::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- 20210364SX0000506625

क	अपील / फाइलसंख्या/Appeal /File No.	मूलआदेशसं /OIO No.	दिनांक/Date
	V2/EA2/13-27/RAJ/2010	238 to 252/2009-10	11.03.2010

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

KCH-EXCUS-000-APP-138-TO-152-2021

आदेश का दिनांक / Date of Order: **24.03.2021** जारी करने की तारीख / Date of issue: **25.03.2021**

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. Rudrakash 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 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 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, वित्त आधिनियम,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" 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 (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/

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 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.

(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 वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 हों तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये 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 की 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 ::

The Deputy Commissioner, erstwhile Central Excise Division, Gandhidham filed Appeal Nos. V2/EA2/13-27/RAJ/2010 on behalf of the Commissioner, Central Excise, Rajkot (*hereinafter referred to as "Appellant Department"*) in pursuance of the direction and authorization issued under Section 35E(2) of the Central Excise Act,1944 against Refund Order No. 238 to 252/2009-10 dated 11.3.2010 (*hereinafter referred to as "impugned order"*) passed by the Deputy Commissioner, erstwhile Central Excise Division, Gandhidham (*hereinafter referred to as "refund sanctioning authority"*) in the case of M/s Rudraksh Detergent & Chemicals Pvt. Ltd, Padana, District - Kutch (*hereinafter referred to as* 'Respondent').

2. The facts of the case, in brief, are that the Respondent 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 Respondent 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.

2.1 The Respondent had filed refund applications for the period from November, 2006 to January, 2008 for refund of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA amounting to Rs. 21,01,06,973/- on clearance of finished goods manufactured by them.

2.2 On scrutiny of refund applications, it was, *inter alia*, observed by the refund sanctioning authority that,

(i) the Respondent had installed certain new machineries for manufacturing of Detergent bars after cut-off date of 31.12.2005 and hence, they are not eligible for refund of duty paid on goods

manufacture out of said new machineries.

(ii) 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 Respondent was not entitled for refund of Education Cess and S.H.E. Cess.

3. The sanctioning authority sanctioned refund of Rs. 13,92,43,085/- vide Refund Order No. 91 to 105, all dated 12.6.2008, and rejected the remaining refund amount. Being aggrieved, the Respondent filed appeals before the then Commissioner (Appeals), Central Excise, Rajkot who vide his Order-in-Appeal No. 338 to 353/2008 dated 12.12.2008 allowed the appeals with consequential relief. The Department reviewed the said Order-in-Appeal and filed appeals before the Hon'ble CESTAT, Ahmedabad along with stay application. The Tribunal vide Order No. S/1233/WZB/AHD/2009 dated 17.8.2009 rejected the stay application.

3.1 On rejection of Stay application by the Hon'ble Tribunal, the refund sanctioning authority sanctioned refund of Rs. 5,69,14,072/- vide the impugned order but did not sanction refund of Education Cess and Secondary and Higher Education Cess totally amounting to Rs. 57,80,180/-.

4. The impugned order was reviewed by the Appellant Department and present appeals have been filed *inter-alia*, on the grounds that,

(i) The impugned order was passed in pursuance of directions contained in Order-in-Appeal No. 338 to 353 / 2008 dated 12.12.2008 passed by the Commissioner (Appeals), Central Excise, Rajkot; that the said Order-in-Appeal has been challenged by the Department before the CESTAT, Ahmedabad and it is still pending.

(ii) That the Board vide letter F. No. 110/21/2006 CX3 dated 10.07.2008 addressed to the Chief Commissioner of Central Excise, Ahmedabad has issued point wise clarification on the area based Exemption Notification No. 39/2001 dated 31.07.2001, wherein at Point No. 1, it has been clarified as under:

"Point No.1: Whether the benefit of exemption would be available to goods/products that unit starts manufacturing after the cut of date for the commencement of commercial production i.e. 31.12.2005?

Comments: There would be two situations. First is that where a unit

introduced a new product by installing fresh plant, machinery or capital goods after the cut off date, in such a situation, exemption would not be available to this new product. The said new product would be cleared on payment of duty, as applicable and separate records would be required to be maintained to distinguish production of these products from the products which are eligible for exemption.

The other situation is the one where a unit starts producing some products (after the cut off date) using the plant and machinery installed up to the cut off date and without any addition to the plant and machinery. For example, in case of plant molded products, a unit may commence the production of different products simply by changing the moulds and dies. In that case the unit would be eligible for the benefit of Notification because the plant and machinery used for manufacture has remained the same. In this connection, it is further clarified that for the purpose of computing the original value of plant and machinery, the value of plant and machinery installed on the date of commencement of commercial production only shall be considered."

(iii) That the assessee installed one silo, one vibrator sieve, one weigh dropper, vapor separator cyclone and sigma mixture for manufacture of detergent bars after 31.12.2005. From the certificate dated 12.04.2008 issued by the Chartered Engineer, it appears that one sigma mixer, of production capacity of 3,900 Liters has been installed after 31.12.2005 and both the sigma mixer installed before and after 31.12.2005 are having equal capacity. Hence, the production capacity of the assessee has increased. The Chartered Engineer also certified that the sigma mixer installed before 31.12.2005 and installed after 31.12.2005 was having equal capacity. Therefore, it is clear that with the said new machineries, they have obtained the production, otherwise there was no need to install such new machineries and investment of such huge amount; that due to said new machineries, the production has been obtained and refund is not admissible on the additional production from the new additional machineries as above under the said Notification.

