::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

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/70/RAJ/2019	**AC/JAM/R-67/2018-19**	**30-03-2019**

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

RAJ-EXCUS-000-APP-027-2020

आदेश का दिनांक / Date of Order:	**11.02.2020**	जारी करने की तारीख / Date of issue:	**12.02.2020**

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 Reliance Industries Ltd, Refinery and petrochemicals Division,, Village-Meghpar/Padana,, Taluka-lalpur, Jamnagar-361140.

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 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 (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 होंगे।/
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 इकाई,वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-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 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 समयावधि 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 ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in 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 Reliance Industries Ltd, Jamnagar (*hereinafter referred to as* "Appellant") filed Appeal No. 70/RAJ/2019 against Order-in-Original No. AC/JAM/R-67/2018-19 dated 30.03.2019 (*hereinafter referred to as* 'impugned order') passed by the Asst. Commissioner, Central GST & Central Excise, Division-1, Jamnagar (*hereinafter referred to as* 'refund sanctioning authority').

2. The brief facts of the case are that the Appellant had imported various types of capital goods i.e. pipes, cables fittings, cables, plant and machineries etc. under EPCG scheme during the period from 2013-14 to 2015-16 for their manufacturing operations. These capital goods were installed in a phased manner at respective manufacturing plants. However, some of the capital goods could not be installed in the factory of the appellant within the stipulated time period as provided in the Foreign Trade Policy. Accordingly, the Appellant foregone the EPCG benefits for the said capital goods by making payment of Basic Customs Duty(BCD) of Rs. 88,91,170/-, Countervailing duty(CVD) of Rs. 1,37,43,301/- and SAD of Rs. 52,61,137/-, along with interest, on various dates during the period from 30.11.2017 to 7.9.2018. In pre-GST period, Cenvat credit of CVD and SAD was available as Cenvat credit in terms of Rule 3(vii) and Rule 3(viia) of the Cenvat Credit Rules, 2004 read with Rule 9(1)(b) ibid. However, it appeared to the Appellant that there was no specific provisions under GST law to avail Input Tax Credit of CVD and SAD paid on regularisation of EPCG benefits availed earlier and hence, the Appellant filed refund claim of Rs. 1,89,95,438/- under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017 for refund of CVD & SAD paid.

2.1. On scrutiny of refund claim, certain discrepancies were noticed. Hence, Show Cause Notice No. V.27(18)30/Refund/2018-19 dated 05.02.2019 was issued to the Appellant calling them to show cause as to why their refund claim should not be rejected on the following grounds:

(i) In the present case CVD & SAD on capital goods were paid from November-2017 to April-2018, when Cenvat Credit Rules, 2004 were not in force and accordingly, it appeared that as Cenvat credit has not accrued before the appointed day, the Appellant can not avail the Cenvat credit and without availment, the claim of refund of Cenvat credit does not arise.

(ii) The Appellant claimed that refund of Cenvat credit is admissible as per provision of Section 142(6)(a) of the CGST Act, 2017. This Section applies, when there is either proceedings of appeal, or proceedings of review

or proceedings of reference. However, there is no such situation is present in the instant case.

(iii) The Appellant claim that they are entitled for refund under Section 142(3) of the CGST Act,2017 does not appear to be correct. This Section is applicable only when refund claim has been filed for an amount paid under the existing law or Cenvat credit already availed under the existing law which is not the case here. Moreover, there is no mention under the Section 142(3) that it will cover the situation where payment of tax has been made after the appointed day.

(iv) The instant refund claim appeared to be more specifically covered under the provisions of Section 142(8)(a), according to which if in pursuance of an assessment or adjudicating, if any amount is recovered, the same shall not be available as input tax credit. Assessment also includes self-assessment. Accordingly, the payment of duty made in pursuance of assessment makes the Appellant disentitled to the input credit.

(v) The Appellant paid CVD & SAD under Customs Act,1962 which does not appear to be covered the definition of existing law for the transition provisions. The existing law includes subsumed laws viz. Central Excise Act, 1944, Finance Act, 1994 and VAT. This is clear from plain reading of Section 22(2) & Section 139(1) of the CGST Act,2017.

3. The refund sanctioning authority rejected the refund claim vide the impugned order.

4. Aggrieved, the Appellant preferred appeal, *inter alia*, on the following grounds:-

(i) The refund sanctioning authority erred at para 16 of the impugned order holding that reference of 'existing law' pertains only to those laws which are subsumed in GST Act and not Customs Act and Foreign Trade Policy which are still in force and hence, not entitled for refund; that they have not filed refund of CVD and SAD paid under the provisions of Customs Act, 1962 but have filed refund claim for CENVAT credit of CVD and SAD paid on capital goods under the provision of Section 11B of Central Excise Act, 1944 read with Section 142(3) of CGST Act, 2017. Therefore, whether Customs Act, 1962 and Foreign Trade Policy are covered within the ambit of "existing law" or otherwise are irrelevant for determining entitlement for refund. By virtue of Rule 3 of the Cenvat Credit Rules, 2004, Section 11B and Section 2A of the Central Excise Act, 1944 and explanation to Section 142 of the CGST Act,

2017, CVD & SAD paid on capital goods for regularization of Export Obligation under EPCG scheme is squarely covered within the meaning of CENVAT credit.

