::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 :-DIN- 20200964SX000056B807

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/02/BHV/2020	23 /D/2019-20	09.03.2020

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

BHV-EXCUS-000-APP-044-2020

आदेश का दिनांक / Date of Order:	28.08.2020	जारी करने की तारीख / Date of issue:	02.09.2020

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by ShriGopi 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 :-

M/s. Makson Pharmaceuticals (India) Pvt. Ltd., Rajkot Highway, Khareli, Surendranagar

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) मीमा 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 केडीट 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 आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय 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) मीमा 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 Makson Pharmaceuticals (India) Pvt Ltd, Surendranagar (*hereinafter referred to as* "Appellant") filed Appeal No. V2/2/BVR/2020 against Order-in-Original No. 23/D/2019-20 dated 9.3.2020 (hereinafter referred to as 'impugned order') passed by the Asst. Commissioner, CGST Division Surendranagar, Bhavnagar Commissionerate (hereinafter referred to as "adjudicating authority").

2. The brief facts of the case are that the Appellant was engaged in manufacture of Sugar Confectionery and was registered with Central Excise. The Appellant also manufactured said goods on behalf of M/s Parle Products Ltd and M/s Parle Biscuits Pvt Ltd (hereinafter referred to as 'M/s Parle') on jobwork basis and clearing the same on payment of Central Excise duty, in terms of Notification No. 36/2001-CE(NT) dated 26.6.2001. On the basis of information shared by the ADG, DGCEI, Pune, it was revealed that of M/s Parle Products Ltd and M/s Parle Biscuits Pvt Ltd, as Input Service Distributors, had distributed Cenvat credit of service tax to their various contract manufacturers, including the Appellant herein. It appeared that prior to 1.4.2016, such distribution of Cenvat credit of service tax was in contravention to the provisions of Rule 7 of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR, 2004'). It appeared that the Appellant had availed Cenvat credit of Rs. 4,99,739/- during the period june, 2013 to March, 2015 on the basis of ISD invoices but since distribution of said Cenvat credit was irregular, availment of Cenvat credit was also irregular.

2.1 Show Cause Notice dated 8.10.2018 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 4,99,739/- should not be disallowed and recovered from them under Rule 14 of CCR,2004 read with Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as "Act"*) along with interest under Rule 14 *ibid* read with Section 75 of the Act and proposing imposition of penalty under Rule 15(2) of CCR,2004 read with Section 78 of the Act

2.2 The said Show Cause Notice was adjudicated vide the impugned order which confirmed wrongly availed Cenvat credit of Rs. 4,99,739/- under Rule 14 of CCR,2004 read with Section 73(1) of the Act along with interest under Rule 14 *ibid* read with Section 75 of the Act and imposed penalty of Rs. 4,99,739/- under Rule 15(2) of CCR,2004 read with Section 78 of the Act

3. Aggrieved, the Appellant has preferred the present appeal on variou grounds, inter alia, as below :-

(i) The adjudicating authority has erred in holding that the CENVAT credit of service tax has been wrongly distributed by the input service distributor and wrongly taken and utilized by the Appellant without appreciating the provisions of law/ notification, factual position on the issue and hence, impugned order denying CENVAT credit is not sustainable.

(ii) That they manufactured confectioneries 'for & on behalf of' M/s. Parle on contract basis in terms of Notification No. 36/2001-CE(NT) dated 26.6.2001 and they should be considered as a 'manufacturing unit' of M/s Parle; that the Appellant was required to undertake all the compliances and to follow the procedures and to pay duty on the manufacture and to maintain records etc; that the raw & packing materials used in manufacture of final products were procured by M/s. Parle and delivered to them under cover of an excise invoice, which is addressed to as 'Makson Pharmaceuticals -A/c. Parle Biscuits Pvt. Ltd'; that on the basis of such invoices, CENVAT credit was availed on inputs and capital goods as per CCR. 2004; that they cleared the goods to M/s Parle on payment of Central Excise duty

