



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और 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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/2/GDM/2019	06&07/JC/2018-19	27-09-2018

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

KCH-EXCUS-000-APP-015-2020

आदेश का दिनांक / Date of Order:	06.02.2020	जारी करने की तारीख / Date of issue:	07.02.2020
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श्रीगोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri. Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, 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 :-
Sumilon Industries Limited, Plot No.43 , NH 8A Village Varsana, Anjar(Kutch),

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

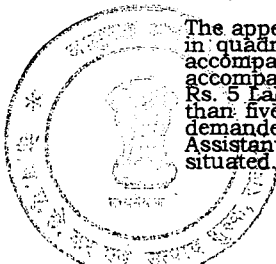
(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in 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) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
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 duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-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 Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल 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 अर्जी 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 को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत अवर 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 outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय 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.

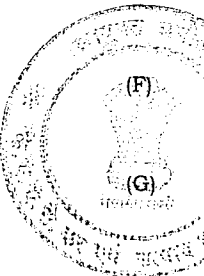
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पदों कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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. Sumilon Industries Ltd, Varsana (hereinafter referred to as "Appellant") filed appeal No. V2/2/GDM/2019 against Order-in-Original No. 6 & 7/JC/2018-19 dated 27.9.2018 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Gandhidham (Kutch) (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that the Appellant having Central Excise Registration No. AADCS3567LXM004 was engaged in the manufacture of Polyester Film-plain and Polyester Film-Metallized falling under Ch. 39 of the Central Excise Tariff Act, 1985. The Appellant informed the Department on 22.9.2014 that a fire broke out at their factory premises. The Appellant vide letter dated 22.7.2015 further informed the jurisdictional Range office that they had reversed Cenvat credit of Rs. 5,99,600/- availed on raw materials which were destroyed in fire and that they paid Central Excise duty of Rs. 31,27,538/- in respect of Cenvat credit availed by them on raw materials which were used in the manufacture of finished goods destroyed in fire.

2.1 The Appellant filed application for remission of duty under Section 5 of the Central Excise Act, 1944 (hereinafter referred to as 'Act') before the Commissioner, Central Excise, Gandhidham, which was rejected vide Order-in-Original No. KCH-EXCUS-COM-000-02-2018-19 dated 10.7.2018. Hence, it appeared that the Appellant was required to pay Central Excise duty of Rs. 43,90,373/- on finished goods destroyed in fire. It further appeared that the Appellant was also required to reverse Cenvat credit of Rs. 7,26,546/- availed on raw materials consumed in in-process goods destroyed in fire.

2.2 The Show Cause Notice No. V.Gnd/AR-IV-Gnd/Commr/92/2015 dated 16.9.2015 was issued to the Appellant calling them to show cause as to why Central Excise duty of Rs. 43,90,373/- on finished goods destroyed in fire should not be demanded and recovered under Section 11A of the Act; Cenvat credit of Rs. 7,26,546/- availed on inputs used in in-process goods should not be disallowed and recovered under Section 11A and Cenvat credit of Rs. 5,99,600/- availed on inputs destroyed in fire should not be disallowed and recovered under Section 11A *ibid*; interest on above demand should not be charged under Section 11AA of the Act and also proposed imposition of penalty under Section 11AC(1)(a) of the Act read with Rule 25 of the Central Excise Rules, 2002.



2.3 The Show Cause Notice No. V.CEX/15-35/Audit-III/ADC-10/2015-16 dated 8.10.2015 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 31,27,538/- availed on inputs consumed in finished goods destroyed in fire should not be disallowed and recovered from them under Section 11A, along with interest under Section 11AA of the Act and also proposed imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004.

2.4 The above SCNs were adjudicated by the adjudicating authority vide the impugned order, wherein he confirmed demand of Central Excise duty of Rs. 43,90,373/- under Section 11A of the Act; disallowed Cenvat credit of Rs. 5,99,600/-, Rs. 5,87,749/- and Rs. 31,27,538/- and ordered for their recovery under Section 11A *ibid*; confirmed interest on above demand under Section 11AA of the Act and imposed penalty of Rs. 4,39,037/- under Section 11AC(1)(a) of the Act.

