

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



<u>राजकोट / Raikot - 360 001</u>

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रजिस्टर्ड डाक ए.डी.द्वारा :-

Appeal -File No.

THE BUILDING WITH TOTAL STATES

मल आदेश सं / O.LO. No.

Date

V2/240 & 241/GDM/2017

02/Supdt/2017-18

21-11-2017

अपील आदेश मंख्या(Order-In-Appeal No.): ग्ब

KCH-EXCUS-000-APP-060-TO-061-2019

आदेश का दिनांक /

Date of Order:

11.06.2019

जारी करने की तारीख /

13.06.2019

Date of issue:

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

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

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेकाकर/दस्तु एदंनेवाकर, 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 :

अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

M/s Bunge India Pvt. Ltd, Survey No. 151/1 & 151/2, Moti Chirei, Bhachau, Gandhidham

इस आदर्श(अपील) स व्याथत काइ व्यक्ति निम्नालीखत तरीक 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.

सीमा शुल्क कन्द्रीय उत्पाद शुल्क एव मबाकर अपोलीय न्यायाधिकरण क प्रीत अपोल, कन्द्रीय उत्पाद शुल्क आंधीनयम ,1944 की धारा 35B क अतरात एवं विसे अधितियम, 1994 की धारी 86 के अंतर्गत निम्नलिखित जगह की जा सकती है !/ (A)

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:-

वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले 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.

उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीटिका,द्वितीय तेल, बंहुमाली भवन असावी अहमवाबाद- ३८००१३को की जानी चाहिए।/ (ii)

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

अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तृत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपष्ट EA-3 का चार प्रतियों में दर्ज किया जाना चाहिए। इनमें में कम में कम में कम में के प्रति के साथ, जहां उत्पाद शुल्क की मौग, ज्याज की मौग, और लगाया गया जमाना, रूपए 5 लाख या उनमें कम,5 लाख रूपए या 50 लाख रूपए तक अर्थवा 50 लाख रूपए में अधिक है तो क्रमश: 1,000/- रूपये, 5,000/- रूपये अर्थवा 10,000/- रूपये का निर्धारित जमा शुल्क की प्रति में नेप करें! निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायक रजिस्टार के नाम में किसी भी सार्वजिनक क्षेत्र के वैंक द्वारा जारी रखांकित वैंक 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 (स्ट ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपए का निर्धारित शुल्क जमा करना होगा।/ (iii)

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 dutydemand/interest/penalty/refund is upto 5 Lac. 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank craft 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/-

अपीलीय त्यायाधिकरण के मुमझ अपील, विन्न अधिनियम,1994 की धारा 86(1) के अंतर्गत मेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा मकेगी एवं उसके माथ जिस आदेश के विक्रूह अपील की गयी हो, उनकी प्रति माथ में संलग्न कर (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें में कम में कम एक प्रति के साथ, जहां मेवाकर की माँग अपाल की माँग और लगाया गया जुमीना, रुपए 5 लाख यो उसमें कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए में अधिक है तो क्रमण: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शृत्क की प्रति संलग्न करें। निर्धारित शृत्क का भुगतान, संबंधित अपीलीय त्यायाधिकरण की शाखा के महायक रिजन्टार के नाम में किसी भी मार्बाजनक क्षेत्र के बैंक द्वारा जारी रेखांकित वैंक ड्राफ्ट द्वारा किया जाना चिहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां सुविधा अपीलीय त्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट ऑडर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शृत्क जमा करना कारा। (B)

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 Lakins or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakins but not exceeding Rs. Fifty Lakins, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakins 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)

(ii)

भारत सरकार कोपुनरीक्षण आदेदन : Revision application to Government of India: इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला ने, केंद्रीय उत्पाद शुल्क अधितियम,1994 की धारा 35EE के प्रथमपूर्वनूक के अंतर्गनअवर सचित्र, भारत मरकार, पुनरीक्षण आदेदन देकाई, दिन मंत्रालय, राजस्व विभाग, बौदी मंजिल, बीदन दीए भवन, समेद मार्ग, नद दिल्ली-110001, को किया जाना चाहिए। (C) 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-11000T, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to subsection (1) of Section-35B ibid:

यदि माल के किसी नुक्सान के मामले में, जहां नुक्सान किसी माल को किसी कारखाने में भंडार गृह के पार्यमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह में माल के प्रमंत्रकरण के दौरान, किसी कारखाने या किसी महार गृह में माल के प्रमंत्रकरण के दौरान, किसी कारखाने या किसी महार गृह में माल के नुक्सान 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 (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विभिन्नीण में प्रयुक्त कड़े माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रियेट) के मामले में. जा भारत के बाहर किसी राष्ट्र या क्षेत्र की 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. (ii)

यदि उत्पाद शुल्क का भ्रातान किए दिना भारत के बाहर, नेपाल या भ्रतान को नाल निर्यात किया गया है। (iii) 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 जो उद्धार के किया एवं उसके विभिन्न प्रावधानों के तहन मान्य की गई है और ऐसे आउँश की अपना (अपील) के द्वारा विभ अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियंत की गई तारीख अथवा समायाविधि पर या वाद में पारित किए तारहा/ of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act of the Rules made there under such order is passed by the Commissioner (Appeals) on of after, the date appointed under Sec. 109 of the Finance (No.2) Act. 1998. (iv)

उपरोक्त आवेदन की दो प्रतियां प्रपत्न संख्या EA-8 में, जो की केन्दीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत दिनिर्दिष्ट है, इस आदेश के सेप्रेपण के 3 साह के अंतर्गत की जानी चाहिए : उपरोक्त आवेदन के साथ सुल आदेश द अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EB के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी जातिकार (\mathbf{v}) चाहण। /
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 OlQ 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 आहेदन के माथ निम्निलिय निर्धारित शुल्क की अदायरी की जानी चाहिए। जहाँ मेलप्र रकम एक लाख क्षये या उसमें कम हो तो क्षये 200/- का भुगतान किया जाए और यदि मेलप्र रकम एक लाख क्षये में ज्यादा हो तो क्षये 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. (vi)

यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुक्क का भूगतान, उपर्युक्त हंग से किया जाना चाहिये: इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य में बचन के लिए उपास्थिति अपीलीय नयाधिकरण को एक अपील या केदीय 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 with standing 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. (D)

यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-! के अनुमार मूल आदेश एवं स्थरन 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. (E)

नीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेबाकर अभीलीय त्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य मंबन्धित मामलों को निम्मिलित करने वाले नियमों की और 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. (F)

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने में मंबंधित व्यापक, विम्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विसागीय वेबमाइट www.cbec.gov.in का देख मकत 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. (G)



::ORDER-IN-APPEAL ::

M/s. Bunge India Pvt. Ltd., Survey No. 15/1/1 & 151/2, Moti Chirai, Bhachau, Gandhidham (Kutch) (hereinafter referred to as "the appellant") filed two appeals against Order-in-Original No. 02/Supdt/2017-18 dated 21.11.2017 (hereinafter referred to as "the impugned order - 1") and Order-in-Original No. 03/Supdt/2017-18 dated 21.11.2017 (hereinafter referred to as "the impugned order - 2") and these two orders collectively referred to as "the impugned orders", passed by Superintendent, Central Excise and Service Tax, Gandhidham (Kutch) (hereinafter referred to as "lower adjudicating authority"). The details of appeals are as under: -

Sr. No.	Appeal No.	Order-in-Original No. and date	Period for which Returns not filed	Show Cause Notice No. and Date
01.	240/GDM /2017	02/Supdt/2017-18 dated 21.11.2017	Annual ER-5 Return not filed from 2012-13 to 2014-15	CEX/BCH/AR- II/CERA/2016- 17/ER-5 dtd 30.3.2017
02	241/GDM/2017	03/Supdt/2017-18 dated 21.11.2017	Monthly ER-6 Returns not filed from 2012-13 to 2015-16 (upto Feb,2016)	CEX/BCH/AR- II/CERA/2016- 17/ER-6 dtd 30.3.2017

- 2. The brief facts of the case are that the Appellant was engaged in the manufacture of refined palm oil, refined soya oil etc falling under Chapter 15 of the Central Excise Tariff Act, 1985 and was holding Central Excise registration No. AAACG7034KEM007. During audit of records of the Appellant, it was noticed by CERA that the Appellant had not filed ER-5 Returns declaring annual production capacity of the factory for the years 2012-13, 2013-14 and 2014-15 as prescribed vide Rule 9(A)(1) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR,2004"); that the Appellant had not filed monthly ER-6 Returns regarding receipt and consumption of their principal inputs for the years 2012-13 to 2015-16 (upto February, 2016) as prescribed vide Rule 9(A)(3) of CCR,2004.
- Two show cause notices dated 30.3.2017 were issued to the Appellant for imposing penalty under Rule 15A of the Cenvat Credit Rules, 2004, which were decided vide the impugned orders and penalty of Rs. 15,000/- and Rs. 1,80,000/- respectively was imposed on the Appellant.
- 3. Being aggrieved by the impugned orders, the Appellant preferred appeals on the following grounds:-
- (i) The lower adjudicating authority has erred in imposing penalty of Rs. 15,000/- for non-submission of ER-5 annual return for the financial years 2012-

