



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & 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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/322/RAJ/2017	मूल आदेश सं / O.I.O. No. 19/D/2016-17	दिनांक / Date 18.03.2017
---	--	---	--------------------------------

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

RAJ-EXCUS-000-APP-004-2018-19

आदेश का दिनांक / Date of Order:	05.04.2018	जारी करने की तारीख / Date of issue:	09.04.2018
------------------------------------	-------------------	--	-------------------

Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :
- घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-**
M/s Eros Minerock Product LLP, S.No. 166, Halvad Ahmedabad Highway, Manaba Maliya, Morbi.

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- ३८००१६ 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 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 हैं 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 नियमवाली, 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 हैं 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 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, 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 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 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 (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" 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 होगा।

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 पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए 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। जहाँ 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 पेढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय 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 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-1 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

7

ORDER IN APPEAL

The present appeal has been filed by M/s. Eros Minerock Products LLP, S. No. 166, Halvad Ahmedabad Highway, Manaba Maliya, Morbi-363636 (hereinafter referred to as the "appellant") who are registered for manufacturing of various excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 having registration No. AAEFE1814AEM001. They are availing the benefit of Cenvat Credit on inputs and input services used by them as per the provisions of the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004" to be used in or in relation with the manufacture of their various final products.

2. The appellant is availing and utilizing the Cenvat Credit on natural Gypsum, which is common, input being used in the manufacture of Gypsum Powder (exempted product) and is also used in the manufacture of Gypsum Board (Dutiable product). As the appellant used common input viz. Raw Gypsum in the exempted as well as dutiable product, they have to follow the procedure as provided in Rule 6(3) (ii) or Rule 6(3) (iii) of the Cenvat Credit Rules, 2004. The other option was also available to them under the provisions of sub-rule 3(i) of Rule 6 of Cenvat Credit Rules, 2004, under which they were under obligation to pay an amount equivalent to six percent (6%) of the value of the exempted goods cleared by them as provided in Rule 3(i) of the Cenvat Credit Rules, 2004. However, the appellant has not followed the procedure for maintaining separate accounts and also has not paid an amount equivalent to six percent (6%) of the value of exempted goods cleared by them. As per explanation III given under sub-rule (3D) of Rule 6 of the CCR, 2004, if the manufacture of goods fails to pay the amount payable under sub-rule (3) or (3A) of Rule 6 of the CCR, 2004, as the case may be, it shall be recovered in the manner as provided in Rule 14 of the CCR, 2004 for recovery of Cenvat credit wrongly taken.

3. On the basis of scrutiny of ER-1 returns filed by the appellant for the period from September, 2014 onwards, a Show Cause Notice V.68/AR-Morbi/49/ADC(PV)2015 dated 20.09.2015 was issued to M/s.Eros Minerock Products LLP, Morbi (**hereby by read as the appellant**). It was alleged that the appellant had not paid an amount of **Rs.12,72,849/- for the period from August-2015 to March-2016 (as per table mentioned in the para 3 of the OIO)** under the provisions Rule 14 of the Cenvat Credit Rules, 2004 read with sub Rule 6(3) of the Cenvat Credit Rules, 2004 and Section 11A(4) of Central Excise Act, 1944. Also, interest at appropriate rate on delayed payment of the said amount. The SCN also proposed penalties on the appellant under Rule 15 of the CCR, 2004. The appellant, by their acts of omission and commission have contravened the provisions of Rule 14 of the CCR, 2014 read with Section 11A of the Central Excise Act, 1944.

4. This Show Cause Notice was adjudicated vide OIO No. 19/D/2016-17 dated 18.03.2017. The observations of the adjudicating authority in the instant case as described as follows:

5. The contention of the appellant is not tenable as the adjudicating authority has observed that the appellant is using common input viz. Raw Gypsum in the manufacture of Gypsum Powder which attract NIL rate of duty and Gypsum Board which is chargeable to duty. Thus, the appellant using common input in the manufacture of exempted as well as dutiable final product. For which the appellant was required to follow the procedure prescribed under Rule-6 of CCR, 2004 of maintaining separate account / record and to submit an option as required. However, the appellant failed to follow the said procedure.

6. The adjudicating authority has found that the appellant had neither exercised any option under the provisions of Rule 6(3) of the CCR, 2004 nor opted for maintaining separate account, as per the option available under sub-rule 3 of Rule 6 of CCR, 2004, under which they were to pay an amount equivalent to 6% of the value of exempted goods cleared by them.

