



**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/179/GDM/2017	Refund/14/2017-18	30-06-2017

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

**KCH-EXCUS-000-APP-065-2018-19**

आदेश का दिनांक / Date of Order:	<b>03.07.2018</b>	जारी करने की तारीख / Date of issue:	<b>04.07.2018</b>
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**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

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 Appellant & Respondent :-**

**M/s. PSL Limited, Plot No. 4 & 5, Sector - 12B,, Post Box No. 113, Kandla Road, Gandhidham-370201 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 एट विंत्त 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 असावा अहमदाबाद- 370016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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) नियमवाली, 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, विंत्त 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 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 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 इसके 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 अपील की 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 रूपए 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 गतत 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 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 मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के 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 इप्टी 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 समावधि 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 संश्लेषण 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 पढ़ी 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, not withstanding the fact that the one appeal to the Appellate 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 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 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](http://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](http://www.cbec.gov.in)



**ORDER-IN-APPEAL**

M/s. PSL Limited, Plot No. 4 & 5, Sector 12/B, Kandla Road, Gandhidham, Dist. Kutch (hereinafter referred to as 'Appellant') filed the present appeal against Order-in-Original No. Refund/14/2017-18 dated 30.06.2017 (herein after referred to as 'the impugned order'), passed by the Assistant Commissioner, Central Excise Division, Gandhidham (hereinafter referred to as 'the lower Adjudicating Authority')

2. The brief facts of case that the Appellant held Central Excise Registration No. AAACP2734KXM009 for manufacture of excisable goods, namely falling under Heading 7304 & 7305 of the first schedule to the Central Excise Tariff Act, 1985, vide their letter No. PSL/CEX/PCD-2/2016 dated 10.10.2016 (received on 13.10.2016 in the Division office) filed a Rebate claim of Rs. 45,75,79,555/- under Section 11B of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*) with the jurisdictional Assistant Commissioner for Cenvat credit lying unutilized in balance at the time of closure of production and subsequent surrender of registration on 14.01.2017. Vide the impugned order the lower adjudicating authority rejected rebate/refund claim under Rule 5 of the Cenvat credit Rules, 2004 (*hereinafter referred to as "the Rules"*) read with Section 11B of the Act.

3. Being aggrieved by the impugned order, the Appellant preferred this appeal, inter alia, on the grounds that they had claimed refund of unutilized amount of Cenvat credit lying in their balance, which they were not able to utilize for payment of duty on final products cleared for home consumption on account of closure of their factory w.e.f. December, 2016; that Cenvat credit got accumulated on account of deemed export where the finished goods were exempted from payment of duty and Cenvat Credit availed on inputs was not required to be reversed; that they had surrendered their Central Excise Registration; that the rejection of the appellant's request by the Department to surrender Central Excise Registration is legally incorrect, as the Department cannot reject the appellant's request merely on the ground that certain cases against them are pending to be attained finality; that in the present case they were claiming refund of accumulated Cenvat credit on account of closure of factory and surrender of registration certificate; that the appellant relied on the decision of the Hon'ble High Court, Karnataka in the case of UOI Vs. Slovak India Trading Co. Pvt. Ltd. - 2006 (201) ELT 559 (Kar.); that in the said case the refund

was sanctioned to the assessee by holding that there is no express prohibition in Rule 5 of the Cenvat Credit Rules, 2004 to sanction refund in case of closure of factory and accordingly, the Hon'ble High Court held that refund is correctly available to the assessee in the case of closure of the factory; that the aforesaid decision of the Hon'ble High Court was subsequently affirmed by the Hon'ble Supreme Court in 2008 (223) ELT A170 (SC); that they relied on the following judgements also wherein Cenvat credit was refunded on account of the closure of the factory :-

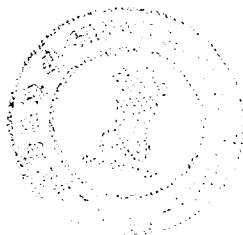
- (a) Jain Vanguard Polybutylene Ltd. reported as 2009 (247) ELT 658 (T);  
(Maintained by High Court reported as 2010 (256) ELT 523 (Bom.))
- (b) Gauri Plasticulture Pvt. Ltd. reported as 2006 (202) ELT 199 (Tri-LB);
- (c) Shalu Synthetics Pvt. Ltd. Vs. CCE reported as 2017 (346) ELT 413 (T);
- (d) Bangalore Chemicals Pvt. Ltd reported as 2017 (347) ELT 100 (T).

