



::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

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/120/GDM/2019	10/DC/GIM/2014-15	28-11-2014

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

KCH-EXCUS-000-APP-063-2020

आदेश का दिनांक /

Date of Order: 29.07.2020

जारी करने की तारीख /

Date of issue:

29.07.2020

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 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 :-

Aquagel Chemicals Pvt., Ltd., Survey No. 159, Varsana Bhimnagar-Padana Road, Off. NH-8A, Near Aggarwal Automobiles, PO-Padana, Gandhidham-370240.

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 मामलों 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 (सिस्टेंट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा 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) 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, रूपये 5 लाख या उससे कम, 5 लाख रूपये या 50 लाख रूपये तक अथवा 50 लाख रूपये से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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 सर्वजनिक 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/- रूपये 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 demanded/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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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, रूपये 5 लाख या उससे कम, 5 लाख रूपये या 50 लाख रूपये तक अथवा 50 लाख रूपये से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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 सर्वजनिक 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/- रूपये 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/-.

:: ORDER-IN-APPEAL ::

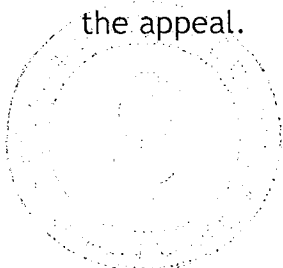
M/s Aquagel Chemicals Pvt Ltd, Kutch (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/120/GDM/2019 against Order-in-Original No. 10/DC/GIM/2014-15 dated 28.11.2014 (*hereinafter referred to as 'impugned order'*) passed by the Dy. Commissioner, Central Excise Division, Gandhidham (*hereinafter referred to as "adjudicating authority"*).

2. The brief facts of the case are that the Appellant having Central Excise Registration No. AABCA8064GXM002 was engaged in manufacture of Bathing Soap, Detergent Bar and Detergent Powder falling under Chapter 34 of the Central Excise Tariff Act, 1985. During the course of Audit, it was found that the Appellant had availed Cenvat credit of Rs. 2,77,400/- on the basis of invoices dated 20.1.2012 issued by M/s R.A. Contractors for providing services falling under the category of 'Commercial or Industrial Construction Service' and/or Works Contract Service. It appeared that said services were appearing in exclusion clause of 'input service' defined under rule 2(l) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*) amended with effect from 1.4.2011 and hence, the Appellant was not eligible to avail Cenvat credit of said services.

2.1 Show Cause Notice No. V/CEX/GIM/AR-II/GIDM/Aquagel/DC/SCN/40/2013-14 dated 2.7.2014 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 2,77,400/- should not be disallowed and recovered from them under Rule 14 of CCR,2004 read with Section 11A(1) of the Central Excise Act, 1944 (*hereinafter referred to as "Act"*) along with interest under Rule 14 *ibid* read with Section 11AA of the Act and proposing imposition of penalty under Rule 15 of CCR,2004.

2.2 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 2,77,400/- and ordered for its recovery along with interest under Rule 14 of CCR,2004. The impugned order also imposed penalty of Rs. 2,77,400/- under Rule 15 of CCR,2004 read with Section 11AC of the Act upon the Appellant.

3. Being aggrieved with the impugned order, the Appellant preferred appeal before the then Commissioner (Appeals), Central Excise, Rajkot who vide his Order-in-Appeal No. KCH-EXCUS-000-APP-026-15-16 dated 26.11.2015 dismissed the appeal.



4. The Appellant filed appeal before the Hon'ble CESTAT, Ahmedabad which was decided vide Order No. A/13387/2017 dated 10.11.2017, wherein the Hon'ble Tribunal remanded the matter to the Commissioner(Appeals) by observing as under:

“5. I find that this Tribunal after analyzing the definition of ‘input service’ with effect from 1.4.2011 observed in the case of M/s ION Exchange (I) Ltd Vs CCE, Surat-II vide Order No. A/13513/2017 dated 8.11.2017 that renovation, modernization or repair and maintenance work within the factory premises, is admissible to credit. Thus, in principle though the credit is admissible on repair and maintenance work, as claimed by the Appellant, however, to ascertain the said fact, the matter is remanded to the Id. Commissioner(Appeals) to adduce evidence, which they did not place before him. The appeal is allowed by way of remand to the Ld. Commissioner (Appeals)”.

