



::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 / 2<sup>nd</sup> 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 / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं/ O.I.O. No.	दिनांक/ Date
	V2/17 /GDM/2018-19	AC/13/2017-18	23-03-2018

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

**KCH-EXCUS-000-APP-070-2019**

आदेश का दिनांक /

Date of Order: 01.07.2019

जारी करने की तारीख /

Date of issue:

03.07.2019

श्रीकुमार संतोष, प्रधानआयुक्त (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 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 :-

**Indian Farmer Fertilizer Co-operative Ltd. (IFFCO), Finance & Accounts Admn Building  
Dept. Old Kandla, Kandla Port, Dist: Bhuj-Kutch Gujarat**

इस आदेश (अपील) से ब्याथत कोई ब्याक्ति निम्नलिखित तरीक म उपयुक्त प्राधिकारी / प्राधिकरण क 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) सामा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण क प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B क 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 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.

(ii) उपरोक्त परिच्छेद 1(a) में ब्रताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार 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। /

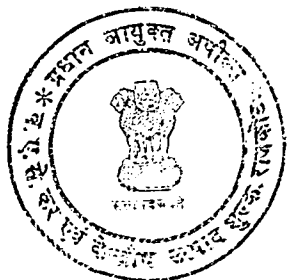
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/refund 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 सकती है एवं उसके साथ जिस 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार 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 is 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) एवं (2A) के अंतर्गत दर्ज 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 एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त 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 For 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 प्राधिकरण (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर 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 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 रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी 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 कोपनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, 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-35E 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 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  
(ii) 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 (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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो 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 समायोजित 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 उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 साक्ष्य 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 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 ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक मूल आदेश 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.  
(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 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](http://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](http://www.cbec.gov.in).



**:: ORDER IN APPEAL ::**

M/s. Indian Farmers Fertilizer Co-Operative Limited (IFFCO), Finance & Accounts Administration Building Department, Old Kandla, Kandla Port, District – Kutch, Pin – 370 201 (*herein after referred to as "the Appellant"*) filed this present appeal against Order-in-Original No. AC/13/2017-18 dated 23.03.2018 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, CGST Rural Division Gandhidham – Kutch (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The brief facts of the case are that the appellant, engaged in manufacture of fertilizer viz. DAP, NPK, GR-1 & 2, NPK 181818, Urea Phosphate, imported Boron (14.6%) STBPH "Di-Sodium Tetra Borate Penta Hydrate" (*hereinafter referred to as "Boron"*) in bulk and cleared the same after repacking in 1 Kg., 5 Kg., 25 Kg. for retail sale to their customers, without payment of central excise duty treating as 'trading activity'. Repacking of the Boron amounts to manufacture in terms of Chapter Note 9 to Chapter 28 of the Central Excise Tariff Act, 1985 (*hereinafter referred to as "the Tariff"*) as Boron appeared classifiable under Tariff Item 2840 1900 on which central excise duty was leviable, as per Department's view. Show Cause Notice No. V.31/AR-1/DIV.GIM/Jt. Commr./21/2016 dated 28.09.2016 was issued to the Appellant demanding Central Excise duty of Rs. 10,21,650/- under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as 'the Act'*) along with interest under Section 11AA of the Act and proposing imposition of penalty under Rule 25 of the Central Excise Rules, 2002 (*hereinafter referred to as 'the Rules'*) read with Section 11AC of the Act. The SCN was decided vide the impugned order and demand of central excise duty of Rs. 10,21,650/- confirmed under Section 11A of the Act along with interest under Section 11AA of the Act and penalty of Rs. 10,21,650/- was imposed under Rule 25 of the Rules read with Section 11AC of the Act with benefit of reduce penalty. The lower adjudicating authority also denied cenvat credit of CVD and SAD paid on the Boron imported by the appellant.

