::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,
द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्डडाकए.डी.द्वारा :- **DIN-20210164SX0000717567**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIO No.	दिनांक/ Date
	V2/30-51/RAJ/2011	**222-243/2010-11**	**09.12.2010**

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

KCH-EXCUS-000-APP-002-TO-022-2021

आदेश का दिनांक / Date of Order: **20.01.2021** जारी करने की तारीख / Date of issue: **29.01.2021**

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, 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. Anchor Daewoo Industries Ltd. (New Anchor Consumer Products Pvt Ltd) Plot No. 50, 53, 56, Bhuj-Bhachau Road, Village Paddhar, Taluka Bhuj, District Kutch.

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग , ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 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 सार्वजिनक 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 dutydemand/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, वित अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 माँग ,ब्याज की माँग 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 क्रमश: 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 सार्वजिनक 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,1994की 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 Commissionerauthorizing 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 वितीय 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" मे 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 (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/
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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित 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 outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
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 आदेशो 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 नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers 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 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-I 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

:: ORDER-IN-APPEAL ::

M/s Anchor Daewoo IndustriesLtd (now Anchor Consumer Products Pvt. Ltd.),Village-Paddhar, District - Kutch(hereinafter referred to as "Appellant") filed Appeal Nos. V2/30-51/RAJ/2011against Re-Credit Order No. 222-243/2010-11 dated 9.12.2010(hereinafter referred to as "impugned order") passed by the Deputy Commissioner, erstwhile Central Excise Division, Gandhidham(hereinafter referred to as "sanctioning authority").

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of excisable goods falling under Chapter Nos. 15,17,33, 34 and 38 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAACD3710BXM005. The Appellant was availing benefit of exemption under Notification No. 39/2001-CE dated 31.07.2001, as amended (hereinafter referred to as 'said notification'). As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per prescribed rates and refund was subject to condition that the manufacturer has to first utilize all Cenvat credit available to them on the last day of month under consideration for payment of duty on goods cleared during such month and pay only the balance amount in cash. The said notification was amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which altered the method of calculation of refund by taking into consideration the duty payable on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity.The Appellant had opted for availing the facility of re-credit, in terms of para 2C(a) of the said notification.

2.1 The appellant had filed re-credit applications for the period from April, 2008 to August, 2008 and October, 2008 to February, 2010for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA totally amounting to Rs. 22,97,21,540/- on clearance of finished goods manufactured by them.

2.2 On scrutiny of re-credit applications, it was observed by the sanctioning authority that,

(i) the Appellant had installed new machinery viz. soap packing line 3 with accessory for packing of their product- Soap of various sizes, after cut-off date, i.e. 31.12.2005, stipulated in the said notification; that

refund/re-credit of Central Excise duty paid on goods manufactured out of plant and machinery installed after cut-off date is not admissible to the Appellant.

(ii) the Appellant was eligible for exemption only at the rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and the Appellant was not entitled to re-credit full amount paid through PLA.

(iii) exemption under the said notification was available only to Central Excise Duty and the said notification did not cover Education Cess and Secondary & Higher Education Cess and hence, the appellant was not entitled for refund of Education Cess and S.H.E. Cess.

3. The sanctioning authority vide the impugned order determined correct re-credit amount to the tune of Rs. 16,22,20,949/- and rejected excess claimed amount of Rs. 6,75,00,591/- and ordered the Appellant to reverse the excess amount claimed along with interest in terms of Para 2C(e) of the said notification.

