::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय 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
	V2/89/RAJ/2019	**AC/Jam-I/C.Ex/06/2019-20**	**29-05-2019**

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

RAJ-EXCUS-000-APP-021-2020

आदेश का दिनांक / Date of Order:	**29.01.2020**	जारी करने की तारीख / Date of issue:	**30.01.2020**

श्री गोपी 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 **Appellants** & Respondent :-

M/s Mahalaxmi Extrusion, Special Shed 431, GIDC, Shanker Tekri, Udyog Nagar.

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 निम्नलिखि+त 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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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,1994की 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 रकेगी 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 (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" 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 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 outsideIndia 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 (नं. 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 नयाधिकरण 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. Mahalaxmi Extrusions, Special Shed No. 431, GIDC, Shankar Tekri, Jamnagar 361 004 (hereinafter referred to as 'the appellant') has filed the present appeal against Order-In-Original No. AC/JAM-I/C.Ex/06/2019 dated 29.05.2019 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central Excise Division, Jamnagar (hereinafter referred to as "the adjudicating authority").

2. The Brief facts of the case are that the appellant was engaged in the manufacture of excisable goods and was also processing inputs of other clients on job work basis as well as trading of goods by way of high sea sales and availing Cenvat Credit of service tax paid on common input services.

2.1 As per Rule 2(e) of Cenvat Credit Rule, 2004 (hereinafter referred to as "CCR") as amended from time to time read with Section 65, 65B and 66D of the Finance Act, 1994 (hereinafter referred to as "the Act"), trading activity (high sea sales and hedging of currencies) and processing of goods on behalf of others amounting to manufacture (Job Work) were exempted services. The appellant was, therefore, involved in manufacturing of excisable goods as well as in providing exempted services and hence liable to comply with either Rule 6(2) of the CCR or the provisions of Rule 6(3) of the CCR. The appellant had not exercised any option as envisaged under Rule 6(3) of the CCR and had availed & utilized cenvat credit on common input services such as trading of goods and high seas sales etc., without maintaining separate records as prescribed under Rule 6(2) of the CCR. Show Cause Notice No. V.74/GSTR-III-JAM/12/2018-19 dated 23.04.2018 was issued and later adjudicated by the adjudicating authority vide impugned order confirming demand of Rs. 9,77,877/- under Rule 14 of the CCR, 2004 read with Section 11A of the CEA, 1944 along with interest and imposing penalty of Rs. 9,77,877/- under Rule 15 of the CCR, 2004 read with Section 11AC of the CEA, 1944.

3. Aggrieved, the appellant preferred the present appeal, *inter-alia*, on the following grounds:

(i) The adjudicating authority has erred in confirming the demand of Rs. 9,77,877/- on the ground that appellant has not challenged the orders passed in earlier proceedings is consent and the applicant cannot change their stand at present is bad in law and is liable to set aside.

(ii) The adjudicating authority has ignored the facts that the issue of reversal under the provisions of Rule 6 on the goods processed under Notification No. 214/86 is already settled by the department in favour of applicant and same has been accepted by the department.

(iii) The adjudicating authority has confirmed demand on the goods removed as such ignoring the facts that the said clearance is with payment of duty and cannot be termed as exempt clearance. Appellant refers the decision of Hon'ble CESTAT, Ahmedabad in the case of M/s. Mahesh Twisto Tech Ltd. bearing No. A/13504/2017 dated 17.11.2017 whereby the Bench has settled the law that the input cleared as such with payment of duty cannot be termed as exempted clearance and Rule 6 cannot be made applicable.

(iv) In respect of trading goods the appellant has reversed the proportionate credit and on the basis of settled law the proceedings are ought to be dropped. Appellant refers decision of Hon'ble CESTAT, Ahmedabad in the case of CCE V/s. Optel Ceramic Pvt. Ltd. bearing No. A/12279/2017 dated 05.09.2017 whereby the Bench has settled the law that once the proportionate credit is reversed the recovery at the rate of 6% or 7% is not justified.

(v) As the demand of the impugned order is liable to set aside the interest confirmed and also penalty imposed are also liable to set aside.

4. Personal Hearing in the matter was given on 05.11.2019, 27.11.2019, 17.12.2019, 03.01.2020 & 14.01.2020, but no one from the appellant side has appeared for the same. Therefore, the instant case is to be decided *ex-parte* on the basis of available records.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made therein. The issues to be decided in the present appeal are as

(i) whether the appellant is required to pay amount under Rule 6(3) of the CCR, 2004 for undertaking exempted service or otherwise.

(ii) whether order for recovery of interest under Rule 14 of the CCR, 2004 and imposition of penalty under Rule 15 of the CCR, 2004 is correct or not?