7. The proposed SCN is issued for subsequent period i.e. August, 2015 to March-2016 on the basis of the SCN dated 29.09.2015 issued for the period from September-2014 to July-2015, proposing an amount of Rs.25,32,211/-, which had been confirmed vide OIO dated 31.06.2016. With reference to SCN dated 29.09.2015, the appellant has already reversed an amount Rs.26,22,259/- before adjudication. However, the said amount has been appropriated by confirming the demand.



8. The adjudicating authority has observed that the appellant has no dispute that raw gypsum is common input and was availing and utilizing the cenvat credit on the natural gypsum and is being used in the manufacturing of gypsum powder (exempted goods) as well as in excisable product as detailed above.
9. The adjudicating authority did not agree with the contention of the appellant that single production line is being used for manufacturing of the said product; hence it is not possible to maintain separate inventory of input / input services. Further, the appellant had also not maintained separate account in respect of input services used in the both product.
10. The adjudicating authority did not agree with the contention of the appellant that they are not taking Cenvat Credit on part of import of raw gypsum, which is to be used in manufacture of exempted product. The appellant was not maintaining a separate account for inputs / inputs services which has used into manufacture of dutiable as well as exempted products, as per the provisions contained in Rule 6(3) of CCR,2004, they are required to pay an amount 6% of the value of the exempted goods.
11. The adjudicating authority did not agree with the contention of the appellant that they had not taken cenvat credit after 29.09.2015 as there was nothing on record and the appellant had not produced evidence for the same.
12. The adjudicating authority has viewed that appellant failed to comply to the Rule 6, that they are not eligible for the benefit under Rule 6(1), 6(2) and 6(3A) of the CCR, 2004. Further, the appellant has not produced any evidence, whatsoever, to prove that they have exercised any option in this regard or have determined and paid provisionally every month any Cenvat credit as required under Rule 6(3) (ii) read with Rule 6(3A) of CCR,2004. Therefore, demanding the amount of six percent of the value of the exempted goods is proper and justified.
13. The adjudicating authority has observed that the appellant were neither maintaining separate account for inputs as per Rule 6(2) of CCR, 2004 nor paying an amount of 6% of the value of the exempted goods as per Rule 6(3) ibid. It has also been observed that the said act has been come on record only when the scrutiny of monthly return ER-1 was conducted. Hence, it is proved that the appellant had deliberately suppressed the material facts from the department with an intention to evade payment of an amount under Rule 6 (3) of the CCR, 2004. Hence, they are is also liable to pay interest under Rule 14(ii) of the CCR, 2004 read with Section 11AA of the Central Excise Act, 1944 and penalty under Rule 15 of the CCR, 2004.
14. The adjudicating authority did not agree with the contention of the appellant that cenvat credit availed on the Raw Material for the period from August, 2015 to March, 2016 was not utilized & reversed accordingly. Further, it is not clear that they have not taken cenvat credit on raw gypsum after issuance of SCN on 29.09.2015. As the appellant neither produced copy of their cenvat credit register nor have they informed that on which date they have reversed the previous cenvat credit availed. Therefore, nothing on record to prove that they are not taking cenvat credit on raw gypsum after issuance of SCN on 29.09.2015 and from which date they have stopped taking credit.
15. The impugned order confirmed:
1. the demand of Rs. 12,72,849/- under Rule 14 of the Cenvat Credit Rules,2004 read with sub Rule 6 (3) of the Cenvat Credit Rules,2004 and Section 11A (4) of Central Excise Act,1944 and order to recover the same from the appellant viz. M/s. Eros Minerock Products LLP, Morbi.
 2. the demand of interest on the demand as per para 13(i) above, as applicable from the appellant viz. M/s. Eros Minerock Products LLP, Morbi under Rule 14 of the Cenvat Credit Rules,2004 read with Section 11AA of Central Excise Act,1944.
 3. Imposed a penalty of Rs.12,72,849/- upon the appellant viz. M/s. Eros Minerock Products LLP, Morbi under Rule 15 of the CCR, 2004.