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

(i) The Appellant did not dispute duty liability on Boron cleared by them after



*[Handwritten signature]*

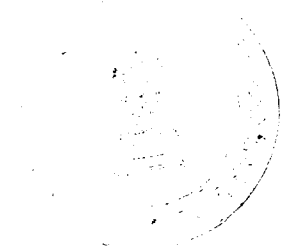
re-packing from bulk quantity into smaller packs as per Chapter Note 9 under Chapter 28 of the Tariff Act. The lower adjudicating authority did not consider their eligibility of cenvat credit of CVD of Rs. 8,20,887/- and SAD or special duty of Rs. 2,97,054/-, totaling Rs.11,17,941/-, already paid by the appellant on imported Boron. The appellant vide letter dated 27.10.2016 informed details of payment of Custom duty, CVD and SAD and requested to allow them cenvat credit of Rs. 11,17,941/- as admissible under the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR") and requested to drop the proceedings, however, the lower adjudicating authority failed to discuss as to why cenvat credit is not admissible, neither gave any findings not said why decisions cited by them are not applicable. Thus, the impugned order is a non-speaking, bad in law and violative of Principles of natural justice and therefore, is required to be set aside being contrary to the settled law.

(ii) It is undisputed fact that the appellant paid Custom duty, CVD and SAD on Boron when imported; that duty has been demanded subsequently on the ground that re-packing from bulk quantity to smaller packing amounts to manufacture; they accepted duty liability subject to condition that benefit of Cenvat Credit of CVD and SAD paid on imported Boron and relied upon the following decisions/judgements.

- Abdos Trading Co. Pvt. Ltd. - 2016 (332) E.L.T. A241 (S.C.)
- Titan Industries Ltd. - 2007 (217) E.L.T. 423 (Tri.-Chennai)
- United Distributors - 2014 (309) E.L.T. 571 (Tri. - Mumbai)
- BASF India Ltd. - 2009 (245) E.L.T. 381 (Tri. - Ahmd.)
- L'oreal India Pvt. Ltd. - 2014 (308) E.L.T.746 (Tri.-Mum)

(iii) The ratio of all the aforesaid decisions is applicable in the present case and therefore, requested to allow the cenvat credit. The amount of admissible cenvat credit is more than that of duty demanded.

(iv) The appellant's Company is established on Farmer's own initiative in Co-operative sector with the enactment of multi-state Co-operative Societies Act, 2002; that IFFCO is registered as a multi-state Co-operative Society; that IFFCO falls within the administrative control of the Ministry of Chemicals and Fertilizers, Government of India; that several Constituents members of IFFCO are units controlled and funded by the State government. Therefore, the vision and mission of IFFCO is to manufacture and distribute world class Fertilizers. IFFCO is not in the business for generating profit for few individuals; that no single




individual is beneficiary from the profit earned by them; that they promote self-reliance of this country in manufacture and distribution of fertilizer, and to make available the fertilizers to the Indian farmers at a competitive price and thereby, to reduce requirement of government to import fertilizers from foreign countries; that IFFCO has no intention to evade Government Taxes or Central Excise Duty and therefore, there is no mala fide reason on the part of the appellant to evade the duty intentionally. There is a revenue neutrality and hence, no penalty should be imposed on them. It is also submitted that it is well settled law of the Hon'ble Supreme Court that penalty cannot be imposed merely because it is provided under the Act. But for imposition of penalty it is mandatory on the part of the Department to bring positive and concrete evidences of fraud, suppression of facts with intend to evade payment of duty etc. as required under Section 11AC of the Act. The lower adjudicating authority has failed to bring and positive and concrete documentary evidences. Therefore, the imposition of penalty is required to be set aside in view of following case laws:

- Sun Pharmaceuticals Industries - 2015 (317) E.L.T. 144 (Tri. - Ahmd.)
- Flextronics Technologies (I) P. Ltd. - 2014 (314) E.L.T.664 (Tri. - Bang.)
- Flextronics Technologies (India) Pvt. Ltd. - 2015 (323) E.L.T. 273 (Kar.)
- Transasia Bio-Medicals Ltd. - 2013 (297) E.L.T. 429 (Tri. - Ahmd.) and maintained by Supreme court as reported 2015 (326) ELT A138 (S.C.)
- Heritage Board Ltd. - 2013 (295) E.L.T. 716 (Tri. - Ahmd.)
- Landis + Gyr Ltd. - 2013 (290) E.L.T. 447 (Tri. - Kolkata)
- Packaging India Pvt. Ltd. - 2009 (241) E.L.T. 60 (Tri. - Chennai)
- Ravi Teja Processors - 2015 (323) ELT 306 (A.P.)
- B.S.N.L.- 2009 (14) S.T.R. 359 (Tri. - Ahmd.)
- Indian Petrochemicals Corpn. Ltd. 2009 (237) E.L.T. 317 (Tri. - Ahmd.)
- U.P. State Sugar & Cane Devpt. Corpn. Ltd. - 2009 (242) E.L.T. 260 (Tri. - Del.)

