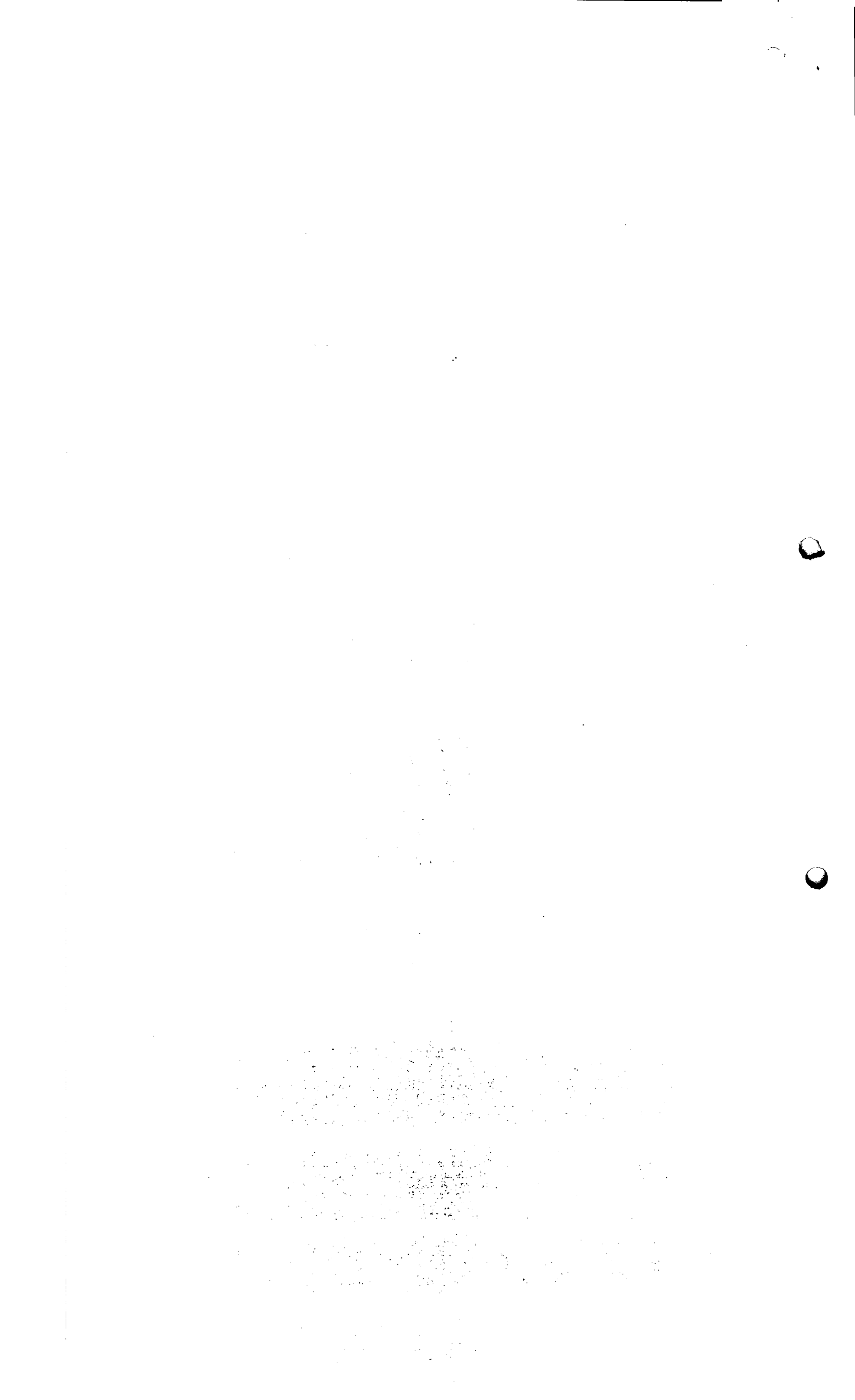
2.1 Show Cause Notice No. VI(a)/8-93/CEA/Cr-I/Gr.C/2016-17 dated 13.4.2018 was issued to the Appellant calling them to show cause as to why Cenvat credit of 18,93,385/- should not be disallowed and recovered from them under Rule 14 of CCR,2004 read with Section 11A(4) of the Central Excise Act, 1944 (*hereinafter referred to as "Act"*) along with interest under Rule 14 *ibid* read with Section 11AA of the Act and proposing imposition of penalty under Rule 15 of CCR,2004.

2.2 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 18,93,385/- and ordered for its recovery along with interest under Rule 14 of CCR,2004. The impugned order also imposed penalty of Rs. 18,93,385/- under Rule 15 of CCR,2004 read with Section 11AC of the Act upon the Appellant.

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

(i) They do not dispute that they had availed Cenvat credit in February, 2017 on the invoices issued during the period from February, 2014 to February, 2016; that reason for taking late credit was due to fact that the Department had issued them Show Cause Notice for earlier period in respect of Cenvat credit availed by them for maintenance and repairs of wind mills situated outside





factory and hence, they had stopped taking Cenvat credit during the material period; that when issue was decided in their favour vide Order-in-Original No. 9 & 10/AC/2016-17 dated 23.2.2017 passed by the Asst. Commissioner, Central Excise Division, Gandhidham in their own case, they availed Cenvat credit; that delay in availing Cenvat credit was on account of above mentioned reason.