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

(i) The adjudicating authority has erred in confirming demand of Rs. 43,90,373/- on finished goods burnt/lost in fire; that they were only required to reverse Cenvat credit availed on inputs consumed for manufacture of finished goods lost in fire and that they have already paid amount of Rs. 31,27,538/- towards said Cenvat credit; that there is no provision to recover duty simultaneously on finished goods which is burnt in fire and also asking for reversal of Cenvat credit involved in said goods; that it will amount to recover duty and credit twice for same goods, which is against the provisions of Cenvat Credit Rules; that Section 11AA of the Act deals with chargeability of interest on delayed payment of duty. Since demand of Rs. 43,90,373/- on finished goods is not sustainable, the question of interest on said demand does not arise.

(ii) That they had reversed Cenvat credit of inputs lost/burnt either at input stage or semi processed stage/finished stage; that there was no removal of inputs and hence, date of clearance cannot be determined and delayed period can never be worked out; that Section 11AA of the Act does not stipulate recovery of interest in case of fire accident; that they were always having sufficient balance lying in their Cenvat credit account and hence, interest is not payable on said credit involved in goods burnt/lost in fire.

(iii) That imposition of penalty of Rs. 4,39,037/- is illegal and unwarranted;



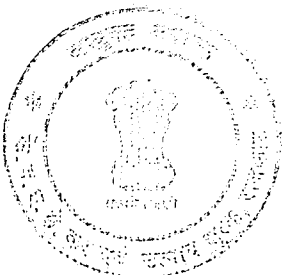
that when goods were not destroyed in fire, how can they assessed said goods to duty; that it is never the intention of the statute to impose penalty in such types of fire accident; that there are plethora of judgement that penalty is imposable only if the party had acted in deliberate defiance of law; that there was no mens rea on their part and hence, penalty can not be imposed.

4. Hearing was fixed on 4.11.2019,26,11.2019,2.1.2020. The Appellant vide letter dated 30.12.2019 waived the opportunity of personal hearing. I, therefore, proceed to decide the appeal on the basis of submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum and written submission made by the Appellant. The issue to be decided is whether the impugned order confirming duty on finished goods destroyed in fire, confirming interest on reversal of Cenvat credit and imposing penalty is correct, legal and proper or not.

6. On going through records, I find that fire broke out at the factory premises of the appellant destroyed raw materials, in-process goods and finished goods. The Appellant reversed Cenvat credit availed on raw material as well as inputs used in the manufacture of in-process goods and finished goods. The proceedings were initiated against the Appellant for demanding duty on finished goods destroyed in fire and for recovery of interest on Cenvat credit availed on raw materials from the date of availment of Cenvat credit to date of reversal of Cenvat credit.

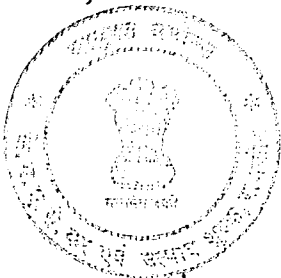
7. Regarding confirmation of demand of Central Excise duty of Rs. 43,90,373/- on finished goods destroyed in fire, the Appellant contended that there is no provision to recover duty simultaneously on finished goods which is burnt in fire and also asking for reversal of Cenvat credit involved in said goods; that it will amount to recover duty and credit twice for same goods, which is against the provisions of Cenvat Credit Rules. I find that the finished goods valued at Rs. 3,55,20,815/- lying in the factory premises of the Appellant got destroyed in fire, which is not under dispute. I find that as per Section 3 of the Act, Central Excise duty is levied on goods manufactured in India, however, for administrative convenience, Central Excise duty is levied at the time of clearance of goods from factory. So, point of taxation is manufacture and not



Or

clearance for home consumption. When the Appellant had manufactured finished goods, they became liable to pay Central Excise duty. Though, finished goods manufactured by the Appellant were destroyed in fire, liability to pay Central Excise duty remained with the Appellant unless the competent authority provide for remission of duty under Section 5 of the Act. On going through the impugned order, I find that the Appellant had filed application under Section 5 of the Act for remission of duty on finished goods and semi finished goods before the Commissioner, Central Excise, Gandhidham, but the same was rejected vide Order-in-Original No. KCH-EXCUS-COM-000-02-2018-19 dated 10.7.2018, *inter alia*, on the grounds that the Appellant had filed insurance claim including duty element involved in goods destroyed in fire. Since, the application for remission of duty filed by the Appellant was rejected, the Appellant was rightly held liable for payment of Central Excise duty on finished goods destroyed in fire. I, therefore, uphold confirmation of demand of Rs. 43,90,373/-.

