



::आयुक्त (अपील्स) का कार्यालय,दस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



सत्यमेव जयते

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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**रजिस्टर्ड डाक ए.डी.द्वारा :-**

क	अपील / फाइलसंख्या/ Appeal / File No. V2/49/GDM/2018-19	मूल आदेश सं / O.I.O. No. 32/JC/2017-18	दिनांक/ Date 28-03-2018
ख	अपील आदेश संख्या(Order-In-Appeal No.):		

**KCH-EXCUS-000-APP-087-2019**

आदेश का दिनांक / Date of Order:	21.10.2019	जारी करने की तारीख / Date of issue:	21.10.2019
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श्रीगोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri. Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/दस्तु एवंसेवाकर,  
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned O/O 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 :-  
Aarti Industries Ltd., Survey No. 1430/1, K.H. No. 8A, Tal: Bhachau, Dist: Kutch,, Gujarat-370140

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित उग्रह 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 मामलों 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.

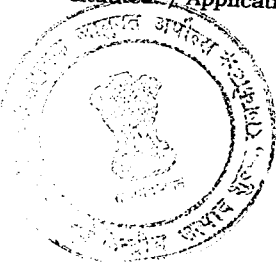
(ii) उपरोक्त परिच्छेद 1(a) में द्वापार गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 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।/  
Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

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 dutydemanded/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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी 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 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।/  
Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

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 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-धारा (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 सकेगी 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 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 प्राधिकरण (सेस्टेट) के प्रति अपीलों 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना 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 हैं

- (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 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 प्रथमपरतक के अंतर्गत अथवा सर्वत्र, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह 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 छुट (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.

(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 इयूटी 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 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 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 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। जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टा कार्य से बचने के लिए यथासंभव अपीलीय प्राधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अंतर्गत के उपरोक्त 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 section 11 in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering matters related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकरण को अपील दाखिल करने से संबंधित अन्य विवरणों और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.obec.gov.in](http://www.obec.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 Department's website [www.obec.gov.in](http://www.obec.gov.in).

**ORDER IN APPEAL ::**

M/s. Aarti Industries Ltd. (formerly known as M/s Anushakti Chemicals & Drugs Ltd), (*herein after referred to as "Appellant"*) filed appeal No. V2/49/GDM/2019 against Order-in-Original No. 32/JC/2017-18 dated 28.03.2018 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central GST, Gandhidham (*hereinafter referred to as 'adjudicating authority'*).

2. The brief facts of the case are that audit conducted for FY 2012-13 revealed that appellant wrongly availed Cenvat credit of service tax paid on GTS, manpower, recruitment agency, packaging service, clearing & forwarding service, banking & financial services, telephone service, maintenance & repair service, testing & technical service, commissioning & installation service, internet & telecommunication service etc. as input services, which pertained to other units of the Appellant. It was also revealed that the address shown in various invoices was not correct and the same was of their Mumbai based head office while the Appellant was not having Input Service Distributor (ISD) registration. The Appellant had HO at Mumbai with various other associated companies and firms having key management personal along with their relatives. The Appellant obtained Input Service Distributor (ISD) registration with effect from 01.06.2013 after merging the said unit with M/s Aarti Industries Ltd. It was also observed that the Appellant had trading business and availed Cenvat credit of service tax paid on services, used for carrying out trading activity, as input service. It appeared that the Appellant failed to comply with the provisions of Rule 6(2) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as "Rules"*).

2.1 Accordingly, a Show Cause Notice No. V.28/Ar-IV/Bch/Commr/167/2015-16 dated 18.03.2016 was issued to the Appellant calling them to show cause as to why Cenvat amounting to Rs. 1,93,63,615/- should not be demanded and recovered from them under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "Act"*) read with Rule 14 of the Rules, along with interest under Section 11AB/11AA of the Act read with Rule 14 of the Rules and proposing imposition of penalty under Section 11AC of the Act read with Rule 15(2) of the Rules.

2.2 The above SCN was adjudicated vide the impugned order, wherein Cenvat credit of Rs. 1,93,63,615/- was disallowed and ordered to be recovered under Section 11A of the Act read with Rule 14 of the Rules and ordered to recover interest under Section 11AB/11AA of the Act read with Rule 14 of the



Rules; imposed penalty of Rs.1,93,63,615/- under Section 11 AC of the Act read with rule 15(2) of the Rules.

3. Aggrieved, the Appellant preferred appeal, *inter-alia*, on the various grounds as under:

(i) The adjudicating authority erred in confirming the demand; that the impugned order is not sustainable as the same is based upon presumptions, interpretation beyond the scope of law and inferences not warranted by facts; that they have not contravened any of provisions of the Act or the rules made thereunder, hence neither recovery of Cenvat Credit along with interest nor penalty can be imposed on them and impugned order needs to be set aside.