(iii) That the adjudicating authority erred in relying upon order of the Hon'ble CESTAT in the case of Sunbell Alloys Company of India Ltd. -2014 (34) STR 597 (Tri); that said case law is not applicable to the facts of present case inasmuch as in the case of Sunbell Alloys, the job-worker undertook the process of repacking and relabelling of the goods imported/supplied by the Importer/Credit-distributor; that M/s. Merck Specialties Limited, who distributed the credit, did not even have any manufacturing unit of their own and, further, there was no arrangement between the supplier of raw materials and the jobworker under Notification No. 36/2001-CE(NT). Whereas, in the present case, the manufacturing activities of the finished goods, from the stage of inputs till the stage of finished goods, was carried out by Appellants for and on behalf of the Principal-manufacturer M/s Parle and both, the Appellants as well as M/s Parle were having full-fledged manufacturing facilities. Therefore, the case of Sunbell Alloys is distinguishable on facts and consequently not applicable to the facts of the present case.

(iv) That the Department has not appealed against the Order-in-Appeal passed by Commissioner (A), Central Excise, Manglore, in the case of Imperial

Confectioneries Pvt. Ltd, wherein identical issue was decided in favour of the assessee. Since the said OIA has attained finality, it is binding on the Department, including on Commissioner (A). Hence, the impugned order is required to be set aside.

(v) That Rule 7 of CCR, 2004 was substituted w.e.f. 1.4.2016, wherein a specific provision was made for an Input Service Distributor to distribute the credit of input services even to outsourced manufacturers /job workers/contract manufacturers, manufacturing goods on their behalf and paying duty on their finished goods. This amendment by 'substitution' of Rule 7 of CCR, 2004 was made only to correct the possible mistake/lacuna in the earlier Rule and hence, the same would have retrospective effect from the inception of CCR, 2004; that it is a settled position of law that 'substitution' of any rule or notification or any parts thereof would have retrospective effect, i.e. from the date of incorporation of such rule or notification in the statute and relied upon following case laws:

(a) Indian Tobacco Association -2005 (187) ELT 162 (SC)

(b) Steel Authority of India Ltd.- 2013 (297) ELT 106

(vi) That provisions of Rule 7 were discriminatory and against the principles of CENVAT credit scheme since the principal manufacturers, who opted to get their goods manufactured from job workers were discriminated against as compared with the manufacturers who set up their own factory, since in former case Cenvat was denied, which is otherwise available to them. This was so, since in both cases, the excise duty was being paid on the sale price of the manufacturer (as the job worker was required to pay excise duty on sale price of principal manufacturer as per rule 10A of the Central Excise Valuation Rules) but in the former case, the principal manufacturer could not distribute the credit and it became their cost, and in the latter case, the manufacturer was able to distribute the credit and was able to claim the credit on such input services. It is a settled principle that CENVAT is a value added tax and tax can only be levied on the value addition, after granting credit of all the taxes paid on inputs and input services and such credit pertaining to the value of excisable goods should be allowed.

(vii) That impugned order has wrongly confirmed demand under Rule 14 of CCR,2004 read with Section 73 of the Finance Act, 1994; That the provisions of Finance Act, 1994 can be invoked only in case of recoveries for service

providers. Since the Appellant is a manufacturer, the recovery provisions under the Central Excise Act,1944 would be applicable and not under the Finance Act, 1994. Since the SCN notice itself was issued under incorrect provisions, there is no question of confirmation of demand and, therefore, the impugned order is liable to be set aside.

(viii) That they availed Cenvat credit under dispute during the period from July, 13 to March, 15 but the SCN was issued on 8.10.2018 by invoking extended period of five years. Since the recovery provisions permit to recover any incorrectly claimed credit within five years from the date of the notice and any credit claimed before that date cannot be disputed and hence, demand on such Cenvat credit availed by them prior to October, 2013 is time barred. If such incorrectly confirmed demand is removed from the calculation, the demand would come down to Rs. 74,587/- and interest and penalty would also need to be recomputed.