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- 13, 2013-14 to 2014-15 as filling of ER-5 return by them is not required; the lower adjudicating authority has just reiterated allegations of the Show Cause Notice while passing the impugned order 1.
- (ii) The Appellant also submitted that their final goods was "exempt" and no input Tax Credit (ITC) on any principal input from 2012-13 to 2014-15 has been taken and therefore, annual return of information relating to principal inputs was not applicable to them; that filing of ER-5 return annually was mandatory only for those assessee who were paying duty of Rupee one crore or more per annum (either through PLA or Cenvat or both together) and were manufacturing goods under tariff headings as specified in Notification No. 39/2004-CE (N.T.) dated 25.11.2004; that their finished products did not fall under specified tariff headings 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94, 54.02, 54.03, 55.01, 55.02, 55.03, 55.04; that duty payment by them was not more than Rupee one crore annually; that they were not claiming input tax credit and accordingly they were not required to file ER 5 returns; that their finished products "Edible Oil" did not fall under the specified tariff headings
- (iii) Penalty under Rule 15A of Cenvat Credit Rules, 2004 is imposable when an assessee takes or utilizes Cenvat credit on inputs or capital goods through fraud, willful misstatement, suppression of facts or contravention of any of the provisions of the Act is involved; that these ingredients are not available in this case.
- (iv) The Appellant further submitted that General Penalty provisions as prescribed under Rule 27 of Central Excise Rules, 2002 refers to 'A breach of these rules shall.....' i.e. the Rules which is a plural term and not Rule and therefore, contravention of any number of rules would invite penal action under Rule 27 of the Central Excise Rules, 2002 to the extent of Rs. 5000/- and accordingly, penalty of Rs. 5000/- per month is not warranted and maximum penalty of Rs. 5000/- only should have been imposed.
- (v) The lower adjudicating authority has erred in law as they had not evaded any tax and therefore, the lower adjudicating authority has not considered the principles laid down by the Hon'ble Delhi High Court in the case of Wood Crafts Enterprises Corporation Vs. STO reported as STO (1972) STC 315; that the basic intention of penalty is prevention of evasion of tax and punishing the offenders for breach of legal provisions.
- (vi) The Appellant in respect of the impugned order No. 2, inter alia, submitted that the Appellant had not filed monthly ER-6 returns for the years



2012-13, 2013-14, 2014-15 for which the lower adjudicating authority has imposed penalty of Rs. 1.80 lakhs @ Rs. 5000/- for 36 months; that their finished product, Edible Oils was "exempt" and no Input Tax Credit (ITC) on any principal inputs has been taken / claimed by them from 2012-13 to 2014-15; that ER-6 return has been made applicable to all those assessee who are required to file ER-5 return as per Cenvat Credit Rules, 2004; that their finished products "Edible Oil" did not fall under the specified tariff headings; that they were not required to file ER-5 returns due to Notification No. 39/2004-CE(NT) dated 25.11.2004. Hence, the lower adjudicating authority has erred in imposing penalty of Rs. 1,80,000/- for non-submission of ER-6 for the year 2012-13, 2013-14, 2014-15.