(ii) The adjudicating authority has wrongly invoked larger period of limitation for demanding duty ignoring the fact that they had regularly filed monthly returns till issuance of SCN and no objection was raised by the Department; that during the disputed period, Departmental officers also visited their factory for verification purposes but never pointed out any discrepancy and hence, there was no suppression of facts on their part and therefore, the impugned order is liable to be set aside.

4. The P.H. Notice dated 8.4.2019 was served to the Appellant for Personal Hearing scheduled on 15.4.2019. In reply, the Appellant vide letter dated 10.4.2019 reiterated the grounds of appeal submitted in Appeal memorandum and submitted that they do not desire to avail opportunity of personal hearing and requested to decide their appeal on merit.

Findings:

5. I find that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 1,42,004/- @7.5% of Rs. 18,93,385/- vide Challan No. 00008 dated 9.8.2018, as declared by them in Appeal Memorandum.

6. I have carefully gone through the facts of the case, the impugned order and ground of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided is whether the Cenvat credit of Rs. 18,93,385/- availed by the Appellant beyond one year from the date of issue of invoices is admissible under Rule 4(1) of CCR, 2004 or otherwise.

7. On going through the records, I find that the Appellant availed Cenvat credit of Rs. 18,93,385/- in February, 2017 on the invoices issued during the period from February, 2014 to February, 2016. The lower adjudicating authority disallowed Cenvat credit on the ground that the Cenvat credit was availed beyond one year from the date of issue of invoices and hence, not admissible in terms of Rule 4(1) of CCR, 2004. The Appellant has not disputed about availment of Cenvat credit beyond one year from the date of issue of invoices but contended that they did not take Cenvat credit during material period as the

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Department had issued Show Cause Notice for earlier period on same issue and matter was under process of adjudication; that when the issue was finally decided in their favour vide Order-in-Original dated 23.2.2017, they took said Cenvat credit in February, 2017.

7.1 I find that provisions/conditions governing availment of Cenvat credit are provided under Rule 4 of CCR, 2004, which are reproduced as under:

“RULE 4. Conditions for allowing CENVAT credit. — (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be :

Provided that in respect of final products, namely, articles of jewellery or other articles of precious metals falling under Heading 7113 or 7114, as the case may be of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker :

Provided further that the CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs :

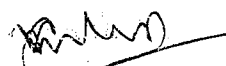
Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule (1) of rule-9.”

(Emphasis supplied)

7.2 It is on record that the Appellant had availed Cenvat credit in February, 2017 on invoices which were issued between the period from February, 2014 to February, 2016. Thus, Cenvat credit was availed after one year of date of issue of invoices, which is not admissible in terms of proviso to Rule 4(1) of CCR, 2004.

7.3 The plea of the Appellant that they did not avail Cenvat credit at material period as Show Cause Notice issued to them for earlier period on same the issue was under process of adjudication is not backed by any letter from them within period of one year of before issue of SCN. The Appellant was required to take Cenvat credit at material period in their Cenvat credit account without utilizing them, even if admissibility of such Cenvat credit was under process of adjudication and they could have taken action depending upon the outcome of the adjudication proceedings. Since, the Appellant did not take Cenvat credit within permissible period of one year as provided under Rule 4(1) of CCR, 2004, I hold that Cenvat credit is not admissible to the Appellant after one year.

7.4 In view of above factual position, I hold that the Appellant is not eligible to avail Cenvat credit on invoices issued beyond one year. I, therefore, uphold



confirmation of demand of Rs. 18,93,385/-. Since demand is confirmed, it is natural consequence that confirmed demand is to be paid along with interest.

8. The Appellant has contended that invocation of extended period of limitation is not sustainable as they had regularly filed monthly Returns till issuance of SCN and no objection was raised by the Department within normal period and hence, there was no suppression of facts on their part. I find that ER-1 Returns do not capture details of Cenvat credit availed by the assessee, so the Department is not in a position to know whether the assessee has availed Cenvat credit within time period specified in Rule 4(1) of CCR, 2004 or not. Even otherwise, merely filing of self assessed ER-1 Returns will not entitle them to get away with charge of suppression of facts when it is on record that wrong availment of Cenvat credit was revealed only during audit of the records of the Appellant by the Department. The Appellant never informed these facts to the Department. Had there been no audit of the Appellant's records, the wrong availment of Cenvat credit by the Appellant would have gone unnoticed and hence, ingredients for invoking extended period under Rule 14 of the CCR, 2004 very much exist in the present case. Accordingly, I hold that the demand is not barred by limitation. In this regard, I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

"6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns."

6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."

(Emphasis supplied)

9. Since, suppression of facts has been made by the Appellant, penalty under Rule 15 of CCR, 2004 is mandatory. The Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) has held that once ingredients for invoking extended period of limitation for demand of duty exist, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold the penalty of Rs. 18,93,385/- imposed under Rule 15 of CCR, 2004.

10. In view of above, I uphold the impugned order and reject the appeal.



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

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

(Handwritten Signature)
21/11/19
(कुमार संतोष)

प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To, 1. M/s Sumilon Industries Ltd Plot No. 43 P, NH 8A, Village-Varsana, Talukar: Anjar, District Kutch.	सेवा में, मे. सुमिलोन इंडस्ट्रीज़ लिमिटेड प्लॉट नं./43 पी, राष्ट्रीय मार्ग 8 ए, वरसाना, तालुका अंजार, जिल्ला कच्छ।
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प्रति:-

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