4. Being aggrieved, the appellant has preferred the present appeals, *inter-alia,* on the grounds that,

(i) The said notification puts condition of original investment in plant and machinery at the time of commencement of commercial production; that on the basis of said original investment, unit's eligibility will be decided by the empowered committee. Once, eligibility criteria are being decided by the empowered committee, all the clearances from that unit is eligible for benefit of the said notification; that the said notification 39/2001-CE dated 31.7.2001, as amended, does not contain any such provision that goods manufactured with the aid of new plant and machineryinstalled after 31.12.2005 will not be eligible for benefit of the notification; that the clarification letter dated 10.07.2008 relied upon by the adjudicating authority clarifies such matter which is not stated anywhere in the notification and the same has been clarified without any support of law; that the said letter dated 31.12.2005 is not issued under Section 37B of the CEA, 1944 and hence, the same is not binding in nature and relied upon Board's Circular No. 939/29/2010-CX dated 22.12.2010; that the appellant is eligible for re-credit of refunds on the Soaps manufactured with the aid of 3rd line installed even after 31.12.2005. Hence, the rejection of re-credit of refund of duty paid on

soap manufactured with the aid ofthe said 3rd line is not legal and sustainable.

(ii) That as per original scheme of the Notification No. 39/2001-CE dated 31.7.2001, the units located in Kutch were allowed refund of entire duty paid from PLA. Subsequently, the said notification was amended by notification 16/2008-CEdated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and thereby, the benefit of the notification has been restricted by allowing refund to the extent of duty paid, on notified value addition/special rate of value addition as the case may be or duty paid from PLA whichever is less; that the said amendment was challenged before the Hon'ble Gujarat High Court in the case of VVF Ltd who held that subsequent amendment restricting benefit of area based notification is not sustainable. Hence, the refund rejected on the ground of said clarification is not legal and sustainable and liable to be set aside.

(iii) That the sanctioning authority has erred in calculating re-credit amount by taking into consideration only Basic Excise Duty and ignored Education Cess and SHE Cess; that as per Section 93(3) of the Finance Act, 2004, all provision of Central Excise Act, including those relating to refund, exemption will also apply to Education Cess. Hence, exemption relating to Central Excise duty will automatically apply to Education Cess also and relied upon caselaw of Bharat Box Factory-2007(214) ELT 534(Tri.Delhi).

5. The Appeals were transferred to callbook in view of pendency of appeals filed by the Department against the orders of Hon'ble High Court of Gujarat in the case of VVF Ltd & others before the Hon'ble Supreme Court. The said appeals were retrieved from callbook in view of the judgement dated 22.4.2020 passed by the Hon'ble Supreme Court and have been taken up for disposal.

5.1 Hearing in the matter was scheduled in virtual mode on 10.9.2020. The Appellant vide letter dated 8.9.2020 waived the opportunity of personal hearing and requested to decide their appeals on the basis of grounds raised in appeal memoranda and further written submissions as detailed below:

(i) That one of the issues in dispute is whether they are eligible for refund of full amount of duty paid from PLA or refund to the extent of duty paid from PLA in light of notified rate of value addition as notified

vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008; that in re-credit applications, they had claimed re-credit of total amount of duty paid from PLA but had taken re-credit of refund to the extent of duty on notified rate of value addition given in the said notification; that they had already paid under protest the disputed amount of Central Excise duty of Rs. 27,39,472/-, Education Cess of Rs. 35,17,755/- and Secondary and Higher Education Cess of Rs. 17,68,212/- and intimated to the Department vide their letter dated 22.12.2010.

(ii) Regarding eligibility of refund of Education Cess and Secondary and Higher Education Cess, they relied upon CESTAT, Ahmedabad's order No. A/12868-12891/2018 dated 20.12.2018 passed in their own case.

6. I have carefully gone through the facts of the case, impugned order and submissions made by the appellant in grounds of appeals and in their letter dated 8.9.2020. The issues to be decided in the present appeals arewhether,

(i) the Appellant is eligible for refund of Central Excise duty at full rate of duty or at the rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 ?

(ii) The appellant is eligible for refund of Education Cess and Secondary & Higher Education Cess under the provisions of the Notification No.39/2001-CE dated 31.07.2001, as amended?

(iii) The Appellant is eligible for refund of Central Excise duty paid on goods manufactured out of plant and machinery installed after cut-off date i.e. 31.12.2005?