(ii) The majority of the documents, on which credit was availed, were in the name and address of their manufacturing unit situated at Bhachau, Kutch; that unlike inputs, in case of input services, services being of intangible character, the receipt of invoice of the service provider is indicative of receipt of services. The Rule 4 (7) of the Rules states that Cenvat credit in respect of input service shall be allowed on or after the day on which the invoice, bill or challan is received. Hence, credit of the input services, where invoices being in the name and address of the appellant's factory at Bhachau should not have been denied; that the observations at para 36 and 36.1 of the impugned order cannot be sustained as invoices were produced before both the Audit Officers as well as Range Officers during verification.

(iii) That during the relevant period i.e. F.Y. 2012-13, credit of service tax paid on input services was availed by them in some cases against invoices or bills in the name of their head office. Since, it is not case of the department that the appellant during the said period was having more than one manufacturing unit, the invoices bearing the address of the head office of appellants has to be necessarily held as being in respect of services exclusively pertaining to their manufacturing unit alone and relied upon Circular No. 211/45/96-CX dated 14.5.1996, wherein it is categorically clarified that credit cannot be denied if the Invoices are in the name of registered Office/Head Office. Though the circular concerns invoices of inputs, but the ratio laid therein would apply even to invoices pertaining to input services also; that credit of input services used exclusively in connection with their manufacturing operations cannot be denied solely on the ground that the invoices were on the address of their Head Office. The appellant placed reliance on the following case laws in support of their



contention:

- a) Modern Petrofils- 2010 (20) STR 627 (tri- Ahmd.)
- b) CCE vs. Chamundi Textiles - 2011 (270) ELI 531 (Tr-Bang).
- c) Krishna Maruti - 2012 (277) ELT 357 (Tr-Del).
- d) CCE vs. D.N.H. Spinners - 2009 (244) ELT 65 (Tri-Ahmd).
- e) Chemplast Sanmar Ltd - 2011 (267) ELT 392 (Tri-Chennai).
- f) Rohit Surfactants Pvt Ltd - 2013 (29) SIR 175 (In-Del).
- g) CCE & ST vs. Dayalal Megji & Co. -2015 (38) STR 557 (Tr-Del).
- h) Inox Air Products Ltd -2015 (38) STR 79 (Tr-Mum).

(iv) The ISD Registration is required for distribution of common input services between two or more manufacturing units of the same organisation. It is an admitted fact in para 25 of the impugned order that the unit of the appellant at Bhachau was the only manufacturing unit. Hence, their Head Office was not required to obtain an ISD Registration for distributing credit to their unit; that having associated companies or officials of their company being key management personnel of other companies or conducting of trading business from Head Office are neither essential criteria for having an Input Service Distributor; that activity of trading, which are alleged to attract the provisions of Rule 6(2) of the Rules is baseless, because such input services were solely received and consumed at the manufacturing premises of the appellant and not at the Head Office in Mumbai, where the trading activities were carried out. The impugned order does not establish that such input services were received and consumed elsewhere other than unit at Bhachau. Even the Show Cause Notice does not mention name and address of other manufacturing or service providing unit of the appellant. Therefore, findings at para 28 of the impugned order are based on erroneous information, misconstrued, baseless and thus not sustainable and placed reliance on the following case laws:-

- a) CCE vs. Smita Conductors - 2012 (278) ELT 492 (Tr).
- b) Lakshmi Automatic Loom Works Ltd - 2011 (274) ELT 375 (Tri-Chennai).
- c) Valco Industries -2012 (286) ELI 54 (Tr-Del).
- d) Taurus Agile Technology Corporation (P) Ltd -2015 (39) SIR 880 (Tr-Del).
- e) Doshion Ltd -2013 (288) ELI 291 (Tri-Ahmd).
- f) Demosha Chemicals Pvt Ltd - 2014 (34) STR 758 (Tri-Ahmd).
- g) Durferrit Asea Pvt Ltd -2010 (258) ELT 414 (Tr-Bang).

(v) The impugned order failed to prove elements of suppression of facts, willful mis-statement, etc as provided under proviso to Section 11A(1) of the Act in the present case. The lower adjudicating authority simply held that since the appellant had not divulged these facts to the department in their returns or through separate communication and such irregularity came to the knowledge of



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the department after verification by the audit, which proved suppression of facts with intent to evade payment of duty. They had regularly filed periodical returns indicating availment of Cenvat credit on routine basis. All the columns in the returns were filled with factual and correct information. If the monthly returns do not require a manufacturer, who avails Cenvat credit, to declare the name and nature of service on which credit is availed or to intimate the nature and type of services on which credit is availed by a separate communication by any specific provisions, no charges of suppression can be established against the appellant for failing to do so; that they firmly believed that they have taken Cenvat credit correctly, hence, there was no reason to seek confirmation from the department; that the provisions of extended period are to be applied only in those cases where there is a clear intention to evade payment of duty/tax, mere inaction or failure on the part of the assessee does not constitute basis for invoking extended period there must be conscious or deliberate withholding of information by the assessee. The extended period of 5 years as invoked in the impugned order is not sustainable, hence, the entire demand is time barred.