- (vii) The Appellant further submitted that General Penalty provisions as prescribed under Rule 27 of Central Excise Rules, 2002 refers to 'A breach of these rules shall.....' i.e. the Rules which is a plural term and not Rule and therefore, contravention of any number of rules would invite penal action under Rule 27 of the Central Excise Rules, 2002 to the extent of Rs. 5000/- and accordingly, penalty of Rs. 5000/- per month is not warranted and maximum penalty of Rs. 5000/- should have been imposed. In light of above penalty of Rs. 1,80,000/- imposed may be set aside.
- 4. Both the above appeals were dismissed for non compliance of the provisions of Section 35F of the Central Excise Act,1944 vide Order-in-Appeal No. KCH-EXCUS-000-APP-212 to 213-2018-19 dated 30.11.2018.
- 5. Being aggrieved, the Appellant preferred appeals before the CESTAT, Ahmedabad, which were allowed by way of remand vide Order No. A/10541-10542/2019 dated 19.3.2019 on the ground that the Appellant has subsequently paid pre-deposit @10 %.
- 6. Pursuant to the remand direction of the Hon'ble CESTAT, both appeals were restored and Personal Hearing was granted and held on 21.5.2019. Shri Sanjeev Kacchal, C.A. appeared on behalf of the Appellant and reiterated the grounds of appeals and submitted that they are manufacturing products under Chapter 15; that they are not required to file ER-5 return as per Notification No. 39/2004-CE(NT) dated 25.11.2004; that their total annual duty payment including through CENVAT has also not exceeded Rs. 1 Crore in any of the relevant 3 years i.e. 2012-13, 2013-14 and 2014-15; that they have not taken Cenvat credit on any input in any years; that in view of above, both appeals may be allowed as they are neither required to file ER-5 nor ER-6 returns.

Findings:

- 7. I have carefully gone through the facts of the case, the impugned orders, grounds of appeals, written as well as oral submissions made by the appellant. The issue to be decided in the present appeals is whether imposition of penalty under Rule 15A of the Cenvat Credit Rules, 2004 for non filing of ER-5 returns / ER-6 returns is justified or not.
- 8. I find that the lower adjudicating authority imposed penalty under Rule 15A of CCR, 2004 on the Appellant for non filing of ER-5 / ER-6 returns prescribed under Rule 9A of CCR, 2004. The Appellant has contested that filing of ER-5/ER-6 return was mandatory only for those assessee who were paying duty of more than Rupee one Crore or were manufacturing goods under tariff headings as specified in Notification No. 39/2004-CE (N.T.) dated 25.11.2004; that their finished products did not fall under specified tariff headings listed in the said notification and hence, they were not required to file ER-5/ ER-6 returns.
- 9. I find that the Central Government has issued notification No. 39/2004-CE(NT) dated 25.11.2004 under Rule 9A of CCR, 2004 specifying manufacturers or class of manufacturers who are not required to furnish declaration mentioned in sub-rule(1) or sub-rule(3) of Rule 9A of CCR, 2004, which is reproduced as under:

"In exercise of the powers conferred by sub-rule (4) of the rule 9A of the CENVAT Credit Rules, 2004, the Central Government being satisfied that it is necessary and expedient in the public interest so to do, hereby exempts the following class of manufacturers of final products who manufacture excisable goods, -

- (i) specified in column (2) of the Table annexed hereto and falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and have paid duties of excise less than rupees one hundred lakhs during the preceding financial year,
- (ii) other than those specified in column (2) of the said Table annexed hereto and falling under the First schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

from the operation of rule 9A of the said rules.

TABLE

S.	Description of Goods	
No.		
(1)	(2)	
1.	All goods falling under Chapters 22, 28, 29, 30, 32, 33, 34, 38, 39, 40, 48, 72, 73, 74, 76, 84, 85, 87, 90 and 94	

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2.	All goods falling under Heading Nos. 54.02, 54.03, 55.01, 55.02,
	55.03 and 55.04

(Emphasis supplied)

- 9.1 It is on record that the Appellant was engaged in the manufacture of goods falling under Chapter 15 of the Central Excise Tariff Act, 1985. As per subclause (ii) of Notification supra, Chapter No. 15 is not appearing in Table above and consequently the Appellant was exempted from the operation of Rule 9A of CCR, 2004. Since, the Appellant was exempted from filing ER-5 and ER-6 returns, imposition of penalty for non filing of said returns under Rule 15A of CCR, 2004 is not sustainable and required to be set aside and I do so.
- 10. In view of above, I set aside the impugned orders and allow both the appeals.
- 11. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।
- 11. Appeals filed by the appellant are disposed off in above terms.

सत्यापित ,

(कुमार संतोष) प्रधान आयुक्त (अपील्स)

विपुल शाह <u>.D.</u> अधीक्षक (अपील्स)

By R.P.A.D.

To,
M/s. Bunge India Pvt. Ltd.,
Survey No. 151/1 & 151/2,
Moti Chirai, Bhachau,
Gandhidham (Kutch).

सेवा में, मे॰ बंजे इंडिया प्राइवेट लिमिटेड, सर्वे नः 15/1/1 एवं 151/2 मोती चिरई, भचाउ, जिल्ला कच्छ।

प्रति:-

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