(ix) That the issue involves interpretation of provisions. If a legal provision is capable of two or more different interpretations and if assesses interprets same to his benefit, it cannot be taken as suppression of facts or mala fides on his part. In such circumstances, extended period is not invokable; that the SCN was issued by invoking extended period of five years, which is barred by limitation, as extended period of limitation is not invokable in the absence of any suppression, mis-statement, etc.

(x) That penalty under Section 78 of the Finance Act, 1994 is not imposable as there was no suppression of facts, mis-declaration on their part and none of the ingredients envisage under Section 78 is present in their case.

4. Hearing in the matter was conducted in virtual mode through video conferencing with prior consent of the Appellant. Shri Kartik Solanki, Chartered Accountant appeared on behalf of the Appellant and reiterated the submission of appeal memorandum and requested to grant two days' time for filing additional submission.

4.1. The Appellant vide letter dated 6.8.2020 filed additional submission wherein grounds raised in appeal memorandum are reiterated and relied upon Order No. 50729-50731/2020 dated 22.6.2020 passed by the Hon'ble CESTAT, New Delhi in the case of M/s Krishna Food Products & others.

5. I have carefully gone through the facts of the case, the impugned order and ground of appeal submitted by the appellant in the memorandum of appeal as well as in additional submission. The issue to be decided is whether the Cenvat credit of Rs. 4,49,739/- availed by the Appellant on ISD invoices is correct, legal and proper or not.

6. On going through the records, I find that the Appellant was engaged in the manufacture of sugar confectionary on contract basis on behalf of M/s Parle Products Ltd and M/s Parle Biscuits Pvt Ltd. The Appellant was clearing such goods manufactured on contract basis on payment of Central Excise duty. The Appellant had availed Cenvat credit of service tax of Rs. 4,49,739/- during the period from June, 2013 to March, 2015 on the basis of invoices issued by their Principal i.e. M/s Parle Products Ltd and M/s Parle Biscuits Pvt Ltd, as Input Service Distributor. The adjudicating authority denied said Cenvat credit on the grounds that M/s Parle Products Ltd and M/s Parle Biscuits Pvt Ltd. could distribute Cenvat credit only to their manufacturing unit prior to 1.4.2016 and since the Appellant was not their manufacturing unit, such distribution of Cenvat credit is not in accordance with the provisions of Rule 7 of CCR, 2004.

6.1 The Appellant has contended that they manufactured confectioneries 'for & on behalf of' M/s. Parle on contract basis in terms of Notification No. 36/2001-CE(NT) dated 26.6.2001 and they should be considered as a 'manufacturing unit' of M/s Parle; that the raw materials & packing materials used in manufacture of final products were procured by M/s. Parle and delivered to them under cover of an excise invoice, on which they had also availed Cenvat credit as per CCR, 2004 and relied upon the Order dated 20.6.2020 passed by the Hon'ble CESTAT, New Delhi in the case of Krishna Food Products & others.

7. I find that entire issue revolves around Cenvat credit which was distributed by M/s Parle as Input Service Distributor, in terms of Rule 7 of CCR, 2004. I, therefore, find it is pertinent to examine the provisions of Rule 7 of CCR, 2004, which are reproduced as under:

> "RULE 7. Manner of distribution of credit by input service distributor. — The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely :—
> (a) ...
> (b) ...

(c) ...
(d) ...

Explanation 1.- For the purpose of this rule, 'unit' includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.
..."