7. On perusal of the records, I find that the Appellant was availing the benefit of area based Exemption Notification No. 39/2001-CE dated 31.7.2001, as amended. As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008. I find that the Appellant had opted for availing the facility of re-credit, in terms of para 2C(a) of the said notification. The appellant had filed re-credit applications for the period from April, 2008 to August, 2008 and October, 2008 to February, 2010 for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA totally amounting to Rs. 22,97,21,540/- on clearance of finished

goods manufactured by them. The sanctioning authority after determination restricted the re-credit amount to Rs. 16,22,20,949/- and rejected balance amount of Rs. 6,75,00,591/- and ordered for its recovery vide the impugned order on various counts mentioned in the impugned orders.

8. The Appellant has made first contention that they were eligible for refund of Central Excise duty at full rate of duty as per Notification No. 39/2001-CE dated 31.7.2001 and that amendments made in said notification subsequently vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 restricting the refund of duty to the extent of duty paid on notified value addition was not legally sustainable in as much as that this issue was challenged before the Hon'ble Gujarat High Court in the case of SAL Steel Ltd & others Vs Union of India reported as 2010 (260) E.L.T. 185 (Guj.), who held that subsequent amendment restricting benefit of area based notification is hit by promissory estoppel. Hence, the refund restricted vide the impugned order by taking prescribed rate is not legally sustainable and liable to be set aside.

8.1. I find that Notification No. 39/2001-CE dated 31.7.2001 was amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which altered the method of calculation of refund by taking into consideration the duty payable on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity. Thus, a manufacturer was eligible for refund of Central Excise duty only at the rates prescribed in the said notifications. I find that the Hon'ble Gujarat High Court in the case of SAL Steel Ltd & Others-2010 (260) E.L.T. 185 (Guj.), held the said amending notifications as hit by promissory estoppel. However, I find that the said decision of the Hon'ble Gujarat High Court has been reversed by the Hon'ble Supreme Court of India in the case of Union of India Vs. VVF Ltd & Othersas reported in 2020 (372) E.L.T. 495 (S.C.). The Hon'ble Apex Court has held as under:

> "14.3 As observed hereinabove, the subsequent notifications/industrial policies do not take away any vested right conferred under the earlier notifications/industrial policies. Under the subsequent notifications/industrial policies, the persons who establish the new undertakings shall be continue to get the refund of the excise duty. However, it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking

manufacturing activities. Therefore, it cannot be said that subsequent notifications/industrial policies are hit by the doctrine of promissory estoppel. The respective High Courts have committed grave error in holding that the subsequent notifications/industrial policies impugned before the respective High Courts were hit by the doctrine of promissory estoppel. As observed and held hereinabove, the subsequent notifications/industrial policies which were impugned before the respective High Court can be said to be clarificatory in nature and the same have been issued in the larger public interest and in the interest of the Revenue, the same can be made applicable retrospectively, otherwise the object and purpose and the intention of the Government to provide excise duty exemption only in respect of genuine manufacturing activities carried out in the concerned areas shall be frustrated. As the subsequent notifications/industrial policies are "to explain" the earlier notifications/industrial policies, it would be without object unless construed retrospectively. The subsequent notifications impugned before the respective High Courts as such provide the manner and method of calculating the amount of refund of excise duty paid on actual manufacturing of goods. The notifications impugned before the respective High Courts can be said to be providing mode on determination of the refund of excise duty to achieve the object and purpose of providing incentive/exemption. As observed hereinabove, they do not take away any vested right conferred under the earlier notifications. The subsequent notifications therefore are clarificatory in nature, since it declares the refund of excise duty paid genuinely and paid on actual manufacturing of goods and not on the duty paid on the goods manufactured only on paper and without undertaking any manufacturing activities of such goods.

