::आयुक्त (अपील) 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: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी.द्वारा :- DIN- 20210364SX000000D086

क	अपील / फाइलसंख्या/Appeal /File No.	मूलआदेशसं /OIO No.	दिनांक/Date
	V2/214-224/RAJ/2010	461-471/2009-10	11.03.2010

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

KCH-EXCUS-000-APP-119-TO-129-2021

आदेश का दिनांक / Date of Order: **08.03.2021** जारी करने की तारीख / Date of issue: **11.03.2021**

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपयुक्तलिखित 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. Rudraksh Detergent & Chemicals Pvt Ltd, Village Padana, Taluka Gandhidham, District – Kutch.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 असार्वा 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, वित्त 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 वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन 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,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 outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रूपये 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 Rudraksh Detergent & Chemicals Pvt. Ltd, Padana, District - Kutch (*hereinafter referred to as "Appellant"*) has filed Appeal Nos. V2/214-224/RAJ/2010 against Re-Credit Order No. 461 to 471/2009-10 dated 11.3.2010 (*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. 28 and 34 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AADCR08390XM001. 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 subsequently 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 May, 2008 to March, 2009 for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA, totally amounting to Rs. 17,64,25,075/- on clearance of finished goods manufactured by them.

2.2 On scrutiny of re-credit applications, it was observed by the sanctioning authority that re-credit facility of the Appellant for the Financial Year 2008-09 was forfeited by the Assistant Commissioner, Central Excise, Gandhidham vide Re-credit Order No. 115/2009-10 dated 13.5.2008 and hence, they were not entitled for re-credit for the said period and they were required to reverse the re-credit taken along with interest.

3. The sanctioning authority vide the impugned order rejected the re-credit claims of Rs. 17,64,25,075/- for the period from May, 2008 to March, 2009 and directed the Appellant to reverse re-credit taken for the said period 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 adjudicating authority failed to appreciate that notification granted facility to a manufacturer assessee to take re-credit of duty paid by him for the previous month. This was done with a view to take care of delays in sanctioning the refund claims. Since the intention of the Central Government was to grant complete exemption to all the units set up in Kutch and since this is only a mechanism devised to effectuate the said exemption, the Central Government was keen that the lower administrative functionaries do not unnecessarily hold up refund claims by the assesses and harass them. It was for this reason that the facility of re-credit was introduced in the notification. At the same time, the Central Government had to safeguard the interests of the revenue to ensure that no manufacturer took credit more than the credit to which he is entitled. Therefore, the Asst. Commissioner was required to verify the correctness of the claims and if there was any excess credit taken or less credit taken than what a manufacturer was entitled to, credit or debit had to be ordered. That was the limited role of the Asst. Commissioner. When this aspect was explained to the Asst. Commissioner after he passed order on 13.5.2008, he understood the error committed by him and proceeded to pass order on 4.6.2008 whereby he disallowed certain portion of the claims. The appellant complied with his directions as per the notification and pursued the remedy of appeal. Despite the above, by the present impugned order, the Dy. Commissioner again proceeded on the assumption that the facility of re-credit was denied and, therefore, rejected the total claims. Also, despite the fact that the ex-facie error committed by him was pointed out by the appellant, he refrained from correcting the said error. The impugned order, therefore, deserves to be quashed and set aside.

(ii) In the present case, all the re-credit claims were submitted from time to time and were verified by the jurisdictional Superintendent who found the claims to be in order, as recorded by the learned Dy.

Commissioner in the impugned order. However, he kept the re-credit claims pending with him for over a year and then without determining the correct amount as mandated by the notification, chose to reject the claims on an ex-facie erroneous, incorrect and illegal ground. He ought to have appreciated that the appellant had paid duty on the finished goods, that such duty was exempted by the notification, that the appellant had a right to take re-credit under the notification and that the limited role assigned to him by the notification was to verify the correctness of the figures mentioned therein. It was not open to him to take away the exemption legally and validly granted by the notification. Failure to appreciate this has vitiated the impugned order which deserves to be quashed and set aside.