(ii) That reference to Section 142(6)(a) of the CGST Act,2017 was made just to substantiate that intention of legislature is to grant refund in cash even in the cases of proceeding of appeal, or proceeding of review or proceeding of reference where any amount of credit is found to be admissible. In fact, Section 142(6)(a) of CGST Act, 2017 enhances the scope and coverage for grant of refund. Moreover, Section 142(6)(a) of CGST Act, 2017 does not prohibit its applicability in any manner whatsoever for the cases other than referred therein. Even assuming without admitting that Section 142(6)(a) of CGST Act, 2017 is not applicable in the instant case, it cannot be a ground to reject the refund claim filed by us in terms of Section 11B of the Central Excise Act, 1944 read with Section 142 (3) of CGST Act, 2017.

(iii) The finding of the refund sanctioning authority that no CENVAT credit under Cenvat Credit Rules, 2004 was admissible since duties have been paid after supersession of Cenvat Credit Rules, 2004 is not legally tenable in view of saving clause contained in Section 174(2)(c) of CGST Act, 2017 which specifically provides that repeal of Central Excise Act, 1944 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the said act.

(iv) That duty claimed as refund though not paid as excise duty, however CENVAT credit of the same was available to the Appellant in terms of Rule 3(1) of CCR, 2004 and relied upon case laws o M/s. Arvind Lifestyle Brands Ltd -2019-TIOL-936-HC-KAR-GST; that in refund application reference was made to Rule 9(1)(b) of CCR, 2004 and not Rule 9(1)(c) of CCR, 2004; that no Cenvat Credit was availed in respect of aforesaid capital goods but instead claimed refund for CVD and SAD paid on such goods under Section 11B of CEA, 1944 read with Section 142 (3) of CGST Act, 2017; that capital goods were installed in various plants including amongst those producing GST goods. Hence, even if capital goods are used commonly for GST and Non-GST goods, refund needs to be granted. There is no contemplation in the transitional provision that duty paid on goods for which refund claim has been filed must be exclusively used for production of GST goods.

(v) That transitional provision contained in Chapter XX of CGST Act, 2017 does not provide any time limit for which it will be operational. If the

intention of the legislature was to limit operation of transitional provision for specific period, they would have explicitly mentioned therein that it will cease to exist after the specified period. In absence of such a provision, it cannot be interpreted that transitional provisions would cease to exist automatically.

(vi) That merely because Section 142(3) of the CGST Act, 2017 does not explicitly mention about payment made whether before or after the appointed day, it cannot be presumed that it only deals with payment made prior to the appointed day. Furthermore, there is no bar under the said Section for claiming refund in respect of which duty or tax which has been paid after the appointed day. If the intention of legislature was to cover only those cases for which payment would have been made prior to the appointed day, the expression "paid under the existing law" appearing in Section 142(3) of the CGST Act, 2017 would have been worded as "paid under the existing law prior to appointed day". In absence of such a wording, it cannot be presumed that it only deals with the payment made before the appointed day. the expression "paid under the existing law" referred in Section 142(3) of the CGST Act, 2017 needs to be interpreted to include "amount paid after the appointed day" and refund of CVD and SAD paid by us on capital goods for regularization of Export Obligation under EPCG scheme needs to be granted in terms of Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017.

(vii) That identical issue is already decided vide Order no. Div-VII/41/RR Kabel/Ref/17-18 dated 20.06.2018 passed in the matter of M/s. R.R.Kable by the Assistant Commissioner of CGST, Vadodara and by the Hon'ble Commissioner (Appeals), Raigarh vide Order-in-Appeal No. MKK/397-398/RGD APP/2018-19 dated 21.12.2018 passed in the matter of M/s. Sudarshan Chemical Industries Ltd; that the impugned order be quashed and set aside and refund is sanctioned in cash.

5. In hearing, Shri George Mathews, VP(Indirect Taxes) and Shri Divyesh Suchak, Manager appeared on behalf of the Appellant and reiterated the submissions of appeal memo and submitted additional submissions dated 05.11.2019 for consideration, wherein grounds of appeal memo are reiterated.

6. I have carefully gone through the facts of the case, the impugned order, grounds of appeal memorandum and written submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 1,89,95,438/- is correct, legal and proper or not.