15. In view of the above and for the reasons stated above and once it is held that the subsequent notifications/industrial policies which were impugned before the respective High Courts are clarificatory in nature and are issued in public interest and in the interest of the Revenue and they seek to achieve the original object and purpose of giving incentive/exemption while inviting the persons to make investment on establishing the new undertakings and they do not take away any vested rights conferred under the earlier notifications/industrial policies and therefore cannot be said to be hit by the doctrine of promissory estoppel, the same is to be applied retrospectively and they cannot be said to be irrational and/or arbitrary.

16. Under the circumstances, the respective High Courts have committed a

grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not retroactive. Consequently, all these appeals are *ALLOWED.* The impugned Judgments and Orders passed by the respective High Courts, which are impugned in the present appeals, quashing and setting aside the subsequent notifications/industrial policies impugned in the respective writ petitions before the respective High Courts, are hereby quashed and set aside."

8.2 By respectfully following the above judgement passed by the Hon'ble Supreme Court in the case of Union of India Vs VVF Ltd& others, I hold that the Appellant is eligible for refund of duty only at the rates prescribed under Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and following the terms prescribed therein. I, therefore, uphold the impugned order to that extent.

8.3. It is further observed that the Appellant has claimed in their written submission dated 08.09.2020 that they had claimed re-credit of total amount of duty paid from PLA in re-credit applications filed before the sanctioning authority but had taken re-credit of refund only to the extent of duty at notified rate of value addition given in the said notifications and that they had also informed to the Department to this effect vide letter dated 22.12.2010. In absence of any supporting documents, it is not possible for this appellate authority to verify the sanctity of this claim at this stage. In any case, the Respondent Department has not contested this issue before me. However, the sanctioning authority may verify the genuineness of this claim.

9. Now, coming to second issue. I find that the sanctioning authority had sanctioned refund of Central Excise duty under Notification No. 39/2001-CE dated 31.7.2001, as amended, but had not sanctionedrefund of Education Cess and Secondary & Higher Education Cess on the ground that exemption under the said notification was available only to Central Excise Duty and the said notification did not cover Education Cess and Secondary & Higher Education Cess and hence, the appellant was not entitled for re-credit of Education Cess and S.H.E Cess.On the other hand, the Appellant has pleaded that as per Section 93(3) of the Finance Act, 2004, all provisions of Central Excise Act,1944 including those relating to refund, exemption will also apply to Education Cess and S.H.E. Cess and that exemption relating to Central Excise duty will automatically apply to Education Cess and S.H.E. Cess also and relied upon

CESTAT, Ahmedabad's Order No. A/12868-12891/2018 dated 20.12.2018 passed in their own case.

9.1 I find that issue regarding refund of Education Cess and Secondary and Higher Education Cess is no longer *res integra* and stand decided by the Hon'ble Supreme Court in the case of Unicorn Industries reported at 2019 (370) ELT 3 (SC), wherein it has been held that,

> "40. Notification dated 9-9-2003 issued in the present case makes it clear that exemption was granted under Section 5A of the Act of 1944, concerning additional duties under the Act of 1957 and additional duties of excise under the Act of 1978. It was questioned on the ground that it provided for limited exemption only under the Acts referred to therein. There is no reference to the Finance Act, 2001 by which NCCD was imposed, and the Finance Acts of 2004 and 2007 were not in vogue. The notification was questioned on the ground that it should have included other duties also. The notification could not have contemplated the inclusion of education cess and secondary and higher education cess imposed by the Finance Acts of 2004 and 2007 in the nature of the duty of excise. The duty on NCCD, education cess and secondary and higher education cess are in the nature of additional excise duty and it would not mean that exemption notification dated 9-9-2003 covers them particularly when there is no reference to the notification issued under the Finance Act, 2001. There was no question of granting exemption related to cess was not in vogue at the relevant time imposed later on vide Section 91 of the Act of 2004 and Section 126 of the Act of 2007. The provisions of Act of 1944 and the Rules made thereunder shall be applicable to refund, and the exemption is only a reference to the source of power to exempt the NCCD, education cess, secondary and higher education cess. A notification has to be issued for providing exemption under the said source of power. In the absence of a notification containing an exemption to such additional duties in the nature of education cess and secondary and higher education cess, they cannot be said to have been exempted. The High Court was right in relying upon the decision of three-Judge Bench of this Court in Modi Rubber Limited (supra), which has been followed by another three-Judge Bench of this Court in Rita Textiles Private Limited (supra). "

