::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE
द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/35/GDM/2018-19	**01/Superintendent/Anjar-Bhachau-V/2018-19**	**28-12-2018**

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

KCH-EXCUS-000-APP-088-2019

आदेश का दिनांक / Date of Order: **21.10.2019** जारी करने की तारीख / Date of issue: **21.10.2019**

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/वस्तु एवंसेवाकर, 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 :-

Aarti Industries Ltd., Survey No. 1430/1, N.H. No. 8A, Tal: Bhachau, Dist: Kutch,, Gujarat-370140

इस आदेश(अपील) से व्यथित कोइ 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 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 बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd 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 माँग ,ब्याज की माँग 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 क्रमश: 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 सार्वजिनक 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 dutydemand/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 अंतगत सेवाकर नियमवाली, 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 माँग ,ब्याज की माँग 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 क्रमश: 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 सार्वजिनक 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 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 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 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 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 Commissionerauthorizing 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 (सेस्टैट) 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" मे 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 अर्ज़ी एवं अपील को लागू नहीं होगे।/
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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, 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 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.

(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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
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 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।
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 आदेशो 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयार्धिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers variousnumbers 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 filled 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 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.

(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 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.

(G) 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 Aarti Industries Ltd, Survey No. 1430/1, NH-8A Bhachau, District Kutch (*hereinafter referred to as* "Appellant") has filed Appeal No. V2/35/GDM/2019 against Order-in-Original No. 1/Superintendent/Anjar-Bhachau-V/2018-19 dated 28.12.2018 (*hereinafter referred to as* 'impugned order') passed by the Superintendent, Central Goods & Service Tax Range-V, Anjar-Bhachau Division, Gandhidham Commissionerate (*hereinafter referred to as* 'adjudicating authority').

2. The brief facts of the case are that the Appellant having Registration No. ABCA2787LEM037 was engaged in the manufacture of DI Metheyl Phthalate falling under Chapter Sub-Heading No. 29173940, Mono Methaynal under CH SH No. 29214290 and Calcium Chloride under CHSH No. 28272000 of the Central Excise Tariff Act, 1985. The Appellant was availing Cenvat credit facility under the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR 2004").

2.1 During the course of audit, it was found that the Appellant had imported Steam Coal on payment of Additional Duty of Customs (CVD) at 2% in terms of Notification No. 12/2012-Cus dated 17.03.2012, as amended. It was found that the Central Excise duty on Steam Coal is levied @ 6% as per Central Excise Tariff Act, 1985 and was levied @ 1% under Notification No. 12/2012-CE dated 17.03.2012, as amended, subject to condition that no credit under Rule 3 or Rule 13 of CCR, 2014 is taken in respect of inputs or input services used in the manufacture of these goods. It was found that the Appellant had wrongly availed and utilized Cenvat credit of CVD paid on imported Steam Coal totally amounting to Rs. 3,76,627/- during the period from 1.4.2017 to 30.6.2017, in contravention of Rule 3(1)(i)(b) of CCR,2004.

2.2 Show Cause Notice No. CERA-IV/AR-IV/Bhachau/H.M. No. 4/16 dated 1.3.2018 was issued to the Appellant calling them to show cause as to why Cenvat credit amounting to Rs. 3,76,627/- availed and utilized during the period from 1.4.2017 to 30.6.2017 should not be demanded and recovered from them along with interest under Rule 14 of the CCR,2004 and also proposing imposition of penalty under Rule 15 of CCR,2004 read with Section 11AC of the Central Excise Act, 1944(hereinafter referred to as "Act").

2.3 The Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who held that the Appellant wrongly availed Cenvat credit of CVD on imported Coal and thereby contravened the provisions of Rule 3(1)(i) of CCR,2004 read with Notification No. 12/2012-CE dated 17.3.2012 for

not fulfilling the condition specified at Sr. No. 67.