16. Being aggrieved, the appellant have filed present appeal, interalia, on the following grounds:

- That OIO has been issued without giving proper opportunity of PH.
- That adjudicating authority has relied upon earlier judgment dated 31.03.2016 issued by Additional Commissioner, Rajkot as shown at para 12 of the OIO.
- Allegation that the Cenvat Credit on entire quantity of raw gypsum is taken by them is not correct; that cenvat credit not taking on the quantity of Raw Gypsum to be used in manufacture of Gypsum powder of specific grit to be sold in market as gypsum powder.
- The details submitted were not properly understood and duty @ 6% of value of exempted product is wrongly confirmed without considering the records maintained.
- Though the production line is same as well as the input raw material is same, hence there is no chance to go on assumption basis for charging the duty.
- that they are not taking Cenvat credit on part of import of raw gypsum which are to be used in manufacture of exempted product, but only on lump-sum quantity of gypsum.
- It is not possible to separate the inventory of input / output services used in single line for manufacture of both the goods. Hence, appellant not in a position to maintain separate account.
- that the credit is not taken on the manufacturing of said exempted goods. Therefore, no question of reversed the credit on such cleared goods.
- For filing of declaration is only procedure, which cannot take away right to avail cenvat credit.
- When the cenvat credit is not availed on part quantity of imported raw gypsum to be used in manufacture of gypsum powder for marketing, demanding a lump sum duty @ 6% is not proper.
- Since, there is no component of willful default, no penalty under 15 of CCR, 2004.
- The OIO has been issued in violation of principle of natural justice in as much as request for giving another opportunity of personal hearing was rejected.

17. The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as regards to the case of appellant vide Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Deptt of Revenue, CBEC, Service Tax Wing on the basis of **Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017.**

18. Personal hearing was held on 16.03.2018 and on behalf of the appellant, Shri Subhash Boradia, Chartered Accountant, attended the hearing and reiterated the grounds of appeal.

19. The method of taking credit on the common inputs and input services used for manufacture of dutiable final products and exempted products is specified in Rule 6 of the CCR, 2004.

20. As per Rule 6(1) of the CCR, 2004 the cenvat credit shall not be allowed on such quantity of inputs and input service, which are used towards exempted finished goods / exempted services, except in the circumstances mentioned in Rule 6(2). The cenvat credit should be taken only on that quantity of inputs and input service, which are intended for use in manufacture of dutiable final products.

21. As per Rule 6(3) of the CCR, 2004, the manufacturer has to give an option whether to follow the above procedure to pay an amount equivalent to the cenvat credit attributable to inputs and input services used for provision of exempted products subject to the conditions and procedure specified in sub-rule (3A) or not to follow it.

22. In case where the common inputs and input services are used for manufacture of dutiable final products and exempted products, the proportionate credit attributable to exempted goods is required to be reversed.



23. In the instant case, the appellant had taken Cenvat Credit on Raw Gypsum used in the manufacture of dutiable product viz. Gypsum Board as well as in the exempted product viz. Gypsum Powder. The manufacturer cannot take credit on inputs / inputs services meant for use in exempted goods and is required to maintain separate records for availment and consumption of the inputs/ input services meant for exempted goods. On failure to comply with the provisions, he will be required to pay an amount equal to 6% of the value of exempted goods prevailing at material time.

25. In this case, the appellant has not reversed the cenvat credit availed on the common inputs and input services used in manufacturing of the dutiable as well as exempted product and failed to prove that they are maintaining separate accounts for the same. Accordingly, the appellant is liable to pay amount @ 6% of the value of the exempted goods as per the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004.

26. The period under dispute in the instant case is from April, 2015 to March, 2016, for which recovery of interest under rule 14 of the CCR, 2004 read with section 11AA of the Central Excise Act, 1944 is also liable in this case.

27. From the above discussion and findings, I find that the appellant failed to fulfil the prescribed conditions to avail the benefit of cenvat credit under Rule 6 of the CCR, 2004. Also, the appellant has deliberately suppressed the material facts and violated the provisions of the Rule 6; hence the appellant is liable for penalty under Rule 15 of the CCR, 2004.

30. In view of the above discussion and findings, I hereby uphold the impugned order.

31. The appeals filed by the appellants stand disposed off in above terms.


(Dr. Balbir Singh)

Additional Director General (DGS),
AZU, Ahmedabad.

Date : /04/2018

F.No. V2/322/RAJ/2017

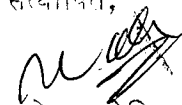
BY RPAD.

To,

M/s. Eros Minerock Products LLP,
S. No. 166, Halvad Ahmedabad Highway,
Manaba Maliya, Morbi-363 636

Copy to :

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone;
2. The Commissioner, CGST & Central Excise, Rajkot/ Commissioner (Appeals), Rajkot;
3. The Deputy/Assistant Commissioner, Division-II, Rajkot;
4. The Additional/Joint Commissioner, Systems, CGST, Rajkot.
- ✓ 5. Guard File.

सत्यापित,

निखिल ए. रूपारमिया
अधीक्षक (आपील्स)