6. The records indicate that the appellant was engaged in manufacture of excisable goods as well as processing of excisable goods on job-work basis and was also engaged in trading of goods on high sea sales basis. The appellant contended that out of total demand of Rs. 9,77,877/- under Rule 6(3) of the CCR, mainly demand pertained to transactions of job work carried out for other manufactures on payment of duty as well as

CE(NT) dated 20.06.2012 establish that trading of goods is an exempted service. A service on which no service tax is leviable under Section 66B of the Finance Act has to be treated as an exempted service. Thus, I find that the trading of goods falls within ambit of definition of "exempted service" as per Rule 2(e) of the CCR, 2004 and exempted services are all those services which are placed under negative list under Section 66D of the Finance Act. The said intention of the legislation is further fortified vide Explanation I (c) to Rule 6(3D) of CCR, 2004 wherein value on which payment of an amount under Rule 6(3) on trading of goods is stipulated to be considered as difference between sale price and the cost of goods sold or ten per cent of the cost of goods sold, whichever is more. Therefore, the Service Tax law and Cenvat Credit law in respect of trading of goods are unambiguous with effect from 01.04.2011 and after 01.07.2012 as the trading activity is covered under definition of exempted service.

8. I find that Rule 6 of the Cenvat Credit Rules, 2004 stipulates Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services, which reads as under:-

Rule 6 (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2). **Provided** that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Rule 6 (2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

Rule 6 (3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:-

without payment of duty under Notification No. 214/86-CE dated 25.03.1986 and on input removed as such hence it is illogical to treat such transactions as 'exempted services'.

6.1 I find that Section 66D of the Finance Act, 1994 provides the Negative list comprising of services not chargeable to service tax.

Clause (f) of Section 66D mentions 'any process amounting to manufacture or production of goods' is not chargeable to service tax.

Section 65B clause (40) of the Act explains the term 'process amounting to manufacture or production of goods' as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.

Hence, any process amounting to manufacture or production of goods or services by way of carrying out any process amounting to manufacture or production of goods were included in negative list under Section 66D of the Act, meaning thereby that service tax on activities of production and processing of goods on job work basis was exempted from service tax or on such activities and no service tax is payable in view of Section 66B of the Act. It is also not under dispute that the appellant has not paid service tax on such activities undertaken by them during the said period. I find that where the principal manufacturer has not claimed exemption from payment of Central Excise duty under Notification No. 214/86-CE dated 25.03.1986, it would be obligatory on the part of the appellant in the capacity of job worker to discharge Central Excise duty liability since the activities carried out by them amounts to 'manufacture' within the ambit of Central Excise law. The payment of Central Excise duty on job worked goods has nothing to do with execution of exempted service. Hence, I do not find any merit in the contention of the appellant. I find that the adjudicating authority held that the process carried out by the appellant on behalf of their customers was amounting to manufacture and the same has also been admitted/confirmed by the appellant in their written submission. From the above, it is clear that service provided or to be provided by way of carrying out any process amounting to manufacture or production of goods i. e. job work is not leviable to service tax and hence I find that the appellant has provided exempted service.

I also find that the definition of 'exempted service' was amended vide Notification No. 28/2012-CE(NT) dated 20.06.2012 w. e. f. 01.07.2012 as under:

"exempted service" means a–

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under Section 66B of the Finance Act; or

(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

(Emphasis supplied)

7. I find that trading of goods and job work process have been included in the negative list of services as per clause (e) and (f) of Section 66D of the Act with effect from 01.7.2012, which reads as under:-

"SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely :—

(a) to (d) .....

(e) trading of goods;

(f) any process amounting to manufacture or production of goods;"

(Emphasis supplied)

7.1 Clause (f) of the Section 66D of the Finance Act substituted by the Finance Act, 2015, with effect from 01.06.2015, which reads as under:

"SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely :—

(a) to (d) .....

(e) trading of goods;

(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;"

(Emphasis supplied)

7.2 Therefore, w.e.f. 01.07.2012, Section 66D specifies trading of goods as service but makes it in the negative list specifying that no service tax is payable on trading of goods. However, the fact remains that "trading of goods" under Section 66D of the Act has been treated as service. Similarly, Rule 2(e) of the CCR, 2004 amended vide Notification No. 3/2011-CE(NT) dated 01.03.2011 as well as Notification No. 28/2012-

(i) the manufacturer of goods shall pay an amount equal to five per cent. of value of the exempted goods and the provider of output service shall pay an amount equal to six percent. of value of the exempted services; or

(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specifiedin sub-rule (3A).

Explanation I.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II.-For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service

8.1 I find from the above discussion with regard to definition of the term 'exempted services' and that the job work as well as trading activity is specifically included as exempted services and the intent and purpose of legislation are very clear not to allow credit on input services meant for use in job work and trading activity under provisions of Rule 6 of the CCR, 2004. Thus, the manufacturer-trader cannot take credit on input services meant for used in job work and trading activity. He is required to maintain separate records for availment and consumption of the input services meant for job work and trading activity. On failure to comply with separate records, the only option available with him, as per the Cenvat Credit Rules, is either he has to pay the amount as per Rule 6(3)(i) or as per Rule 6(3)(ii) of the CCR, 2004. In other words, the appellant is required to pay amount equal to 6% / 7% of the value of trading of goods or to pay amount as per relevant formula provided in Rule 6(3A) of the CCR, 2004. I, therefore, hold that the appellant has failed to maintain separate account as stipulated under Rule 6(2) of the Rules and is required to pay an amount under Rule 6(3) of the Rules.