4. Personal hearing in the matter was attended by Shri M. A. Patel, Consultant on behalf of the appellant, who reiterated the ground of appeal and made written submissions to say that they were under impressions that central excise duty is not payable; that if duty is payable due to Chapter Note 9 of Chapter 28 of the Tariff then cenvat credit of CVD and SAD on imported Boron need to allowed as held by the Hon'ble Supreme Court in the various cases including in case of Abdos Trading Co. Pvt. Ltd. - 2016 (332) ELT A241 (SC).

4.1 The appellant through Shri M. A. Patel, Consultant also made PH submission stating that


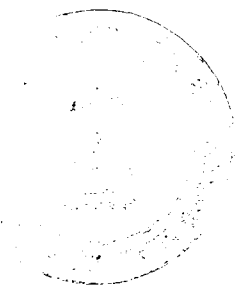


(i) The Appellant manufactured Fertilizers and cleared the same with payment of central excise duty @1% ad valorem by virtue of Notification No. 1/2011 dated 01.03.2011 without availment of cenvat credit on inputs and input services. Appellant has been clearing the goods claiming above exemption and therefore, not availing cenvat credit on inputs and input services. Therefore, the question of availing credit on imported Boron and subsequent use this credit to pay duty on Boron is ruled out, when Appellant has filed ER-1 returns regularly and fact of non availment of credit is apparent from ER-1 Returns filed, which is not in dispute.

(ii) The Boron was imported and not manufactured in their factory; that as per the market requirement, the imported Boron was required to be re-packed in smaller packs to be sold in the market. As per Sr. No. 109A inserted vide Notification No. 12/2016-CE dated 01.03.2016, the concessional rate of central excise duty @ 6% is leviable on all types of Micronutrient. However, there is no restriction on availing of cenvat credit on inputs and inputs services. Therefore, cenvat credit on inputs and input services is admissible on clearance of micronutrients falling under Chapter 28. The Board has also clarified vide Circular No. 1022/10/2016-CX dtd.06.04.16, that the duty is payable @ 6% on all micronutrients falling under Chapter 28.

(iii) However, in the present case, Appellant imported Boron on payment of CVD and SAD for the purposes of trading, and therefore, Appellant did not avail credit of CVD and SAD paid on Imported Boron. However, when central excise duty is demanded on clearance of imported Boron after re-packing carried out at their factory by treating repacking as manufacture as per Chapter Note 9 under Chapter 28 of Tariff cenvat credit of CVD and SAD paid on Boron is admissible in terms of Rule 2 and Rule 3 of the Cenvat Credit Rules. Appellant submitted that total 192 Mt. quantity was imported and central excise duty @ 12.5% is demanded on quantity of 84 MT of repacked Boron sold from Oct, 2015 to Feb,16 and central excise duty @ 6% is demanded on quantity of 70 MT of repacked Boron sold from March,16 to June,16. Therefore, when duty is demanded subsequently, cenvat credit of CVD and SAD paid at the time of import of Boron shall have to be allowed in light of the following decisions.

- Titan Industries Ltd - 2007 (217) ELT 423 (Tri. Chennai)
- Abdos Trading Co. Pvt. Ltd. - 2016 (332) ELT A241 (S.C.)
- United Distributors - 2014 (309) E.L.T. 571 (Tri. Mumbai)

- BASF India Ltd. - 2009 (245) E.L.T. 381 (Tri. Ahmd.)
- L'oreal India Pvt. Ltd. - 2014 (308) E.L.T. 746 (Tri. Mum)