7.1. I find that Rule 7 of CCR,2004 provides that the input service distributor may distribute Cenvat credit of the service tax paid on the input service to "its manufacturing units". In the present case, the Appellant had carried out manufacturing activities as job worker in terms of Notification No. 36/2001-CE(NT) dated 26.6.2001. However, M/s Parle has nothing to do with the manufacturing activities undertaken by the Appellant, as both the Appellant and M/s Parle were different legal entities and the Appellant was certainly not manufacturing unit of M/s Parle. Only because the Appellant was carrying out jobwork of M/s Parle in term of Notification supra, they cannot be treated as manufacturing unit of M/s Parle, so as to become eligible to avail Cenvat credit of service tax distributed by Input service distributor. Even though the Appellant had undertaken jobwork on the raw materials supplied by M/s Parle, but the Appellant has to be considered as 'manufacturer' for the purpose of discharging Central Excise duty and not supplier of the goods. After analyzing the facts of the case, I am of the opinion that Appellant cannot be considered as 'manufacturing unit' of M/s Parle and consequently, Cenvat credit availed by the Appellant on the basis of invoices of the Input Service Distributor is irregular and not admissible. I rely on the Order passed by the Hon'ble CESTAT, Mumbai in the case of Sunbell Alloys Company of India Ltd. -2014 (34) STR 597 (Tri), wherein it has been held that,

"5.3 Therefore, if anybody wants to avail input service credit, the above provisions of law has to be complied with. As per the definition of 'input service distributor' it has to be a service used by the manufacturer, whether directly or indirectly, in relation to the manufacture of final products and clearance of the final products up to the place of removal. In the present case, the manufacturer is the job-worker who has undertaken the processing of the goods supplied by M/s. Merck Specialties Ltd. and the services on which credit is taken and distributed by M/s. Merck has nothing to do with the manufacturing operations undertaken by the appellants and, therefore, it is difficult to agree with the contention that the services received by M/s. Merck is an input service relating to the manufacture of goods by the job-workers.

5.4 Secondly, 'input service distributor' means an office of the manufacturer or producer of final products. The office of M/s. Merck cannot be considered as an office of the job-worker and, therefore, the definition of 'input service distributor' is not satisfied. Thirdly, Rule 7 deals with the manner of distribution, which specifically states that the input service distributor may distribute Cenvat credit of the service tax paid on the input service to *its manufacturing units*. The job-workers' factory is not the manufacturing unit of M/s. Merck Specialties Ltd. but they are independent legal entities by themselves and, therefore, the question of distribution of credit by M/s. Merck Specialties Ltd. to the job-workers does not satisfy the condition that the credit is distributed to its manufacturing units. It is a settled position of law that job-workers who actually undertake the manufacturing process is the 'manufacturer' of goods and not the supplier of raw materials.

... ...

5.6 If one applies the ratio of these decisions to the facts of the present cases, it will then become very clear that it is the appellants who are the manufacturers and not M/s. Merck Specialties Ltd. who has merely supplied the raw materials to the appellants for manufacture of the goods. It is also not in dispute that, it is the appellants who are discharging the excise duty liability though on the price declared by M/s. Merck Specialties Ltd. The value on which excise duty liability is discharged is not determinative of the liability to pay excise duty or who the manufacturer is, as held by the Hon'ble Supreme Court in the case of Bombay Tyre International [1983 (12) E.L.T. 869 (S.C.) & 1983 (14) E.L.T. 1896 (S.C.)]. A perusal of the agreement between the appellants and M/s. Merck Specialties also shows that they are independent legal entities and the transaction between them are on principal-to-principal basis."

7.2 By respectfully following the above decision, I hold that the Appellant is not eligible to avail Cenvat credit of service tax availed on the basis of invoices issued by M/s Parle as Input Service Distributor.

8. The Appellant has contended that the impugned order has wrongly confirmed demand under Rule 14 of CCR,2004 read with Section 73 of the Finance Act, 1994; that the provisions of Finance Act, 1994 can be invoked only in case of recoveries for service providers. Since the Appellant is a manufacturer, the recovery provisions under the Central Excise Act,1944 would

be applicable and not under the Finance Act, 1994. I do not find any merit in the argument of the Appellant. It is not correct to say that provisions of Finance Act, 1994 are only for service providers. If any manufacturer wrongly avails Cenvat credit of service tax, as happened in the present case, then provisions of Rule 14 of CCR, 2004 are invoked along with provisions of Section 73 of the Finance Act, 1994 for recovery of wrongly availed Cenvat credit of service tax.