8. Regarding recovery of interest from date of availment of Cenvat credit to date of reversal of Cenvat credit under Section 11AA of the Act, the Appellant contended that Section 11AA of the Act does not stipulate recovery of interest in case of fire accident; that they were always having sufficient balance lying in their Cenvat credit account and hence, interest is not payable on said credit involved in goods burnt/lost in fire. I find that the Appellant had reversed Cenvat credit of Rs. 5,99,600/- availed on raw materials, Rs. 5,87,749/- on raw materials used in in-process goods and Rs. 31,27,538/- on raw materials used in finished goods. Once the Appellant had availed Cenvat credit, which is subsequently held ineligible, they are liable to pay interest on such Cenvat credit unless it is shown that the same was not utilized. I find that the Appellant has not produced any documentary evidence in support of their claim that they were having sufficient balance lying in their Cenvat credit account. Further, provisions of Section 11A and Section 11AA of the Act are applicable for recovery of wrongly availed Cenvat credit along with interest as provided under Rule 14 of the Cenvat Credit Rules, 2004. The adjudicating authority has rightly confirmed recovery of interest under Section 11AA of the Act. My views are supported by the decision rendered by the Hon'ble Gujarat High Court in the case of Sweet Industries reported as 2011 (264) E.L.T. 349 (Guj.), wherein it has been held that,



Qr

“10. ~~Insofar as the recovery of interest on the amount of Cenvat Credit of Rs. 19,06,198/- reversed by the assessee lying as such, the Tribunal has held that the provisions of Section 11AB of the Act would not be applicable inasmuch as the said provision can be invoked only in cases of non-levy or short-levy of excise duty or non-payment of duty by due date as required under law. In this regard, it is clarified that this Court does not agree with the reasoning adopted by the Tribunal. The learned counsel for the revenue appears to be justified in contending that while holding so, the Tribunal has failed to consider the provisions of Rule 12 of the Rules, which lays down that the provisions of Section 11A and 11AB of the Act shall apply *mutatis mutandis* for effecting such recoveries where Cenvat Credit has been taken or utilized wrongly or has been erroneously refunded.”~~

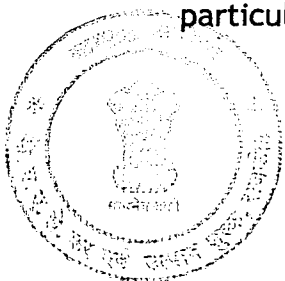
(Emphasis supplied)

9. Regarding imposition of penalty of Rs. 4,39,037/- under Section 11AC(1)(a) of the Act, the Appellant has contended that there are plethora of judgement that penalty is imposable only if the party had acted in deliberate defiance of law; that there was no mens rea on their part and hence, penalty can not be imposed. I find it is pertinent to examine the provisions of Section 11AC(1)(a) of the Act, which are reproduced as under:

“(1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows :-

(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent. of the duty so determined or rupees five thousand, whichever is higher.”

9.1 In view of above provisions, ingredients of fraud, suppression etc is not required for imposition of penalty under Section 11AC(1)(a) *ibid*. When there is non levy or short levy of duty, it attracts penalty under the provisions of Section 11AC(1)(a). In the present case, it is undisputed that the Appellant failed to discharge Central Excise duty on the finished goods burnt/lost in fire, particularly when their remission application under Section 5 of the Act was




rejected by the competent authority. Considering the facts of the case as well as legal provisions, I am of the opinion that the adjudicating authority has correctly imposed penalty of Rs. 4,39,037/- under Section 11AC(1)(a) of the Act and I uphold the same.

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

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

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


(GOPI NATH) 6/2/2020
Commissioner(Appeals)

Attested



(V.T.SHAH)

Superintendent(Appeals)

By RPAD

To, M/s Sumilon Industries Ltd Plot No. 43 P, NH 8A, Village-Varsana, Taluka: Anjar, District Kutch.	सेवा में, मे. सुमिलोन इंडस्ट्रीज लिमिटेड प्लॉट नं./43 पी, राष्ट्रीय मार्ग 8 ए, वरसाना, तालुका अंजार, जिल्ला कच्छ।
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प्रति:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फाइल। _____