9.2 I have examined the relied upon Order No. A/12868-12891/2018 dated 20.12.2018 passed by the Hon'ble CESTAT, Ahmedabad in Appellant's own case. I find that the Hon'ble Tribunal in that case has relied upon judgement rendered by the Hon'ble Supreme Court in the case of SRD Nutrients Pvt Ltd-2017 (355) ELT 481 (SC). I find that Apex Court's judgment in the case of SRD

Nutrients Pvt Ltd has been held per incuriam by the Hon'ble Supreme Court in the case of Unicorn Industries supra. The relevant portion of the said judgement is reproduced as under:

> "41. ... ... The reason employed in *SRD Nutrients Private Limited* (supra) that there was nil excise duty, as such, additional duty cannot be charged, is also equally unacceptable as additional duty can always be determined and merely exemption granted in respect of a particular excise duty, cannot come in the way of determination of yet another duty based thereupon. The proposition urged that simply because one kind of duty is exempted, other kinds of duties automatically fall, cannot be accepted as there is no difficulty in making the computation of additional duties, which are payable under NCCD, education cess, secondary and higher education cess. Moreover, statutory notification must cover specifically the duty exempted. When a particular kind of duty is exempted, other types of duty or cess imposed by different legislation for a different purpose cannot be said to have been exempted.
>
> 42. The decision of Larger Bench is binding on the Smaller Bench has been held by this Court in several decisions such as Mahanagar Railway Vendors' Union v. Union of India & Ors., (1994) Suppl. 1 SCC 609, State of Maharashtra & Ors. v. Mana Adim Jamat Mandal, AIR 2006 SC 3446 and State of Uttar Pradesh & Ors. v. Ajay Kumar Sharma & Ors., (2016) 15 SCC 289. The decision rendered in ignorance of a binding precedent and/or ignorance of a provision has been held to be per incuriam in Subhash Chandra & Ors. v. Delhi Subordinate Services Selection Board & Ors., (2009) 15 SCC 458, Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, and Central Board of Dawoodi Bohra Community & Ors. v. State of Maharashtra & Ors., (2005) 2 SCC 673 = 2010 (254) E.L.T. 196 (S.C.). It was held that a smaller bench could not disagree with the view taken by a Larger Bench.
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> 43. Thus, it is clear that before the Division Bench deciding SRD Nutrients Private Limited and Bajaj Auto Limited (supra), the previous binding decisions of three-Judge Bench in Modi Rubber (supra) and Rita Textiles Private Limited (supra) were not placed for consideration. Thus, the decisions in SRD Nutrients Private Limited and Bajaj Auto Limited (supra) are clearly per incuriam. The decisions in Modi Rubber (supra) and Rita Textiles Private Limited (supra) are binding on us being of Coordinate Bench, and we respectfully follow them. We did not find any ground to take a different view."

9.3 In view of the above, I hold that the appellant is not eligible for refund of Education Cess and Secondary & Higher Education Cess. I, uphold the impugned order to that extent.

10. Regarding the third issue, I find that the Appellant had installed new machinery viz. soap packing line 3 with accessory for packing of their finished product i.e. Soap of various sizes, after cut-off date i.e. after 31.12.2005 stipulated in the said notification. The sanctioning authority held that refund/re-credit of Central Excise duty paid on goods manufactured out of plant and machinery installed after cut-off date is not admissible to the Appellant. On the other hand, the Appellant has contended that Notification No. 39/2001-CE dated 31.7.2001, as amended, does not contain any such provision that goods manufactured with the aid of new plant and machinery installed after 31.12.2005 will not be eligible for benefit of the notification; that said notification only puts condition of original investment in plant and machinery at the time of commencement of commercial production and relied upon Board's Circular No. 939/29/2010-CX dated 22.12.2010.

