



::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



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20211264SX0000777C88

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/13//BVR/2021	BHV-EXCUS-000-JC-MT- 004-2020-21	23-03-2021

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

BHV-EXCUS-000-APP-011-2021

आदेश का दिनांक / Date of Order:	30.12.2021	जारी करने की तारीख / Date of issue:	30.12.2021
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अर्पण 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 :-

M/s. R.K. Industries (Unit-II), [Now M/s. R.K. Industries (Unit-II) LLP], Shree Ram House, Khargada Street 62640 Khargate, Bhavnagar-364001

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 अपीलार्थी न्यायाधिकरण क प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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, बहुमानी 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 मांग, ब्याज की मांग और जमावा गया जमाना, 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 रजिस्ट्रार 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। स्वयंन 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 जमावा गया जमाना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 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 रजिस्ट्रार 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। स्वयंन 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/-



- (ii) 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 of 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.
- (iii) 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 जमाना विवादित है, या जमाना, जब केवल जमाना 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
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - 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 स्थान अर्थात् 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 प्रथमपरंतुक 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:
- 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
 - 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 छूट (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.
 - 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.
 - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश को आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए 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.
 - उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद 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 प्रतियाँ 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.
 - 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.
 - 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 पट्टी 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 umbers 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.
 - 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.
 - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबंधित 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.
 - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी 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. R. K. Industries (Unit-II) (Now M/s. R. K. Industries, Unit-II, LLP), Bhavnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/13/BVR/2021 against Order-in-Original No. BHV-EXCUS-000-JC-MT-004-2020-21 dated 23.03.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST Commissionerate, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that a SCN dated 18.04.2019 was issued to the Appellant demanding Central Excise duty (Cenvat) amount of Rs. 1,05,40,853/- on account of less payment/reversal of Cenvat credit on clearance of non-excisable goods under Rule 6(3A) of Central Credit Rules, 2004 ('CCR, 2004'). The SCN also proposed adjustment of Rs. 25,94,102/- already paid by the Appellant, recovery of interest under Rule 6(3A) of CCR, 2004 read with Section 11(A)(1) of the Central Excise Act, 1944 ('the Act') read with Rule 14(1) (ii) of CCR, 2004, and, imposition of penalty under Section 11AC of the Act read with Rule 15(1) of CCR, 2004.

2.1 The aforementioned SCN was adjudicated vide impugned order wherein demand of Rs. 1,05,40,853/- was confirmed along with interest. An amount of Rs. 25,94,102/- paid by the Appellant was adjusted against the confirmed demand. A Penalty of Rs. 25,00,000/- under Section 11AC of the Act read with Rule 15(1) of CCR, 2004 was also imposed upon the Appellant.

3. Being aggrieved by the impugned order, the Appellant preferred present appeal contending, *inter-alia*, as under:

- (i) The adjudicating authority has not dealt with the pleas made in written reply by the Appellant; that the judgments relied upon also been completely ignored;
- (ii) The Appellant at the outset, adopt and reiterate, the various pleas made by them in their reply to SCN and written submission filed before the adjudicating authority;
- (iii) The figure shown at column (ii) at Para 9 of the SCN and reiterated at Para-23 of the impugned order viz., total Cenvat credit availed during the period Rs. 2,98,28,463/- is not correct; that the correct figure is Rs. 2,90,53,037/- and the same has been ascertained from self-assessed monthly E.R.-1; similarly, the figure shown at column (v) viz. Cenvat credit reversed on clearance of non-excisable goods @6% of the value is not correct, the correct figure is Rs. 8,88,881/-
- (vi) With regards to findings recorded at Para-24 of the impugned order there is no such master circular dated 19.01.2017 as cited by the adjudicating authority;

(vii) The calculation of Cenvat credit which is required to be reversed /paid mentioned at



Para-25 of the impugned order, is not correct as per the formula specified under Rule 6(3A) (b) of the CCR, 2004; that correct calculation sheet was enclosed with the reply to the SCN; that as per the sheet, the Appellant was required to pay Rs. 50,00,808/- out of total credit of input and input services taken during the period, under sub-clause (iv) of clause (b) of Rule 6(3A) of the CCR, 2004; that the same has been paid by the Appellant by debiting Rs. 24,06,706/- from their Cenvat credit account and Rs. 25,94,102/- by cash;

- (viii) The adjudicating authority has added the opening balance of Cenvat credit while calculating the amount which is not correct; that the formula provides only Cenvat credit taken during the month which does not include the opening balance of Cenvat credit;
- (ix) The Appellant has paid the 'amount' as provided in Rule 6(3) and 6(3A) of the CCR, 2004 before the issuance of SCN as well as before issuance of the impugned order, which means that the Cenvat credit not taken; that the Appellant has taken Cenvat credit but not utilized the same which was reversable under Rule 6(3A) of the CCR, 2004; that as per Rule 14(1)(i) of the CCR, 2004 Cenvat credit can be recovered but interest will not be payable and penalty is not imposable; that Hon'ble Courts and Tribunals have taken the view that even when Cenvat credit taken if it is reversed before utilization , it would mean that Cenvat credit has not been taken; therefore the Appellant is not liable for payment of interest on amount paid by them ;
- (x) The penalty imposed under Section 11AC of the Act is illegal. The Rule 15 of CCR, 2004 provides for penalty for wrongly availed or utilized Cenvat credit ; that it is clear that penalty can be imposed where Cenvat credit has been taken or utilized wrongly; that in the instant case neither the Appellant has taken the cenvat credit wrongly nor utilized the same .
- (xi) No evidence was adduced in the SCN to establish that the alleged acts or omission had been committed by the Appellant deliberately or contumaciously or in flagrant violation of provisions of law or with intention to evade duty; that no penalty was imposable when there was no mala fide intention to evade payment of duty. Therefore, the Appellant is not liable for penalty under Section 11AC of the Act.