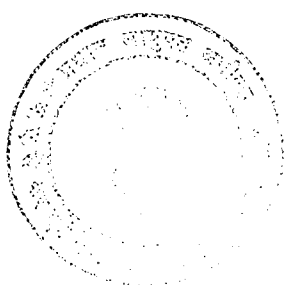
5. The personal hearing in the matter was conducted in virtual mode through video conferencing. Shri Sachin Chitnis, Advocate appeared on behalf of the Appellant and reiterated the submissions of appeal memo and submitted additional submission through email, wherein it has been contended that,

(i) The issue involved in the instant case is as to whether credit of Cenvat of service tax paid to M/s. R.A. Contractors towards repairs and maintenance, within factory is admissible, as input services, under Rule 2(l) of CCR, 2004 as being used in “modernization, renovation and repairs of factory” and whether the demand is barred by limitation.

(ii) That the Hon'ble Tribunal vide Final Order No. A/13387/2017 dated 10.11.2017 has held that credit is admissible on repair and maintenance work, as claimed by the Appellant. However, the matter has been remanded for limited purpose of adducing evidence; that they submitted sample invoices providing information of utilization of the said services.

(iii) That for the subsequent period, in Appellants own case, the Hon'ble Tribunal in the case of Lakme Lever Ltd. (formerly Aquagel Chemicals Pvt Ltd.) vide Final Order No. A/10897/2018 dated 26.04.2018, was pleased to allow credit on service tax paid on construction services

(iv) That the demand for the period 01.04.2011 to 31.12.2012, has been raised vide Show Cause Notice dated 02.07.2014 based on audit, is barred by limitation, in absence of extraneous grounds.



(v) Since entire credit along with interest has been reversed, hence penal provisions are not invocable, especially when issue relates to interpretation of law.

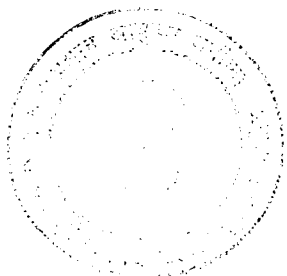
5.1 The Appellant vide letter dated 15.7.2020 submitted list of invoices and copies of 23 invoices issued by M/s R.A. Contractors.

6. I have carefully gone through the facts of the case, the impugned order, direction contained in Hon'ble Tribunal's order dated 10.11.2017, oral as well as additional written submission filed at the time of hearing and documents submitted vide letter dated 15.7.2020. The issue to be decided is whether the invoices on the basis of which the Appellant had availed Cenvat credit of Service Tax pertained to Repair & Maintenance Service or otherwise.

7. On going through the records, I find that the Appellant had availed Cenvat credit of service tax of Rs. 2,77,400/- on the basis of invoices raised by M/s R.A. Contractors for providing services falling under the category of 'Commercial or Industrial Construction Service' / ' Works Contract Service'. The said Cenvat credit was denied by the adjudicating authority on the ground that said services were covered in exclusion clause of 'input service' defined under rule 2(l) of CCR,2004. The matter reached before the Hon'ble CESTAT, Ahmedabad who vide its Order dated 10.11.2017 remanded the matter to this appellate authority to examine the evidence to ascertain whether the services availed by the Appellant was in connection with repair and maintenance work within the factory as claimed by the Appellant before the Tribunal.