10.1 I have gone through the provisions of Notification No. 39/2001-CE dated 31.7.2001 relevant to the present case. I find that the Notification granted exemption by way of refund of Central Excise duty paid in cash through PLA. The said notification prescribed cut-off date of 31.12.2005 for commencement of commercial production in order to be eligible for exemption under said notification. I further find that quantum of benefit under said notification depended upon investment in plant and machinery i.e. unit having investment upto Rs. 20 crore was eligible for refund upto twice the investment and unit having investment above Rs. 20 crore was eligible for exemption without any limit. There is no bar in the said notification for installation of plant and machinery after cut-off date. I find that Appellant has set up the unit with original value of investment of Rs. 37,34,57,941/- in plant and machinery as per Para 1 of the impugned order. So, the Appellant was eligible for exemption without any limit and there is no undue advantage to the Appellant by installing said machinery after cut-off date. I find that the Appellant had produced Chartered Engineer's Certificate dated 19.3.2010 to the Department, wherein it has been certified that no production capacity has been increased due to installation of the machines in dispute. Further, the sanctioning authority has not brought on records any evidence to the effect that installation of soap packing line 3 with accessory for packing of their finished product resulted in increase in their production capacity.

10.2 I further rely on the Order passed by the Hon'ble CESTAT, Ahmedabad in the case of Rudraksh Detergent & Chemicals Pvt. Ltd reported at2010 (260) E.L.T. 469 (Tri. - Ahmd), wherein it has been held that,

> **"5.1** We have considered the submissions and perused the records. The respondents are eligible for the benefit of Notification No. 39/2001-C.E., dated 31-7-2001, is not in dispute. The appellant have only challenged the Ld. Commissioner Appeals' order, setting aside the lower adjudicating authority's order to the extent of denial of 50% refund on the production of detergent bars in case of order No. 91/2008, dated 12-6-2008. The contention of the appellant is that the respondent have installed one silo, one vibrator sieve, one weigh dropper, vapor separator, cyclone and sigma mixture for manufacture of detergent bars after 31-12-2005 and installation of one sigma mixture of production capacity of 3900 after 31-12-2005 is in addition to a sigma mixture of equal capacity already installed in the factory prior to 31-12-2005, has lead to enhancement in production capacity. This issue has been dealt with by the ld. Commissioner (Appeals) at length in para 11.1 to 11.5 and gave cogent findings that the installation of the aforesaid equipment has not led to any enhancement of the production capacity. The aforesaid equipments were only to improve efficiency, to ease the problem of storage and handling of raw materials. The learned Commissioner (Appeals) in para 11.3 of order-in-appeal found that :
>
> > "On perusal of the declaration filed in Annexure-I giving information relating to installation of machinery on or before 31-12-2005 and after 1-12-2006, I find that One Silo Mixer of 23 M3 capacity and one VibroSeive of 3.7 M3/H were installed to take care for any change in formulation. One weigh hoper of 1.35 M3 was added after removing the conveyor which fed the two mixtures since it created the quality problem and now each feed each mixer. Further, one cyclone was replaced since the earlier one was not working efficiently. Lastly, one Sigma Mixer of 3900 Liters was added to enable easy change in formulation.
> >
> > Further, Shri Mahendrakumar H. Trivedi, Chartered Engineer vide his Certificate dated 24-4-2008 while taking into account the installation of above 4 items has stated that *"Installed Capacity of Detergent Bards is determined by the capacity of the Plodder, Stumpers and Wrapping Machines. Since there are no addition to these three equipments, the final installed/production capacity remains at the original installed capacity of 75000 MTs per annum as on 31-12-2005."*
>
> I find that Lower Authority vide his impugned orders have not adduced any findings to counter the appellants above arguments and the Chartered Engineer certificate.
>
> Further, I find that the basic use of installed machineries is to handle the problem of storage of raw materials, increase efficiency of the installed machinery and to facilitate easy change in formulation. I also find that it is a fact that there is no addition to the already installed capacity i.e. 75,000 Metric Tones and the said fact has not been refuted by the lower Authority in his order."