4. Personal hearing in the matter was held in virtual mode on 01.12.2021. Shri Sarju S. Mehta, CA, attended the hearing on behalf of the Appellant. He re-iterated the submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum filed by the Appellant and oral submission made at the time personal hearing. The issue to be decided in the case is whether the impugned order confirming demand of Central Excise duty Rs. 1,05,40,553/- under Section 11A(1) of the Act read with Rule 14(1)(ii) of CCR, 2004 , along with interest and imposition of penalty under Section 11AC of the Act is correct, legal and proper or not.



6. It is undisputed from the case records that the Appellant was engaged in manufacture of excisable as well as exempted goods, and had exercised option under Rule 6(3A) of CCR, 2004 for reversal of proportionate cenvat credit with effect from 01.04.2017. However, instead of reversing Cenvat credit as per the option exercised, it had reversed Cenvat credit @6% of the value of non-excisable (exempted goods). Accordingly, the proceedings were initiated against the Appellant, which culminated into the passing of impugned order.

7. I find that the Appellant's main contention is that the figures taken for calculation of proportionate Cenvat credit, in SCN as well as impugned order are incorrect.

7.1 The Appellant has pointed out that figure of Cenvat credit of Rs. 2,98,28,463/- shown in column (ii) of Para-9 of the SCN and reiterated at Para-23 of the impugned order is incorrect. The Appellant on the basis of copy of E.R.-1 for the Month of April-2017, further contended that correct figure is Rs. 2,90,53,037/-. On the other hand, the adjudicating authority at Para-23 of the impugned order has observed that "CENVAT credit of Rs. 2,98,28,463/- is correctly mentioned in the SCN as the same has been reflected in the monthly E.R.-1 return for the month of April, 2017 filed by the Noticee." I find that above discrepancy in figures taken, cannot be resolved at the Appellate stage and hence, the matter is required to be remanded to the adjudicating authority for verification as per the records.

7.2. The Appellant's another contention is that while calculating the Cenvat credit amount to be reversed in formula prescribed under Rule 6(3A) of CCR, 2004, for the period April-2017 to June-2017, the adjudicating authority has also included opening balance of Rs. 11,53,37,786/-, which is incorrect. The Appellant further argued that the formula provides for CENVAT credit taken during the month only which does not include the opening balance of CENVAT credit. I find some merit in the arguments. It is observed from the Para-25 of the impugned order that while calculating the amount to be reversed under Rule 6(3A) of CCR, 2004, for the period April-2017 to June-2017, the adjudicating authority has also included opening balance of Rs. 11,53,37,786/-, for the month of April-2017, which would be the closing balance of March-2017 i.e., financial year 2016-17. I further find that the procedure/steps given in clause (b) of Rule 6(3A) of the CCR, 2004 also envisages for credit of inputs and input services taken during the month only. Hence, the matter needs to be re-examined based on the legal provisions contained under Rule 6 (3A) of the CCR, 2004 to arrive at the correct quantification. Accordingly, I find it proper to remand the matter to the adjudicating authority to examine the issue again in the light of legal provisions contained under Rule 6 (3A) of the CCR, 2004 and pass a speaking order in this regard.



8. The Appellant has also argued that interest under Section 11AA of the Act is not imposable in its case, as it has paid the amount as provided in Rule 6(3) and 6(3A) of the Rules before the issuance of the SCN as well as before passing of impugned order. The Appellant further argued that it had taken Cenvat credit but not utilized the same. As regards penalty under Section 11AC of the Act, the Appellant has argued that it had neither taken Cenvat credit wrongly nor utilized the same hence no penalty is imposable upon them under Section 11AC of the Act. In this regard, I find that when the matter is being remanded for re-examination of the issue as per findings recorded in Para supra, it would be proper if the adjudicating authority also reconsiders the issue of recovery of interest and imposition of penalty afresh in the light of submissions made by the appellant.

9. In view of the above findings, I set aside the impugned order and remand the matter back to the adjudicating authority to decide the matter afresh as per the direction given at Para 7.1, 7.2 and 8 above.

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.

सत्यापित / Attested



केतन दवे
Ketan Dave
अधीक्षक (अपील)
Superintendent (Appeal)

(AKHILESH KUMAR)
Commissioner (Appeals)

By RPAD

To M/s. R. K. Industries (Unit-II) (Now M/s. R. K. Industries (Unit-II)(LLP), Shree Ram House, Khergada Street, Khargate, Bhavnagar: - 364001.	एमएस आर.के.इंडस्ट्रीज (यूनिट-II) (अब मेसर्स आर.के.इंडस्ट्रीज (यूनिट-II)(एलएलपी), श्री राम हाउस, खेरगड़ा स्ट्रीट, खर्गोट, भावनगर: - 364001
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प्रति:-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर, को आवश्यक कार्यवाही हेतु।

गार्ड फाइल।