2.4 The adjudicating authority confirmed demand of Cenvat credit of Rs. 3,76,627/- and ordered for its recovery along with interest under Rule 14 of the CCR,2004 and imposed penalty of Rs. 3,76,627/- under Rule 15(2) of the CCR,2004 read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal on the following grounds:-

(i) The adjudicating authority failed to consider that the Additional Duty of Customs(CVD) on imported Steam Coal was not levied as per the Central Excise Tariff which provides for 6% rate of duty or as per Sr. No. 67 of Notification No. 12/2012-CE dated 17.3.2012 which provides for 1% effective rate of duty on condition of non availment of Cenvat credit in respect of inputs and input services but was levied under Sr. No. 123 of Notification No. 12/2012-Cus dated 17.3.2012 where the rate of duty is 2%. Hence, the restriction prescribed under proviso to Rule 3(1)(i) of CCR,2004 would not have any application for denying Cenvat credit;

(ii) It is precisely and unambiguously provided that only if the benefit of Notification No. 12/2012-CE dated 17.3.2012 is availed in respect of goods specified at Sr. No. 67 and 128 thereof, Cenvat credit is not available. In the present case, it is undisputed that exemption under Notification No. 12/2012-CE dated 17.3.2012 was not availed but duty was paid at higher rate i.e. 2% specified under Notification No. 12/2012-Cus dated 17.3.2012.

(iii) The Tariff rate of Steam Coal if manufactured in India is 6% and effective rate (conditional) @1%. However, if the Steam Coal is imported into India, the tariff rate continues to be 6% but effective rate is 2%. The restriction contained in proviso to Rule 3(1)(i) of CCR,2004 only applies to Central Excise duty levied under Notification No. 12/2012-CE dated 17.3.2012 and not in respect of Steam Coal imported in India for which CVD is levied at effective rate of 2% as per Sr.No.123 of the Notification No. 12/2012-Cus dated 17.3.2012.

(iv) The Appellant submitted that although the Additional duty of Customs(CVD) is levied under Section 3(1) of the Customs Tariff Act, 1975 should be equal to Central Excise duty leviable on like product if manufactured in India, the said levy continues to be in the nature of Customs Duty and is not collected as Central Excise duty on the imported goods. As per Section 2(15) of the Customs Act, 1962, 'duty' means a duty of Customs leviable under this Act. Further, Section 12 states that duties of Customs shall be levied at such rates as

may be specified under the Customs Tariff Act, 1975. Hence, the Additional Duty of Customs levied under Section 3(2) of the Customs Tariff Act retains the nature of Customs duty. Thus, restriction on availment of Cenvat credit contemplated under Rule 3(1)(i) of CCR,2004 applies only to Central Excise duty levied under Notification No. 12/2012-CE dated 17.3.2012 on the goods manufactured in Indian and not in respect of Additional Duty of Customs paid on imported Steam Coal under Notification No. 12/2012-Cus dated 17.3.2012.

(v) Penalty under Rule 15(1) of CCR,2004 can not be imposed merely for the venial beach of provisions of law without involving any *mens rea.* All the transactions were recorded in their books of accounts. Further, they have regularly filed returns showing factual and correct details. Therefore, no charges of suppression can be established against the Appellant for failing to do so. The Appellant relied upon the case law of Ranka Wires Pvt Ltd-2015 (322) ELT 410.

4. In hearing, Shri P.S. Namboodiri, Advocate appeared on behalf of the Appellant and reiterated the grounds of Appeal Memorandum filed by them and submitted compilation of legal provisions and case laws in support of their appeal.

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 issues to be decided are (i) whether the Appellant has wrongly availed Cenvat credit of Additional Duty of Customs paid on imported Steam Coal or not; and (ii) whether confirmation of demand and imposition of penalty on the Appellant are correct or otherwise.

6. On going through the records, I find that the Appellant is engaged in the manufacture of various chemicals falling under Chapters 28 & 29 of the Central Excise Tariff Act,1985. The Appellant had imported Steam Coal which was assessed to, *inter alia*, Additional Duty of Customs(CVD) @2% under Notification No. 12/2012-Cus dated 17.3.2012, as amended. The Appellant availed and utilized Cenvat credit of said CVD of Rs. 3,76,627/- during the period from 1.4.2017 to 30.6.2017 which has been disallowed by the adjudicating authority on the ground that the Appellant violated the condition of Notification No. 12/2012-CE dated 17.3.2012 by availing Cenvat credit of CVD paid on Steam Coal and thereby contravened the provisions of Rule 3(1)(i)(b) of CCR,2004. On the other hand, the Appellant has vehemently argued that Additional duty of Customs(CVD) is a duty of Customs levied under Section 3(1) of the Customs Tariff Act, 1975 on the goods imported into India and is not collected as Central Excise duty on the imported goods and that restriction on availment of Cenvat