The department didn't challenge the findings of the lower adjudicating authority. Revenue could not produce any document or any evidence which shows enhancement of production capacity. The Revenue has also placed reliance on clarification on Point No. 1 issued by letter F. No. 110/21/2006 CX3, dated 10-7-2008. Since there is no change in installed capacity the

Board's clarification is not relevant to the instant case. The learned Commissioner (Appeals) has relied upon the Point No. 2 of the aforesaid Board's clarification wherein it has been clarified that as long as there is no increase in the capacity of production and alteration or addition are made to enhance the quality of the products or for efficiency gains the benefit of notification shall not be denied. Therefore, we do not find any infirmity with the learned Commissioner (Appeals) order. The appeal is devoid of merits. Therefore, the impugned order is upheld and the appeal of the Revenue is dismissed to the above extent."

10.3 The above Order has been upheld by the Hon'ble Supreme Court as reported in 2019 (368) ELT A341 (SC).

10.4 I find that the sanctioning authority had relied upon Order-in-Appeal passed by the then Commissioner(Appeals), Central Excise, Rajkot in the case of Rudraksh Detergent & Chemicals Pvt Ltd at para 9 of the impugned order. However, I find that the said Order-in-Appeal was in favour of the assessee in respect of the issue involved herein and the said Order has also been upheld by the Hon'ble CESTAT, Ahmedabad as well as by the Hon'ble Supreme Court as reproduced in para *supra*. I, therefore, hold that the Appellant is eligible for re-credit of Central Excise duty paid on the goods manufactured using soap packing line 3 installed after cut-off date.

11. In view of above discussion and findings, I hold that the Appellant is eligible for refund/re-credit of Central Excise duty not at full rate, but at rates prescribed under Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, wherever applicable. The Appellant is not eligible for refund/re-credit of Education Cess and Secondary and Higher Education Cess. The Appellant is eligible for refund/re-credit of Central Excise duty on the goods manufactured out of plant and machinery installed after cut-off date i.e.31.12.2005. However, I make it clear that such refund/re-credit of Central Excise duty shall be governed by the terms and condition of Notification No. 39/2001-CE dated 31.7.2001, as amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and as per rates prescribed therein.

12. In view of above, I partially allow the appeals filed by the appellant and set aside the impugned order to the extent of not allowing re-credit of Central Excise duty paid on the goods manufactured out of soap packing line 3 with accessory. I uphold the impugned order to the extent of (i) sanctioning re-credit at rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and (ii) not allowing re-

credit of Education Cess and Secondary & Higher Education Cess and reject the appeals to that extent.

13. अपीलकर्ताद्वारादर्जकीगईअपीलोकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

13. The appeals filed by the Appellant are disposed off as above.

20th January 2021

(Akhilesh Kumar)
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By R.P.A.D.

To, M/s Anchor Daewoo Industries Ltd. (Now Anchor Consumer Products Pvt Ltd) Plot No. 50,53,56, Bhuj-Bhachau Road, Village Paddhar, TalukaBhuj, District Kutch.	सेवामें, मे॰एंकर देवु इंडस्ट्रीज़ लिमिटेड, (अब एंकर कंस्यूमर प्रोडक्टस प्राइवेट लिमिटेड) प्लॉट न॰ 50,53,56, भुज-भचाउ रोड, पदधर, तालुका भुज, जिल्ला कच्छ।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क,गांधीधाम आयुक्तालय,गांधीधाम को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अर्बन मण्डल,गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।