7. On going through the records, I find that the Appellant had imported certain capital goods under EPCG scheme without payment of duties in pre-GST period but since the Appellant could not install some of the said capital goods within stipulated period, they chose to forego the EPCG benefits and paid applicable Basic Customs duty, CVD and SAD after implementation of GST i.e. 1.7.2017. Subsequently, the Appellant filed refund claim of Rs. 1,89,95,438/- under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, in respect of CVD & SAD so paid.

7.1 The refund sanctioning authority rejected the refund claim on the ground that CVD & SAD on capital goods were paid from November-2017 to April-2018, when Cenvat Credit Rules, 2004 were not in force and hence, Cenvat credit has not accrued before the appointed day; that the Appellant paid CVD & SAD under Customs Act,1962 which does not appear to be covered the definition of existing law for the transition provisions; that refund claim appeared to be more specifically covered under the provisions of Section 142(8)(a), which provided that if any amount is recovered in pursuance of an assessment or adjudicating, the same shall not be available as input tax credit.

7.2 The Appellant contended that Section 174(2)(c) of the CGST Act, 2017 specifically provides that repeal of the Central Excise Act, 1944 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the said act; that transitional provision contained in Chapter XX of the CGST Act, 2017 does not provide any time limit for which it will be operational; that the expression "paid under the existing law" referred in Section 142(3) of the CGST Act, 2017 needs to be interpreted to include "amount paid after the appointed day" and refund of CVD and SAD paid by us on capital goods for regularization of Export obligation under EPCG scheme needs to be granted and relied upon Order-in-Appeal No. MKK/397-398/RGD APP/2018-19 dated 21.12.2018 passed by the Commissioner (Appeals), Raigarh in the case of M/s. Sudarshan Chemical Industries Ltd.

8. I find that the Appellant imported capital goods under EPCG scheme in pre-GST period i.e. before 1.7.2017 without payment of BCD, CVD and SAD. The Appellant failed to install some of the capital goods and voluntarily paid BCD, CVD and SAD on the said imported goods in GST era i.e. after 1.7.2017. These facts are not under dispute. I find that when the Appellant had paid CVD during the period from 30.11.2017 to 7.9.2018, Cenvat Credit Rules, 2004 were not in existence. Further, there is no provision in CGST Act, 2017 for availment of

Cenvat credit of CVD. Since, Cenvat credit of CVD had not accrued to the Appellant, they were not eligible to avail Cenvat credit itself. Once the Appellant were not eligible to avail Cenvat credit, there is no point on examining whether CVD can be refunded in cash or not. It is also worthwhile to mention that in the erstwhile Cenvat Credit Rules, 2004, refund of accumulated Cenvat credit could be refunded only under Rule 5 ibid in the circumstances as provided therein. It is beyond doubt that Cenvat credit of CVD is not eligible for refund under Rule 5 *ibid* or under any other provisions of Cenvat Credit Rules, 2004. I, therefore, hold that the adjudicating authority has rightly rejected the refund claim filed by the Appellant.

9. Regarding the plea of the appellant to grant them refund of CVD and SAD paid by them on capital goods for regularization of Export Obligation under EPCG scheme under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, I find that the Appellant is not eligible for refund under Section 11B of the Central Excise Act,1944 for the simple reason that even before 1.7.2017 when the Central Excise Act,1944 was in force, there was no provision to grant refund of CVD and SAD in cash under Section 11B ibid. When refund was not permissible in existing law prior to 1.7.2017, then there is no question of granting refund of CVD and SAD in cash after 1.7.2017. The refund claim filed under Section 11B of the Central Excise Act, 1944 is, thus, not maintainable. For this reason, I discard this plea of the Appellant as devoid of merit. As regards applicability of the provisions of Section 142(3) of the Central GST Act, 2017, I find that Section 142(3) *ibid* states that the refund filed before, on or after 1.7.2017, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act,1944. These provisions clearly envisage that for getting a refund of eligible credit, the Appellant should follow the procedure of existing law prescribed i.e. Cenvat Credit Rules, 2004 and any amount eventually accruing to him shall be paid in cash. As discussed by me in para supra, the provisions of erstwhile Cenvat Credit Rules, 2004 did not allow the refund in cash in respect of such Cenvat credit. Thus, refund claim is also not maintainable under Section 142(3) of the Central GST Act, 2017.