8.1 Hon'ble CESTAT, New Delhi in the case of Hema Engineering Industries Ltd. reported as 2017 (5) GSTL 43 (Trib. Del.) has held as under:

"4. The short question involved in this appeal for consideration by the Tribunal is, as to whether, exemption provided for job work activities under Notification No. 8/2005, dated 1-3-2005 should be considered as exempted

service in terms of Rule 2(e) ibid for applicability of the embargo created in Rule 6 ibid.

5. The term "exempted service" has been defined in Rule 2(e) ibid to mean taxable services which are exempt from the whole of the service tax leviable thereon, and include services on which no service tax is leviable under Section 66 of the Finance Act, 1994. The services in this case were exempted from payment of service tax Notification No. 8/2005-S.T., dated 1-3-2005 on the condition that the goods produced by the job worker of using raw material or some semi-finished goods should be returned back to the client for use in or in relation to manufacture of any other goods, on which appropriate excise duty is payable. On fulfilment of such conditions, the appellant was extended the benefit of non-payment of service tax. Such exemption though conditional, is availed by the appellant. Hence, the mischief of Rule 6(3) of the Cenvat Credit Rules, 2004 will get attracted.

6. The appellant pleaded that the Tribunal in the case of Polycab Industries, 2010 (19) S.T.R. 585 (Tri.-Ahmd.) held that job workers availing exemption under Notification No. 214/86-C.E. is eligible for credit on input services. We note that in the present case, the issue involved is not an exemption under Central Excise Notification No. 214/86-C.E. provides exemption to job worker, when the final product is duly accounted for the duty payment by the principal manufacturer. The said Notification is held to be not a bar for availing Cenvat Credit by the job worker. The product manufactured/processed by the job worker ultimately suffers Central Excise duty at the hands of the principal manufacturer. The ratio of the earlier decisions of the Tribunal in the cases of Sterlite Industries (I) Ltd. v CCE, Pune - 2005 (183) E.L.T. 353 (Tri.-LB) and JBF Industries v. CCE & ST, Vapi - 2014 (34) S.T.R. 345 (Tri.-Ahmd.) are on this basis. However, in the present case, Notification No. 8/2005-S.T. provides for exemption from Service Tax, when the process undertaken does not amounts to manufacture. There is no further follow up of service tax liability at the hands of principal manufacturer. Accordingly, we hold that the ratio adopted for Notification No. 214/86-C.E. in respect of Central Excise duty exemption cannot be applied to Notification No. 8/2005-S.T. to determine the applicability of the Cenvat Credit Rules, 2004."

8.2 I find that the ratio of the judgement in the case of Nicholas Piramal (India) Ltd. reported as 2009 (244) ELT 321 (Bom) is squarely applicable in the instant case. The facts in the case of Nicholas Piramal (India) Ltd. were also that the assessee had availed cenvat credit on common inputs used in dutiable as well as exempted final products and

the assessee had proportionately reversed credit of inputs used in the manufacture of exempted goods. The Hon'ble High Court held that ".... once a manufacturer, manufactures from common inputs two final products, one dutiable and the other exempted; Rule 6(2) would be attracted and on failure to maintain separate records, Rule 6(3) would apply." I find that in the instant case, the appellant has used common input service for manufacture of dutiable final products and for providing exempted service, but neither maintained separate records as per Rule 6(2) of the Cenvat Credit Rules, 2004 nor availed options as per Rule 6(3) of the Cenvat Credit Rules, 2004.

9. The appellant has also argued that the impugned order is barred by limitation as the department was well aware of the activities of job work and trading activities being undertaken by them. I find that non reversal of Cenvat Credit came to knowledge of the department only upon asking the Noticee to same by the jurisdictional range superintendent. Thus, this act of the Noticee is nothing but an act of willful suppression of the fact of non-reversal of Cenvat Credit.. The recovery of interest under Rule 14 of Cenvat Credit Rules 2004 read with Sectin 11AA and imposing penalty of Rs. 9,77,877/- under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944 are upheld and the appeal filed by appellant is rejected.

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

10. The appeal filed by the appellant stands disposed off in above terms.

Attested
29/01/2020
(S. D. Sheth)
Superintendent

29/1/2020
(Gopi Nath)
Commissioner (Appeals)

By R.P.A.D.

To,
M/s. Mahalaxmi Extrusions,
Special Shed No. 431, GIDC,
Shankar Tekri, Jamnagar 361 004

Copy for information and necessary action to:

1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
2) The Commissioner, CGST & Central Excise Commissionerate, Rajkot.
3) The Assistant Commissioner, CGST & Central Excise Division, Jamnagar
4) Guard File.