3.1 It was submitted by the appellant that the lower Adjudicating Authority wrongly stated in the impugned order that Cenvat Credit Scheme nowhere envisaged refund of excise duty on inputs used in the manufacture of finished products; that in this case, the accumulation of Cenvat credit was not solely on account of export of goods and in such case, the scheme does not envisage refund of Cenvat credit in cash; that the lower Adjudicating Authority has relied upon Hon'ble Commissioner (Appeals) OIA No. 185/2013(RAJ)CE/AK/Commr(A)/Ahd dated 25.04.2013 passed in case of M/s. Suraj Ropes, Rajkot; that the lower Adjudicating Authority has wrongly stated that filing of refund claim under Section 11 B of Central Excise Act, 1944 is time barred; that the appellant cannot claim refund of accumulated Cenvat credit lying balance on account of unit closed/surrender of Central Excise Registration, filed under Section 11B of Central Excise Act, 1944 read with Rule-5 of the Rules, as there is no legal provision for refund from the Cenvat account except when the same relates to credit attributable to inputs which have gone into the manufacture of final product exported; that the instant refund claim is filed only on account of unutilized Cenvat credit lying in balance at the time of surrender of central excise registration/unit closed and not due to goods exported; that the lower adjudicating authority has wrongly found that as per Rule 5 of the Rules, the case of the appellant was not fit in any manner for granting refund of Cenvat credit; that the Lower Adjudicating Authority has held that the judgement in the case of M/s. Slovak India Trading Co. Pvt. Ltd, is

squrely applicable to their case and in number of cases refund has been sanctioned to the assessee on the basis of the decision of the Hon'ble High Court and Supreme Court in th case of M/s. Slovak India Trading Co. Pvt. Ltd.

4. Personal hearing in the matter was attended by S/Shri Ishan Bhatt, Advocate and Shri A.C. Abraham, General Manager of the Appellant, who reiterated the grounds of Appeals and submitted written submission stating that Cenvat credit accumulated due to export of their final products; that Rule 5 has no time limit; that Rule 5 allows refund of Cenvat credit; that their unit is closed since December, 2016 and registration was surrendered on 11<sup>th</sup> January, 2017 and refund claim was made in October, 2016; that addendum to Refund Claim was made in December, 2016; that Hon'ble Supreme Court in Slovak India Trading Co. Pvt. Ltd. upheld Hon'ble CESTAT's Order reported as 2006 (205) ELT 956 (Tri); that they rely on the Hon'ble Bombay High Court and CESTAT Order in case of Jain Vanguard Polybutlene Ltd. Ltd. reported as 2010 (256) ELT 523 (Bom) duly affirmed by the Hon'ble Supreme Court and Shalu Synthetics Pvt. Ltd. reported as 2017 (346) ELT 413 (Tri-Ahmd); that the Hon'ble CESTAT in case of Deepak Spinners Ltd. reported as 2014 (302) ELT 132 (Tri-Del) has decided on merits as well as on limitation of time; that in view of above, they submitted that appeal should be allowed.

4.1 In the Written submissions made at the time of personal hearing the Appellant has submitted that they stopped manufacturing operations at the Pipe Coating Division-II in the month of December, 2016 and cleared all their closing stock on payment of duty and thereafter surrendered their registration certificate to the Central Excise Department on 11.01.2017; that on the date of surrendering their registration certificate they had unutilized balance of Rs. 45,48,07,037/- lying in their Cenvat Credit account; that they filed refund claim under Rule 5 of the Rules as they were not in position to utilize the unutilized balance of Cenvat credit of Rs. 45,48,07,037/- in any manner; that Cenvat credit accumulated due to physical exports made under Bond/LUT without payment of Excise Duty, and also for supplies made to Deemed Export where the finished goods were exempted from payment of duty and the Cenvat credit availed on inputs was not required to be reversed; that they produced the following Table given below :



Financial Year	Ratio of domestic sales to total sales	Ratio Export sales to total sales	Ratio of Deemed Export sales to total sales	Accumulated Cenvat credit balance lying unutilized at the end of each financial year (Rupees)
2004-05	1%	99%	0%	2,34,62,372
2005-06	13%	87%	0%	20,27,88,369
2006-07	95%	5%	0%	13,57,56,783
2007-08	8%	92%	0%	29,22,92,331
2008-09	66%	18%	18%	51,38,56,290
2009-10	99.7%	0.3%	0%	45,16,84,036
2010-11	100%	0%	0%	42,16,57,509
2011-12	43%	50%	7%	42,52,17,575
2012-14 (2 years combined)	54%	0%	46%	45,51,19,241
2014-15	4%	0%	96%	45,55,06,415
2015-16	0%	0%	0%	45,62,62,723
2016-17	0%	0%	0%	45,48,07,037