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.

6. Personal hearing in the matter was held on 11.2.2021. Shri Vinay Sejpal, Advocate, and Shri Rajesh Devpura, General Manager (Commercial), appeared on behalf of the Appellant and reiterated the submissions made in the appeal memorandum and submitted written submission for consideration.

6.1 In written submission, it has been contended, *inter alia,* as under:

(i) The adjudicating authority failed to appreciate that the said forfeiture of the option for Re-credit facility under their Order dtd. 13/05/2008 was only till further order and the same was with reference to re-credit application for the month of April, 2008. In response to the said Order, the appellants had immediately pointed out to the then Assistant Commissioner under letter dtd. 28/05/2008 that the forfeiture of the option of re-credit under Para-2C(f) can be carried out only in case of contravention by the manufacturer of any of the provisions of clause(a) to clause(e) to Para-2C. Since the issue of re-credit for the month of April, 2008 was still pending and no decision was made, there could not be any forfeiture under Para-2C(f) till the said quantification of re-credit is finally made with a speaking order. In other words the appellants had requested the AC/DC to decide the matter with appropriate speaking order as the said Notification did not empower the

Assistant Commissioner to take away the option specifically granted to the manufacturer by the Notification except in the circumstances specified.

(ii) The adjudicating authority based on their request took up the Re-credit claim for the month of April 2008 for consideration as per Para-2C(e) and the re-credit was duly granted under Re-credit Order No. 165/2008-09 dated 04.06.2008. In other words the forfeiture Order dated 13.05.2008 was till further orders regarding the re-credit of April, 2008 and the same adjudicating authority there after took up the Re-credit claim of April 2008 and passed the Re-credit order dtd. 04.06.2008 in favour of the appellants on the very same grounds which were objected in his forfeiting order. In other words, the Assistant Commissioner had already re-considered and allowed the Re-credit under his Order dated 04.06.2008 and the forfeiture of Re-credit facility under their previous Order dated 13.05.2008 stands overturned / re-considered and allowed by him. Accordingly there are no grounds to allege or hold that the Re-credit availed after 04.06.2008 for the period of May 2008 to March 2009 was incorrect on account of previous Order dated 13.05.2008.

(iii) Even if it is presumed that the provisions of suo-moto re-credit has been suspended as alleged in the order, still the same does not take away the legal right of the manufacturer to claim the refund /re-credit under the provisions of Para-2B(a) of the Notification. The refund/re-credit applications so made by the appellants for the eleven (11) months as enlisted in the appeal memorandum should be considered as an application made under Para 2B(a) and the A.C/D.C should have passed appropriate order quantifying the refund /re-credit amount on merits as per Para-2B(b) of Notification No. 39/2001-C.E as amended by Notification No.16/2008-C.E. The impugned order deserves to be set aside and the matter should be remanded back for determination of the refund amount either under Para-2B(b) or under Para-2C(e) as the case may be, but the statutory benefit cannot be denied on such procedural grounds when there is no dispute on the merits of the claim of the Appellant.

(iv) The second issue is claiming of less credit by the appellants in account of the amending Notification No. 16/2008-C.E. issued by the Board. The appellants submits that they have taken less Re-credit

amounting to Rs.1,93,56,292/- on the pending interpretation whether exemption was restricted to the prescribed rate of value addition as per Notification No. 39/2001-CE dated 31.7.2001 as amended by Notification No. 16/2008-CE and the full amount of duty so paid from PLA was not eligible for refund / re-credit. That the issue was raised by them before the Tribunal for the month of April, 2008 and it was decided in their favour vide Order dated 15.7.2010 reported 2010 (260) ELT 469 and upheld by the Hon'ble Supreme Court as reported in 2019 (368) ELT (A341). Hence, refund / re-credit of the full amount paid from PLA should be granted to them and the restriction of the refund amount so introduced under amending Notification No. 16/2008-CE dated 27.03.2008 would not be applicable to the appellants as they had started new unit much prior to the introduction of the amendment and the appellants are eligible for the full benefit of refund/re-credit as per the original Notification No. 39/2001-CE dated 31.07.2001. Accordingly, the pending re-credit/refund amount of Rs. 1,93,56,293/- of Basic Excise Duty should be granted to the appellants along with consequential relief.