(vi) In the absence of grounds for invoking extended period penal/interest provisions under the Act are not applicable to the present case. Once elements of fraud, willful misstatement or suppression of facts with intent to evade payment of duty are absent, no *mens rea* can be attributed to them and in absence of that penalty/interest can not be imposed.

4. In hearing, Shri Prasannan Namboodiri, Advocate appeared on behalf of the Appellant and reiterated the submissions of appeal memo and also filed compilations of provisions and case laws. He also submitted the CA certificate along with worksheet giving the details of input services invoices and sought time to file additional submission which was allowed. The Appellant vide letter dated 7.10.2019 submitted additional submission wherein they reiterated grounds of appeal memorandum.

5. I have carefully gone through the facts of the case, records of the case, the impugned orders, the Appeal Memorandum and written submissions made by the Appellant. The issue to be decided is whether the Cenvat credit amounting to Rs. 1,93,63,615/- availed by the Appellant is correct, legal and proper or otherwise.

6. I find that the adjudicating authority disallowed Cenvat credit of service tax availed by the Appellant on various services in the year 2012-13 on the



ground that some of the invoices contained address of their Head office located at Mumbai; that they had not obtained Input Service Distribution (ISD) registration; that some input services were related to trading business being operated from their Mumbai head office; that they had not maintained separate account for manufactured goods and traded goods for the purpose of availing Cenvat credit. The Appellant has contested that Majority of invoices on which Cenvat credit was availed were in the name and address of their manufacturing unit situated at Bhachau, Kutch and in some cases invoices were in the name of their head office located at Mumbai however services were exclusively pertaining to their manufacturing unit only; that they were not required to obtain ISD registration as their Kutch unit was only manufacturing unit.

7. Before deciding the issue on merit, I find it pertinent to mention that the invoices on which the Appellant had availed Cenvat credit of service tax during the year 2012-13 have not been verified by the adjudicating authority as per the communication between the Appellant and the Department emerging from records. I find that the Appellant vide letters dated 30.4.2014, 16.5.2014, 16.6.2014, 16.9.2014, 20.1.2015, 20.1.2016, 10.2.2016, 12.2.2016, 15.2.2016 and 25.2.2016 addressed to the Department submitted that they had only taken Cenvat credit pertaining to their manufacturing unit; that records is very bulky comprising of 60 box files and requested to verify the invoices by visiting their unit. On the other hand, the jurisdictional Range Superintendent vide letters dated 22.5.2017, 8.6.2017, 17.7.2017, 13.10.2017 and 6.12.2017 requested the Appellant to submit invoices pertaining to (i) their manufacturing unit located at Kutch (ii) head office located at Mumbai (iii) trading business carried out from Mumbai Office and (iv) invoices pertaining to other units. In reply, the Appellant vide letters dated 17.7.2017 and 15.11.2017 reiterated that they had produced their records before Audit team and that they had only availed Cenvat credit pertaining to their manufacturing unit located in Kutch and had not availed any Cenvat credit of trading business being carried out from their Mumbai office.

8. After analyzing the correspondence between the Appellant and the Department as well as findings recorded by the adjudicating authority in the impugned order, it is apparent that invoices on which the Appellant had availed Cenvat credit during 2012-13 and which is held as ineligible in the impugned order could not be verified by the Department. In other words, the impugned order was passed disallowing Cenvat credit of service tax without carrying out proper verification of any documents at all. However, it is also fair to say that



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the stand taken by the adjudicating authority also appears to be justifiable as the disputed invoices were not made available by the Appellant for verification during adjudication proceedings and under such circumstances, there is no other option for the adjudicating authority but to pass order on the basis of evidences available on record.

9. After carefully examining the facts involved in the matter, I am of the considered opinion that the impugned order disallowing the Cenvat credit and ordering for its recovery is not sustainable in the present form. Therefore, in the interest of justice, I deem it fit to remand the matter to the adjudicating authority for *de novo* adjudication with a direction to the Appellant to produce before the adjudicating authority all the invoices on which they had availed disputed Cenvat credit during the year 2012-13 and any other documents they wish to rely upon within 2 months from date of this Order. Needless to mention that the adjudicating authority shall pass speaking order after following principles of natural justice.

10. In view of above, I set aside the impugned order and dispose the appeal by way of remand.

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

11. The appeal filed by the Appellant stands disposed off in above terms.

विपुल शाह  
अधीक्षक (अपीलें)

(GOPI NATH)  
Commissioner (Appeals)

By RPAD

To, M/s Aarti Industries Ltd, Survey No. 1430/1, NH-8A Bhachau, District Kutch.	सेवा में, मं. आरती इंडस्ट्रीज़ लिमिटेड, सर्वे नं. 1430/1, राष्ट्रीय राज मार्ग- 8ए, भचाऊ, 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) संयुक्त आयुक्त, केन्द्रीय वस्तु एवं सेवा कर, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