4.2 The Appellant submitted that from the Table appended above, it can be seen that Cenvat credit got accumulated primarily during the Financial Years from 2004-05 to 2013-14 on account of Physical Exports & Deemed Export; that there is no dispute regarding the quantum of amount of Cenvat Credit balance lying unutilized in their account as genuineness of accumulated cenvat credit has never been questioned by the lower Adjudicating Authority during the proceedings, and records and documentary evidences for the same has been submitted to the Department during the course of proceedings; that the records of the Appellant have been periodically audited by the Departmental auditors and no irregularity with respect to accumulated Cenvat credit has been observed by the Departmental officers/auditors; that the Appellants produced on record copy of last Audit Report for the year 2013-14; that supporting evidences have been produced to the original Adjudicating Authority in order to establish that they were eligible to cash refund of accumulated credit under Rule-5 of the Rules and therefore, the lower Adjudicating Authority erred in holding that the decision in the case of M/s. Slovak India

Trading Co. Pvt. Ltd. supra cannot be made applicable to the present case as the citation refers to the case of Refund under Rule 5 of the Cenvat credit Rules whereas in the instant case claim is under Section 11B of the Central Excise Act, 1944 and even if the claim is considered under Rule 5, the same is time barred; that regarding the issue of limitation, the appellant submitted that as per Rule-5 the appellant is required to submit application to the jurisdictional Deputy/Assistant Commissioner for cash refund of accumulated cenvat credit on meeting the condition specified in the said rule *“that where for any such adjustment is not possible, the manufacturer or the provider output service shall be allowed refund of such amount subject to such safeguards, conditions and limitation, as may be specified, by the Central Government, by notification”*; that the notification issued under Rule-5 of the Rules states that the refund application under such circumstances shall be submitted before expiry of the period, specified in Section 11 B of the Central Excise Act, 1944; that there is no provision in Section 11B of the Act as to from which date the limitation period prescribed under Section 11 B the Act is to be counted; that the relevant date for the purpose of counting limitation period under section 11 B is defined in Explanation B to Section 11 B, but it does not cover the claims for cash refund of accumulated credit under Rule 5 of the Cenvat Credit Rules; that if the date from which limitation period is to be counted is missing, it would amount to not prescribing any limitation period; that the appellant filed application for refund of balance amount of accumulated cenvat credit at the time of surrender of Registration Certificate and on closure of unit; that the Appellant become incapable to utilize the accumulated cenvat credit for payment of duty on final products cleared for home consumption, from the date when they surrendered the Registration Certificate / Closed the unit and therefore, the limitation period for granting refund under Rule-5 as prescribed under section 11 B is required to be counted from the date when the Appellant surrendered the Registration Certificate/Closed the Unit and therefore, the findings of lower Adjudicating Authority that even if the claim is considered under Rule 5, the same is time barred, is incorrect.

4.3 The appellant submitted that Rule 5 of the Rules has been amended with effect from 01.04.2012; that on comparing Rule 5 of the Rules before 01.04.2012 and after the amendment, it is clear that the condition for allowing refund due to incapability to utilize or adjust the input credit has been done away with for exports made after 01.04.2012; that the appellant relied upon the following

case laws :-

- (a) Salonah Tea Company Ltd. reported as 1988 (33) ELT 249 (SC);
- (b) Joshi Technologies International reported as 2016 (339) ELT 21 (Guj);
- (c) Hind Agro Industries Ltd. reported as 2008 (221) ELT 336 (Del);
- (d) Alar Infrastructure Pvt. Ltd. reported as 2015 (40) STR 1066 (Del).

That they claimed refund claim under Rule-5 of Cenvat Credit Rules, for the reason they have become incapable to use the accumulated cenvat credit for payment of duty on final products cleared for home consumption, or for export on payment of duty; or for payment of service tax on output service, consequent upon surrender of registration certificate/closure of unit. Therefore, the ratio judgment in the case Slovak Trading Co. Pvt. Ltd. shall be squarely applicable in the instant case of Appellant.

### DISCUSSIONS & FINDINGS :

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and the written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether Appellant is eligible for refund claim of unutilized Cenvat Credit under Section 11 B of the Act, read with Rule 5 of the Rules, on surrender of Central Excise Registration Certificate and closure of unit or not.

6. Rule 5 of the Rules, as it prevailed during the period, is reproduced below :-

(i) Prior to 01.04.2012 :-

*“RULE 5. Refund of CENVAT credit. - Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the, CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,*

*(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or*

*(ii) service tax on output service*

*and where for any reason such adjustment is not possible, the*



manufacturer or provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification."