(v) The third issue is the eligibility of refund/re-credit of Education Cess and Secondary and Higher Education Cess, which was short availed by them while taking re-credit in respective months. That issue stands decided in their favour by the Commissioner (Appeals), Rajkot vide Order No. KCH-EXCUS-000-APP-195 TO 209-2018-19 dated 27.11.2018, which was based on the judgment passed by the Hon'ble Supreme Court in the case of SRD Nutrients Pvt Ltd- 2017 (355) ELT 481.

7. I have carefully gone through the facts of the case, impugned order and submissions made by the appellant in appeal memorandum as well as during personal hearing. The issue to be decided in the present appeals is whether the impugned order, rejecting the re-credit applications on the ground that re-credit facility was stand forfeited, is correct, legal and proper or not ?

8. 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 prevalent at the relevant time. 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 May, 2008 to March, 2009 for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA totally amounting to Rs. 17,64,25,075/- on clearance of finished goods manufactured by them. The sanctioning authority rejected the re-credit claims on the ground that re-credit facility of the Appellant for the financial year 2008-09 had been forfeited vide Re-credit Order No. 115/2008-09 dated 13.5.2008 and hence, they were not entitled for re-credit for the said period and they were required to reverse the re-credit taken along with interest.

8.1 The Appellant has contended that after re-credit facility was forfeited vide Order dated 13.5.2008, the Asst. Commissioner again took up the Re-credit claim for the month of April 2008 on their request and re-credit was duly granted under Re-credit Order No. 165/2008-09 dated 4.6.2008. The Appellant further contended that the forfeiture Order dated 13.5.2008 was till further orders and the same refund sanctioning authority there after took up the Re-credit claim of April 2008 and passed the Re-credit order dated 4.6.2008 in their favour on the very same grounds which were objected in his forfeiting order. Thus, forfeiture of Re-credit facility under their previous Order dated 13.05.2008 stand overturned / re-considered and allowed by him. Accordingly there are no grounds to allege or hold that the Re-credit availed after 4.6.2008 for the period from May 2008 to March 2009 was incorrect on account of previous Order dated 13.05.2008.

8.2 I find that the re-credit facility of the Appellant was forfeited by the Assistant Commissioner, Central Excise, Gandhidham vide Re-credit Order No. 115/2008-09 dated 13.5.2008. As per facts emerging from said Re-credit Order, the Appellant had filed re-credit application of Rs. 1,55,29,132/- for the month of April, 2008. It was observed by the Assistant Commissioner, Central Excise, Gandhidham that the Appellant had installed certain machineries after cut-off date of 31.12.2005, which resulted in increase in their production and hence, the Appellant was not eligible for refund of duty paid on production obtained out of said new machineries. It was further observed by the Assistant Commissioner, Central Excise, Gandhidham that the Appellant was asked to furnish information about manufacturing process of detergent bar and detergent powder and list of machineries but they failed to provide the same. Accordingly, the Assistant Commissioner, Central Excise, Gandhidham forfeited re-credit facility of the Appellant in terms of Rule 2C(f) of the said Notification with immediate effect i.e. from 13.5.2008 till further orders. Subsequently, the Assistant Commissioner, Central Excise, Gandhidham processed the Re-credit application for the month of April,2008 and determined eligible re-credit

amount as Rs. 98,76,749/- and ordered to reverse the remaining re-credit amount in PLA vide Re-credit Order No. 165/2008-09 dated 4.6.2008.