credit contemplated under Rule 3(1)(i)(b) of CCR,2004 applies only to Central Excise duty levied under Notification No. 12/2012-CE dated 17.3.2012 on the goods manufactured in India and not in respect of Additional Duty of Customs levied on Steam Coal imported under Notification No. 12/2012-Cus dated 17.3.2012. I find that Additional Duty of Customs is levied under sub-section (1) of Section 3 of the Customs Tariff Act, 1975 at prescribed rate. Steam Coal imported by the Appellant were assessed to duty, *inter alia*, @2% CVD under Notification No. 12/2012-Cus dated 17.3.2012. I find that in the case before me there is no dispute regarding assessment of imported Steam Coal, rate of CVD or applicability of Notification No. 12/2012-Cus dated 17.3.2012. I also find that there is no condition prescribed for import of Steam Coal @2% CVD under Notification No. 12/2012-Cus dated 17.3.2012. The relevant entry appearing at Sr. No. 123 in the said Notification is reproduced as under:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118(E) dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said table.

Sl. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
123	27011920	Steam Coal	Nil	2%	-

6.1 I find that the Appellant has paid CVD by availing the benefit of Notification No. 12/2012-Cus dated 17.3.2012 issued under Section 25(1) of the Customs Act, 1962, which is independent of Notification No. 12/2012-CE dated 17.3.2012, sought to be relied upon by the adjudicating authority.

6.2 I have also examined the proviso to Rule 3(1)(i) of CCR,2004 relied upon by the adjudicating authority for denying Cenvat credit of CVD, which is reproduced as under:-

> **"Provided** that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -
>
> ...
>
> (b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;"

6.3 The relevant entries appearing at Sr. No. 67 and 128 of the Notification No. 12/2012-CE dated 17.3.2012 and condition prescribed against said entries are reproduced as under:-

Sl. No.	Chapter or Heading or Sub-heading or tariff item	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
67	2701	All goods	1%	25
128	31	All goods, other than those which are clearly not to be used as fertilisers	1%	25

Condition No.	**Conditions**
25	If no credit under rule 3 or rule 13 of the CENVAT Credit Rules, 2004, has been taken in respect of the inputs or input services used in the manufacture of these goods.

6.4 On conjoint reading of above provisions, I find that effective rate of CE duty @ 1% has been prescribed for goods appearing at Sr. No. 67 and 128 of Notification No. 12/2012-CE dated 17.3.2012 subject to condition that no Cenvat credit has been taken in respect of inputs or input services used in the manufacture of these goods. The recipient of such goods manufactured in India are not eligible to avail Cenvat credit of CE duty paid on such goods, in terms of Rule 3(1)(i)(b) of CCR,2004 as these provisions are applicable to the manufacturer of specified goods who clears the goods by availing the benefit of exemption Notification No. 12/2012-CE dated 17.3.2012 and to the recipient of such goods.

6.5 I find that in the present case, the Appellant is not engaged in the manufacture of Steam Coal and hence, Notification No. 12/2012-CE dated 17.3.2012 is not applicable to the Appellant at all. On the contrary, the

Appellant has paid Additional Duty of Customs @2% on import of Steam Coal by availing the benefit of exemption Notification No. 12/2012-Cus dated 17.3.2012. Though Additional duty of Customs(CVD) on an imported article is levied at a rate equal to the excise duty leviable on a like article, if produced or manufactured in India, it is not correct to consider Notification No. 12/2012-Cus to be *pari materia* with Notification No. 12/2012-CE dated 17.3.2012 and rates of CVD and Central Excise duty can be different depending upon the policy of the Government. The Board vide Circular No. 41/2013-Cus dated 21-10-2013 issued from F.No. 354/58/ 2013-TRU has also clarified as under:

> "3. The matter has been examined by the Ministry. Under the Free Trade Agreement (FTA), the preference/concession is extended only in respect of BCD. All other duties, including CVD are charged as applicable to similar imports from other countries. The CVD on an imported article is levied at a rate equal to the excise duty leviable on a like article, if produced or manufactured in India. However, at times, under a notification issued under section 25(1) of the Customs Act, 1962, CVD is levied at a rate which is lower than the rate of excise duty leviable on the like domestic article.
>
> 4. In the present case, the excise duty applicable on Steam Coal is 6%, if CENVAT benefit is availed of and 1% if the CENVAT benefit is not availed of. Normally, Steam Coal will suffer 6% CVD, as the condition of non-availment of cenvat benefit cannot be satisfied in respect of imported goods. However, in the Budget 2013-14, as a conscious policy decision, it was decided to levy 2% CVD both on steam coal and bituminous coal. This is the general applied rate of CVD on all imports of steam coal and bituminous coal regardless of the excise duty leviable on like domestic coal. No such condition has been laid down that an importer cannot avail of this concessional CVD of 2% if he has availed of the concessional BCD on steam coal under another notification."

6.6 On examining the case on hand, I am of the considered opinion that the entire proceedings were ill-conceived inasmuch as the adjudicating authority wrongly considered Notification No. 12/2012-Cus to be *pari materia* with Notification No. 12/2012-CE dated 17.3.2012 and attempted to cover Notification No. 12/2012-Cus dated 17.3.2012 availed by the Appellant within Rule 3(1)(i)(b) of CCR,2014, which is grossly erroneous. I rely on Order No. A/11585/2018 dated 9.7.2018 passed by the Hon'ble CESTAT, Ahmedabad in the case of M/s Asahi Songwon Colors Ltd, wherein it has been held that,

> "4. On careful consideration of the submissions made by both the sides, I find that the restriction provided in Rule 3 of Cenvat Credit Rules is as under:-
>
> > " Rule 3. (i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act; [Provided that Cenvat credit of such duty of excise shall not be allowed to be taken when paid on any goods – (a) .... (b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-CE, dated 17th March, 2012 is availed;"
>
> From the above Rule, it is observed that even if any duty is paid by availing exemption Notification No. 12.2012-CE dated 17.03.2012, the same will not be available as Cenvat credit for the user of the goods. In the present case,

admittedly, the appellant have imported Coal and CVD of 2% is leviable in terms of Customs Notification No. 12/2012-Cus. There is no restriction provided in Rule 3 as regards duty paid under Customs notification. This restriction is applicable only in case of indigenous goods on which the excise duty @ 2% was paid availing Notification No. 12/2012-CE, which is not a case here. Therefore, the appellant is entitled for Cenvat credit in respect of CVD paid under Notification No. 12/2012- Cus. Moreover, since the Notification No. 12/2012-CE is applicable only in respect of indigenously manufactured coal and not in respect the imported coal as held by the Hon'ble Supreme Court in the case *SRF Limited vs. CC, Chennai – 2015 (318) ELT 607 (SC)*. Therefore, even if the importer wants to avail the exemption of Notification No. 12/2012-CE for payment of CVD, the same will not be available to the importer. Therefore, in any case, in the case of import the Notification No. 12/2012-CE is not relevant."

6.7 In view of above, I hold that provisions of Rule 3(1)(i)(b) of CCR,2004 are not attracted in the present case since Notification No. 12/2012-CE dated 17.3.2012 is not applicable in this case. I further hold that the Appellant has rightly availed and utilized Cenvat credit of CVD paid on imported Steam Coal and hence, confirmation of demand of Rs. 3,76,627/- and imposition of penalty are required to be set aside.

7. In view of above, the impugned order is set aside and appeal is allowed.

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

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

सत्यापित ,

विपुल शाह
अधीक्षक (अपील्स)

(GOPI NATH) 21/10/19
Commissioner(Appeals)

By R.P.A.D.

To, M/s Aarti Industries Ltd, Survey No. 1430/1, NH-8A Bhachau, District Kutch.	सेवा में, मे॰ आरती इंडस्ट्रीज़ लिमिटेड, सर्वे न॰ 1430/1, राष्ट्रिय राज मार्ग- 8ए, भचाउ, जिल्ला कच्छ ।

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) अधीक्षक, केन्द्रीय वस्तु एवं सेवा कर रेंज-V, अंजार-भचाउ मण्डल, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।