(ii) From 01.04.2012 onwards --:-

" Rule 5 : Refund of Cenvat credit,

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette :

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services})}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely :-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of -



- (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
- (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.
- (2) This rule shall apply to exports made on or after the 1st April, 2012

**Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement :**

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the [Service Tax Rules, 1994] in respect of such tax.

Explanation 1. - For the purposes of this rule, -

(1) "export service" means a service which is provided as per [rule 6A of the Service Tax Rules, 1994];

[(1A) "export goods" means any goods which are to be taken out of India to a place outside India.]

(2) "relevant period" means the period for which the claim is filed.

Explanation 2. - For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rules (3) and (3A) of rule 6 is determined.]"

[Emphasis supplied]

6.1 I need to examine the issue taking into account both the period as Rule 5 existed before 01.04.2012 and w.e.f. 01.04.2012 onwards.

6.1.1 I find that Rule 5 of the Rules had specific proviso regarding time frame to be followed for claiming refund. For better appreciation of the relevant portion of Rule 5 of the Rules is reproduced as under :-

*“Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement ”*

6.1.2 I also find that at the time of amendment of Cenvat Credit Rules called the Cenvat Credit (Third Amendment) Rules, 2012 dated 17.03.2012 vide Notification No. 18/2012-CE(NT) dated 07.03.2012, specific proviso has been introduced by the Central Government for claiming refund under Rule 5 of the Rules. As per this proviso the claim of refund under the Rule 5 of the Rules for the period prior to 01.04.2012 was required to be filed within one year (emphasis supplied), meaning thereby that for refund of Cenvat credit accumulated as on 31.03.2012, was statutorily required to be filed on 01.04.2013 or before. It is undisputed fact that the instant refund claim under consideration was filed by the Appellant on 13.10.2016. I, therefore, find that the lower adjudicating authority has correctly held the refund claim as time barred and therefore, refund claim of Cenvat credit of Rs. 42,52,17,575/- shown to be existed as on 31.03.2012 is time barred without doubt. I, therefore, uphold the rejection of refund claim of Rs. 42,52,17,575/- on the ground of limitation of time.

6.2 Now deciding the issue of refund claim of Cenvat credit of Rs. 2,95,89,462/- [ i.e. Rs. 45,48,07,037/- (-) Rs. 42,52,17,575/-] for the period after 01.04.2012 and accumulated since then till 31.03.2015, I find that as stated by the Appellant with effect from 01.04.2015, there is no production and sales by the Appellant. Therefore, the stipulations contained in Notification No. 18/2012-CE(NT) dated 17.03.2012 laying down period of limitation to file refund claim within one year under the amended Rule 5 of the Rules, would also be applicable to the period after 01.04.2012. No production or sales activity has been carried out by the appellant since 01.04.2015 and therefore, in order to be valid refund claim the Appellant ought to have filed refund claim of Rs. 2,95,89,462/- latest by 01.05.2016. So, having filed the instant refund claim on 13.10.2016, that is beyond period of one year, the instant refund claim for the period after 01.04.2012 is also time-barred and the same has been correctly and legally rejected by the lower adjudicating authority on the ground of time barred.

7. Notwithstanding, rejection of the instant refund claim on the ground of limitation of time, I also find that the Appellant for the period under consideration from 2004-05 to 2013-14 accumulated huge Cenvat credit, maintaining balance of over Rs. 10 crores and they were also maintaining very healthy ratio of export sales vis-à-vis domestic sales and therefore, the appellant had knowledge that they were not utilizing Cenvat credit and/or were not in position to utilize/adjust accumulated Cenvat credit and therefore, they were required to respect the Central Excise Law and should have filed refund claim in time in accordance with law rather than allowing accumulation of Cenvat credit for period of over ten long years.

8. Since the refund claim does not pass the test of limitation, I do not find it fit to go into the other issues and case-laws cited by the appellant.

9. In view of above, I uphold the impugned order and reject the appeal filed by the appellant.

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

9.1 The appeal filed by the appellant is disposed off in above terms.

*(कुमार संतोष)*  
आयुक्त (अपील्स)

सहायित,  
*(Signature)*  
निखिल ए. रूपरेलिया  
अधीक्षक (अपील्स)

By Registered Post A.D.

To,  
M/s. PSL Ltd.,  
Plot No. 4 & 5, Sector 12/B,  
Kandla Road, Gandhidham,  
Dist. Kutch.

**Copy for kind information and necessary action to :**

- 1) The Chief Commissioner, CGST & CX, Ahmedabad Zone for his kind information.
- 2) The Commissioner, CGST & CX, Gandhidham, Kutch Commissionerate.
- 3) The Assistant Commissioner, CGST, Division, Gandhidham.
- 4) Guard File.