(iv) Since demand is less than cenvat credit available, question of imposition of penalty does not arise. Appellant submitted that imposition of penalty is arbitrary and incorrect on the grounds that the Appellant Company is established on Farmer's own initiative in co-operative sector with the enactment of Multi State Co-operative Societies Act, 2002; that they are controlled and substantially financed by the Central and State governments; that they fall under the administrative control of the Ministry of Chemicals and Fertilizers, Government of India; that they are not in the business of trade or commerce to generate profit for benefit of few individuals, but the co-operative is framed to promote self-reliance of country in manufacture and distribution of fertilizers. Therefore, it could be said that the Appellant has no mala fide intent to evade payment of central excise duty. This is a case of interpretation of law only and this is a case of revenue neutrality and so no penalty could be imposed. It is settled principle of law that penalty under Section 11AC of the Act could be imposed only in a case where the ingredients such as fraud, suppression facts, collusion etc. are proved. However, in the present case, department has grossly failed to bring any documentary evidence suggesting mala-fide act of fraud, collusion, suppression etc. by the Appellant. Therefore, penalty imposed under Section 11AC of the Act is not only incorrect but also without authority and jurisdiction and so not sustainable in law and hence, need to be set aside.

**Findings:**

5. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the Appellant. The issue to be decided in the appeal is whether cenvat credit of CVD and SAD paid on imported Boron in bulk by the appellant is available to them when central excise duty has been demanded due to deemed manufacture on clearance of Boron packed in smaller packs or otherwise.

6. The facts on record are that Boron was imported by Appellant in bulk and cleared after packing in 1 Kg., 5 Kg. 25 Kg. for retail sale to various customers, without payment of central excise duty treating this as 'trading activity'. The department contention in SCN was that activity of repacking of Boron amounts to manufacture in terms of Chapter Note 9 to Chapter 28 of the Central Excise



Tariff, Boron being classifiable under Chapter 28. The Appellant stated to have imported 192 MT of Boron in bulk from Turkey under Bill of Entry No. 2254219 dated 19.08.2015 and cleared the same from October, 2015 to June, 2016 as detailed in Annexure to the show cause notice. I find that Appellant in reply to SCN had not disputed duty liability, when Note 9 to Chapter 28 was brought to their notice but requested to allow cenvat credit, in view of decisions of the Hon'ble CESTAT in the cases of Titan Industries Ltd. reported as 2007 (217) ELT 423 (Tri.-Chennai) and United Distributors reported as 2014 (309) ELT 571 (Tri.-Mumbai). The relevant Paras of CESTAT's decision in United Distributors are reproduced as under:

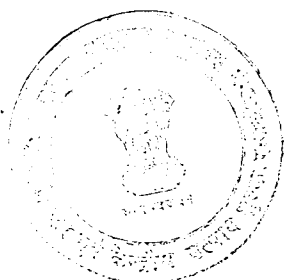
"8. We find that in this case, the show cause notice issued to the appellant on the issue whether the activity of labelling/re-labelling or putting stickers on the imported goods amounts to manufacture or not. In the case of *L'Oreal India Pvt. Ltd.* (supra) we find that this Tribunal has observed that as the activity of fixing MRP stickers took place in Customs bonded warehouse therefore, the same does not amount to manufacture but in this case the MRP stickers have been fixed after clearance of the goods from the Customs. Therefore, as per Chapter note and Section 2(f)(iii) of the Central Excise Act, 1944, the activity undertaken by the appellant amounts to manufacture. In these circumstances, we hold that the activity undertaken by the appellant amounts to manufacture.

8.1 As we held that the activity undertaken by the appellant amounts to manufacture, the appellant is entitled to take Cenvat Credit of CVD paid by them at the time of importation of the goods."

(Emphasis supplied)

6.1 I find that in the present case also, the activity of packing Boron (Chapter 28) in packs of 1 Kg, 5 Kg, 25 Kg from bulk quantity amounts to manufacture due to Chapter Note 9 of Chapter 28 and hence, the activity amounts to deemed manufacture under Section 2f(iii) of the Act and not trading as the appellant understood earlier. However, cenvat credit of CVD and SAD paid on imported Boron by the appellant needs to be made available to them when the activity of packing undertaken by the appellant amounts to manufacture due to chapter note in view of above case laws and Rule 2 and Rule 3 of the Cenvat Credit Rules.