9. The Appellant has contended that since the Department has not appealed against the Order-in-Appeal dated 14.11.2012 passed by Commissioner (A), Central Excise, Mangalore, in the case of Imperial Confectioneries Pvt. Ltd, wherein identical issue was decided in favour of the assessee, the same has attained finality and hence, it is binding on the Department, including on Commissioner(A). I do not find any merit in the contention raised by the Appellant. The Appellant has not brought to my notice that the said Order-in-Appeal was relied upon before the adjudicating authority but the same was not considered. In any case, only orders passed by higher appellate forum is binding on this appellate authority and said Order-in-Appeal dated 14.11.2012 is not binding on this appellate authority.

10. I have examined CESTAT, New Delhi's Order dated 20.6.2020 passed in the case of Krishna Food Products & others, which has been relied upon by the Appellant. I find that in the said case, the Hon'ble CESTAT has referred the matter to the Larger bench and no final decision has been pronounced yet. Hence, said case law has no evidential value.

11. The Appellant argued that they had availed disputed Cenvat credit during the period from July, 13 to March, 15 but the SCN was issued on 8.10.2018 by invoking extended period of five years; that recovery provisions permit to recover any incorrectly claimed credit within five years from the date of Show Cause Notice and any credit availed prior to claimed before that date cannot be disputed and hence, demand on such Cenvat credit availed by them prior to October, 2013 is time barred. I find force in the argument of the Appellant. On going through para 11 of the Show Cause Notice dated 8.10.2018, I find that the Appellant had availed Cenvat credit of service tax during the period from 5.7.2013 to 20.3.2015. In SCN, demand was raised by invoking extended period of limitation of five years under Rule 14 of CCR, 2004 read with Section 73 of the Finance Act, 1994. Therefore, demand in respect of Cenvat credit availed prior to 8.10.2013 is time barred. I find that the Appellant had availed Cenvat credit

of Rs. 3,75,152/- during the period prior to 8.10.2013. Hence, confirmation of demand of Rs. 3,75,152/- is not sustainable being time barred. I, therefore, set aside confirmation of demand of Rs 3,75,152/- but uphold confirmation of remaining demand of Rs. 74,759/-. Since, demand of Rs. 3,75,152/- is set aside, recovery of interest on said demand under Section 75 and imposition of penalty of Rs. 3,75,152/- under Section 78 are also set aside.

12. Regarding imposition of penalty under Rule 15(2) of CCR, 2004, the Appellant has pleaded that penalty is not imposable as there was no suppression of facts, mis-declaration on their part and none of the ingredients envisage under Section 78 is present in their case. I find that wrong availment of Cenvat credit of service tax on the basis of invoices issued by M/s Parle as Input Service Distributor on the basis of information shared by DGCEI, Pune. Had this information not shared by the DGCEI, said wrong availment of Cenvat credit by the Appellant would have gone unnoticed. So, there was suppression of facts involved in the present case. Since the Appellant suppressed the facts of availment of ineligible Cenvat credit, penalty under Rule 15(2) of CCR,2004 is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 74,759/- imposed under Rule 15(2) of CCR,2004. This penalty is equivalent to confirmation of demand of Rs. 74,759/- upheld by me in para supra.

13. In view of above, I partially allow the appeal and set aside the impugned order to the extent of confirmation of demand of Rs. 3,75,152/- and uphold the remaining demand of Rs. 74,759/- and penalty of Rs. 74,759/-.

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

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

28/8/2020

(GOPI NATH)
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By R.P.A.D.

To, M/s Makson Pharmaceuticals (India) Pvt Ltd Rajkot Highway, Khareli, Surendranagar.	सेवा में, मे॰ मेकसन फर्मास्युटिकल्स (इंडिया) प्राइवेट लिमिटेड, राजकोट हाइवे, खरेली, सुरेन्द्रनगर।

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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, सुरेन्द्रनगर मण्डल, सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।