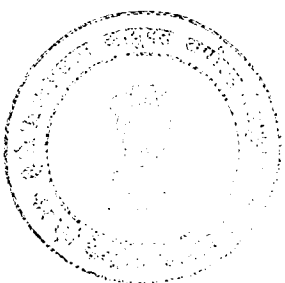
7.1 I find that as per list of invoices submitted by the Appellant vide letter dated 15.7.2020, they had availed Cenvat credit of service tax of Rs. 2,77,400/- in respect of 71 invoices issued by M/s R.A. Contractors during the period from 24.5.2011 to 31.12.2012. Out of this, the Appellant has submitted copies of 23 invoices vide their letter *supra*. On examination of the said invoices, I find that nature of services availed by the Appellant as mentioned under 'Particulars' column of invoices, is reproduced as under:

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Sl No	Invoice No.	Invoice Date	Particulars	Service Tax involved (Rs.)
1.	23	22.8.2011	NSD Plant- Green net and Tarpaulin Fixing work	1081
2.	27	26.8.2011	Boiler House Maintenance	608
3.	26	26.8.2011	TPM Works	7562
4.	25	26.8.2011	DFA Maintenance	1040
5.	28	26.8.2011	Kirloskar DG Works	566
6.	30	6.10.2011	DFA Line works	1414
7.	29	6.10.2011	DFA LTP Maintenance	6350
8.	32	4.10.2011	Utility Maintenance work	924
9.	33	30.9.2012	Measurement Book No. 68	3874
10.	29	30.9.2012	Civil and Mechanical- Measurement	1779
11.	26	30.9.2012	Utility Maintenance	444
12.	30	30.9.2012	DFA Maintenance	4780
13.	63	29.3.2012	Fabrication and maintenance work	2928
14.	62	29.3.2012	Fabrication and maintenance work	2661
15.	64	29.3.2012	Fabrication and maintenance work	9630
16.	70	31.3.2012	Fabrication and maintenance work	4613
17.	68	31.3.2012	Boiler Maintenance work	3542
18.	12	30.6.2012	Fabrication and maintenance work	6225
19.	16	30.6.2012	Fabrication and maintenance work	889
20.	14	30.6.2012	Fabrication and maintenance work	2154
21.	13	30.6.2012	Fabrication and maintenance work	1656
22.	10	30.6.2012	Fabrication and maintenance work	4595
23.	25	30.9.2012	Boiler plant	800
			Total	70115

7.2 On going through the said invoices, it is apparent that the services provided by M/s R.A. Contractors to the Appellant was relating to repair and maintenance work carried out within their factory and would be covered under the service tax category of 'Repair and Maintenance Service'. The Hon'ble Tribunal in its remand order has held that 'Repair and Maintenance Service' is admissible as credit. I, therefore, hold that the Appellant has correctly availed Cenvat credit of service tax of Rs. 70,115/- on the basis of invoices issued by M/s. R.A. Contractors. I set aside the confirmation of demand of Rs. 70,115/-,



recovery of interest and consequent penalty of Rs. 70,115/- imposed under Rule 15 of CCR, 2004.

8. Since, the Appellant has not produced remaining invoices on which they had availed Cenvat credit, I am not in a position to verify whether the services availed by the Appellant were in connection with repair and maintenance service or otherwise. I, therefore, hold that the Appellant is not eligible to avail Cenvat credit of service tax amounting to Rs. 2,07,285/-. I, therefore uphold confirmation of demand of Rs. 2,07,285/- and consequent penalty of Rs. 2,07,285/- imposed under Rule 15 of CCR, 2004.

9. In view of above, I partially allow the appeal of the Appellant and set aside confirmation of demand of Rs. 70,115/-, recovery of interest and consequent penalty of Rs. 70,115/- imposed under Rule 15 of CCR, 2004.

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

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


(GOPI NATH)
Commissioner(Appeals)

Attested



(V.T.SHAH)

Superintendent(Appeals)

By Regd Post A.D.

To, M/s Aquagel Chemicals Pvt Ltd Survey No. 159, Varsana, Bhimasar Padana Road, Off NH-8A, Near Aggarwal Automobiles, PO Padana, Gandhidham.	सेवा में, मैसर्स एक्वाजेल केमिकल्स प्राइवेट लिमिटेड, सर्वे न. 159, वरसाना, भीमासर-पड़ाना रोड, पोस्ट पड़ाना, गांधीधाम.
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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, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गाई फाइल।