10. I rely upon the order No. 40098/2020 passed by the Hon'ble CESTAT, Chennai in the case of M/s Servo Packaging Limited reported in 2020-VIL-72-CESTAT-CHE-CE, wherein it has been held that,

> "8.1 Heard both sides. The only issue to be decided is, "whether the appellant has made out a case for refund under Section 142 (3) ibid, of the Customs Duty paid in view of non-fulfilment of its export obligations?"
>
> 8.2 None of the decisions relied on by the assessee are dealing with the refund arising on account of failure to comply with export obligation *vis-à-vis* Advance Authorization and therefore, as pointed out by the Ld. Authorized Representative for the Revenue, the same are not applicable to the facts of this case.
>
> 9.1 Advance Authorization is issued in terms of paragraph 4.03 of the Foreign Trade Policy [FTP (2015-20)] and the relevant Notification is Notification No. 18/2015-Cus. dated 1st April, 2015. The said Notification exempts materials imported into India against a valid Advance Authorization issued by the Regional Authority in terms of paragraph 4.03 of the FTP subject to the conditions laid down thereunder. One of the conditions, as per clause (iv), is that it requires execution of a bond in case of non-compliance with the conditions specified in that Notification. Further, paragraph 2.35 of the FTP also requires execution of Legal Undertaking (LUT)/Bank Guarantee (BG) : (a) Wherever any duty free import is allowed or where otherwise specifically stated, importer shall execute, Legal Undertaking (LUT)/Bank Guarantee (BG)/Bond with the Customs Authority, as prescribed, before clearance of goods.
>
> 9.2 Further, there is no dispute that the above is guided by the Handbook of Procedure ('HBP' for short) and paragraph 4.50 of the HBP prescribes the payment of Customs Duty and interest in case of *bona fide* default in export obligation (EO), as under :
>
> *"(a) Customs duty with interest as notified by DoR to be recovered from Authorisation holder on account of regularisation or enforcement of BG / LUT, shall be deposited by Authorisation holder in relevant Head of Account of Customs Revenue i.e., "Major Head 0037 - Customs and minor head 001-Import Duties" in prescribed T.R. Challan within 30 days of demand raised by Regional / Customs Authority and documentary evidence shall be produced to this effect to Regional Authority / Customs Authority immediately. Exporter can also make suo motu payment of customs duty and interest based on self/own calculation as per procedure laid down by DoR."*
>
> 10. Thus, the availability of CENVAT paid on inputs despite failure to meet with the export obligation may not hold good here since, firstly, it was a conditional import and secondly, such import was to be exclusively used as per FTP. Moreover, such imported inputs cannot be used anywhere else but for export and hence, claiming input credit upon failure would defeat the very purpose/mandate of the Advance Licence. Hence, claim as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reasons, also since the rules/procedures/conditions governing normal import compared to the one under Advance Authorization may vary because of the nature of import.
>
> 11. The import which would have normally suffered duty having escaped due to the Advance Licence, but such import being a conditional one which ultimately stood unsatisfied, naturally loses the privileges and the only way is to tax the import. The governing Notification No. 18/2015 *(supra)*, paragraph 2.35 of the FTP which requires execution of bond, etc., in case of non-fulfilment of

export obligation and paragraph 4.50 of the HBP read together would mean that the legislature has visualized the case of non-fulfilment of export obligation, which drives an assessee to paragraph 4.50 of the HBP whereby the payment of duty has been prescribed in case of *bona fide* default in export obligation, which also takes care of voluntary payment of duty with interest as well. Admittedly, the inputs imported have gone into the manufacture of goods meant for export, but the export did not take place. At best, the appellant could have availed the CENVAT Credit, but that would not *ipso facto* give them any right to claim refund of such credit in cash with the onset of G.S.T. because CENVAT is an option available to an assessee to be exercised and the same cannot be enforced by the CESTAT at this stage.

12. There is no question of refund and therefore, I do not see any impediment in the impugned order.

13. Accordingly, the appeal is dismissed."

10.1 By respectfully following above order, I hold that the Appellant is not eligible for refund of CVD and SAD.

11. I have also examined Order-in-Appeal No. MKK/397-398/RGD/APP/2018-19 dated 21.12.2018 relied upon by the Appellant. I disagree with the findings of the Commissioner (Appeals), Raigarh, for the reasons as detailed by me in paras *supra* as well as Hon'ble CESTAT, Chennai's order passed in the case of Servo Packaging Limited *supra*.

12. In view of above, I uphold the impugned order and reject the appeal.

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

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

11/12/2020

(GOPI NATH)
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By R.P.A.D.

To, M/s Reliance Industries Ltd, Refinery and Petrochemical Division, Village- Meghpar/Padana, Taluka- Lalpur, District Jamnagar-361140.	सेवा में, मेसर्स रिलायंस इंडस्ट्रीज लिमिटेड, रिफाइनरी एवं पेट्रोकेमिकल डिवीजन, गाँव- मेघपर / पदाना,तालुका- लालपुर, जिल्ला जामनगर -361140.

प्रतिलिपि :-

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, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जामनगर-1 मण्डल, जामनगर उप-आयुक्तालय, जामनगर को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।