6.2 The Appellant has submitted that they had not availed cenvat credit on CVD and SAD, treating the activity of selling Boron as imported in packs as trading; that cenvat credit of CVD and SAD is available to them in terms of Rule



2 and Rule 3 of the CCR; that the appellant paid CVD and SAD but did not avail cenvat credit under belief that they are engaged in trading activity and not manufacturing activity and these facts have not been denied in the SCN and the impugned order. In view of above factual position, I hold that the appellant is entitled to cenvat credit of CVD of Rs. 8,20,887/- and SAD of Rs. 2,97,054/- (Total Rs. 11,17,941/-) paid by the appellant at the time of importation of Boron especially when there is revenue neutrality as demand is of Rs. 10,21,650/- only. The decision of the Hon'ble CESTAT in the case of Titan Industries Ltd. reported as 2007 (217) ELT 423 (Tri.-Chennai) submitted by the appellant is squarely applicable in this case:-

".....It appears from the records that this credit exceeds the amount of duty of excise demanded. In the circumstances, we are of the view that the assessee shall pay the duty of excise by availing the CVD credit and utilizing the same. We, further, are of the view that, in the peculiar facts and circumstances of this case, any intent to evade payment of duty cannot be attributed to the assessee inasmuch as Cenvat credit of an amount higher than what is demanded by the Commissioner in the impugned order was lying with them, which could be utilized in the event of the demand of excise duty being enforced against them. Therefore, we think this is a fit case for vacating the penalty. Accordingly, the penalty is set aside and the appeal is disposed of....."

(Emphasis supplied)

6.3 In view of above, there is no case of demand, interest or penalty against the appellant.

6.4 I further find that the impugned SCN was issued on 28.09.2016 invoking normal time period and demanding Central Excise duty on deemed manufacture in view of Chapter Note 9 to Chapter 28 of CETA, 1985. The facts of this case reveal that there is no suppression of facts on part of the appellant with intent to evade payment of duty at any stage and the issue only involves interpretation of deemed manufacture due to Chapter Note 9 to Chapter 28 and hence, imposition of penalty on the appellant is not warranted in this case as held by the Hon'ble CESTAT in the case of M/s. Rungta Mines Ltd. reported as 2016 (338) ELT 454 (Tri.-Kolkata), wherein at Para No. 15.32 it is held that:

"15.32 We find that besides, confirmation of duty the Id. Commissioner has also imposed penalty on the respective appellants under Section 11AC of CEA, 1944. In our opinion, since the issue involved is an interpretation of law, and the demands are for normal period, therefore, imposition of penalty is unjustified and unwarranted."

(Emphasis supplied)



6.5 I, further, rely on the Hon'ble CESTAT order in a similar case of deemed manufacture due to chapter note for repacking in smaller packs from larger packs of micronutrients, penalties were set aside while upholding duty demand in respect of Shivashakti Bio Planteac Ltd. reported as 2019 (20) GSTL 243 (Tri.-HYd.), wherein held at Para No. 7 that:

*".....Since the issue involved in this case is of interpretation of the chapter notes for classification, we find that there is no necessity to visit the appellant with any penalties. The penalties are set aside."*

(Emphasis supplied)

6.6 In view of above, I uphold demand but allow appeal for availability of cenvat credit of CVD and SAD on imported Boron and set aside penalty imposed on the appellant.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
7. The appeal filed by the Appellant is disposed off in above terms.

*[Signature]*  
31/11/19

*[Signature]*  
11/21/2019  
(कुमार संतोष)  
प्रधान आयुक्त (अपील्स)

By RPAD

To,

M/s. Indian Farmers Fertiliser Co-Operative Limited (IFFCO), Finance & Accounts Administration Building Department, Old Kandla, Kandla Port, District - Kutch, Pin - 370 201	में. इंडियन फार्मर्स फर्टिलाइजर को-ओपरेटिव लिमिटेड (आईएफएफसीओ), फ़ाइनैस एवं अकाउंट एडमिनिस्ट्रेशन बिल्डिंग डिपार्टमेंट, ओल्ड कांडला, कांडला पोर्ट, जिल्ला - कच्छ, पिन - ३७० २०१.
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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) संयुक्त आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, रुरल मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।  
(4) गार्ड फ़ाइल