8.3 I find that the sanctioning authority rejected re-credit applications vide the impugned order only on the ground that re-credit facility of the Appellant stand forfeited vide Order No. 115/2008-09 dated 13.5.2008. It is pertinent to mention that the Assistant Commissioner, Central Excise, Gandhidham had forfeited re-credit facility of the Appellant while processing re-credit application for the month of April, 2008 vide Re-credit Order No. 115/2008-09 dated 13.5.2008 by passing following order :

> "I hereby forfeit the facility of recredit to M/s Rudraksh Detergent and Chemicals Pvt Ltd in terms of para 2C(f) of the Notification No. 39/2001-CE as they have contravened the provisions of said Notification with immediate effect i.e. 13.5.2008 till further orders."

8.4 I find that the same Assistant Commissioner again processed re-credit application for the month of April, 2008 vide Re-credit Order No. 165/2008-09 dated 4.6.2008, which would mean that re-credit facility of the Appellant was restored vide said Order dated 4.6.2008. Hence, I find that the sanctioning authority has erred in not taking cognizance of Re-credit Order No. 165/2008-09 dated 4.6.2008 and rejected the re-credit applications vide the impugned order by relying upon previous Re-credit Order No. 115/2008-09 dated 13.5.2008.

8.5 Apart from above, I also find that the Appellant had contested the issue for which their re-credit facility was forfeited vide Order dated 13.5.2008 before the then Commissioner (Appeals), Central Excise, Rajkot for previous period, who held that installation of new machineries after cut-off date of 31.5.2005 had not resulted in increase in their production capacity and hence, the Appellant was eligible for refund of the duty paid on the goods manufactured out of new machinery installed after cut-off date of 31.12.2005. I find that the Hon'ble Tribunal vide Order dated 15.7.2010 reported as 2010 (260) ELT 469 concurred with the findings of the then Commissioner (Appeals) and 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 Vibro Seive 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 Mahendra kumar 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 Bars 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 Tonnes 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."

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

8.6 In view of above, the issue for which re-credit facility was forfeited vide Order No. 115/2008-09 dated 13.5.2008 has been decided in favour of the Appellant. On this count also, the forfeiture of re-credit facility is not sustainable. I, therefore, direct the sanctioning authority (now Assistant Commissioner of GST, Gandhidham Rural Division, Gandhidham) to process the re-credit applications filed by the Appellant for the period from May, 2008 to March, 2009 on merits and in terms of Para 2C(e) of Notification No. 39/2001-CE dated 31.7.2001, as amended.

9. The Appellant has contended that they had taken less re-credit as per rate prescribed vide Notification No. 16/2008-CE dated 27.03.2008 but the issue has been decided in their favour by the Tribunal vide Order dated 15.7.2010, which has also been upheld by the Hon'ble Supreme Court and hence, they were eligible for refund of entire duty paid from PLA. The Appellant further contended that they are also eligible for refund of /re-credit of Education Cess and Secondary and Higher Education Cess, which was short availed by them while taking re-credit in respective months but the issue stands decided in their favour by the Commissioner (Appeals), Rajkot vide Order No. KCH-EXCUS-000-APP-195 TO 209-2018-19 dated 27.11.2018, which was based on the judgment passed by the Hon'ble Supreme Court in the case of SRD Nutrients Pvt Ltd- 2017 (355) ELT 481.

9.1 I find that the impugned order rejected re-credit applications only on the ground that the re-credit facility of the Appellant had been forfeited. The other two issues raised by the Appellant before me were not raised by them before the sanctioning authority and also not decided vide the impugned order. This appellate authority can decide any issue which is arising out of impugned order. Even otherwise, it would be premature to decide said issues at this stage when the re-credit applications are yet to be processed by the sanctioning authority. I, therefore, discard these contentions.

10. In view of discussion made above, I set aside the impugned order and allow the matter by way of remand to the sanctioning authority to decide the matter on merits.

11. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

8th March, 2021.

(AKHILESH KUMAR)
Commissioner (Appeals)

Attested

(V.T.SHAH)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s Rudraksh Detergent & Chemicals Pvt Ltd,
Village Padana,
Taluka Gandhidham,
District - Kutch.

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, गांधीधाम ग्राम्य मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।