5. The Respondent vide letter dated 8.6.2010 filed Cross Objection, *inter alia*, contending that,

(i) That the refund sanctioning authority correctly followed the Order-in Appeal No. 338 to 353/2008 dated 12.12.2008, especially

when the stay application of the department was rejected by the CESTAT, Ahmedabad vide Order No. S/ 1233/WZB/AHD/09 dated 7.8.2009. The refund sanctioning authority has correctly decided the refund claims and there was no ground for rejecting only because the department's appeal was pending before Hon'ble CESTAT. The said maintenance of judicial discipline cannot be set aside as incorrect or bad in law.

(ii) That the grounds of appeal are mere reference to the grounds of appeal so pending before Hon'ble CESTAT and the same does not render previous Order-in-Appeal No. 338 to 353/2008 dated 12/12/2008 as null and void. The said Order-in-Appeal is still valid and fully in force and during the validity of the said order, the present refund claims cannot be held to be invalid.

(iii) That there was no condition in the notification that no additional equipment or machinery could be installed in the said unit after 31.12.2005. The appeal fails to appreciate that the notification was meant to augment industrial activity in Kutch region which was devastated by an earthquake. Surely, the Central Government did not or could not intend that there can be no further investment made or machinery installed. It is well settled that a notification has to be strictly construed and in absence of any condition it is not open to the executive authority to read any assumed condition that there was a prohibition in installing any new equipment or machinery after 31.12.2005. The present appeal proposing to read additional conditions in the notification deserves to be rejected.

(iv) That the present appeals seriously err in not appreciating that the exemption was not based on any production capacity. The exemption was granted to the unit in respect of goods manufactured and cleared by it provided it was a new unit certified by such empowered committee. The Respondent's unit was a unit so certified by the empowered committee and, therefore, all the clearances made by the respondent from the said unit were qualified for exemption. The present appeal proceeded to read a condition which is clearly absent in the notification and deserves to be set aside.

(v) That the respondent had only installed such equipment or machinery which had resulted in achieving debottlenecking. The

respondent had submitted two Chartered Engineers Certificates to the Asst. Commissioner which have remained un-controverted that there was no increase in production capacity as a result of equipment or machinery installed by the respondents.

6. The Appeals were transferred to callbook in view of pendency of appeals filed by the Department against Order No. A/1713-1714/WZB/AHD2010 dated 15.7.2010 of the Hon'ble CESTAT, Ahmedabad in Respondent's own case before the Hon'ble Supreme Court. The said appeals were retrieved from callbook in view of the Order dated 5.9.2019 passed by the Hon'ble Supreme Court and have been taken up for disposal.

7. Personal hearing in the matter was held on 24.2.2021 in virtual mode. Shri Vinay Sejpal, Advocate, and Shri Rajesh Devpura, General Manager (Commercial), appeared on behalf of the Respondent and reiterated the submissions made in the Cross Objection and also submitted written submission for consideration. No one appeared on behalf of the Appellant Department.

7.1 In written submission, it has been contended that the Departmental appeal has been dismissed by the Hon'ble CESTAT, Ahmedabad vide its Order No. A/1713-1714/2010-WZB/AHD dated 15.7.2010 reported as 2010(260) ELT 469 (Tri.-Ahmd) and that Civil Appeal No. 5487-5488/2011 filed by the Department before the Hon'ble Supreme Court have also been dismissed as reported in 2019 (368) ELT A.341. Since, the issue raised by the Department in present appeal proceedings stand decided and settled by the Hon'ble Supreme Court, the present appeals filed by the Department deserve to be set aside.

8. I have carefully gone through the facts of the case, impugned order, grounds raised in appeal memorandum and Cross Objection and oral submission made by the Respondent at the time of hearing. The issue to be decided in the present appeals is whether refund sanctioned vide the impugned order in pursuance of Order-in-Appeal No. 338 to 353/2008 dated 12.12.2008 is correct, legal and proper or not?

9. On perusal of the records, I find that the Respondent 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 under said notification which was subsequently modified vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE

dated 10.06.2008. The Respondent had filed refund applications for the period from November, 2006 to January, 2008 for refund of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA amounting to Rs. 21,01,06,973/- on clearance of finished goods manufactured by them. The refund sanctioning authority partially rejected the refund claim relating to duty paid on goods manufactured out of plant and machinery installed after cut-off date of 31.12.2005 and also rejected refund of Education Cess and Secondary and Higher Education Cess. The Respondent challenged the rejection of the refund before the then Commissioner (Appeals), Central Excise, Rajkot who vide his Order-in-Appeal No. 338 to 353/2008 dated 12.12.2008 allowed the appeals of the Respondent with consequential relief. In pursuance of the said Order-in-Appeal dated 12.12.2008, the refund sanctioning authority sanctioned refund to the Respondent vide the impugned order.

9.1 The Appellant Department has filed the present appeals on the ground that Order-in-Appeal No. 338 to 353/2008 dated 12.12.2008 was challenged by the Department before the Hon'ble CESTAT, Ahmedabad, which was pending at the time of filing appeals. The Appellant Department mainly rely on Board's letter No. 110/21/2006-CX.3 dated 10.7.2008 to contend that installation of new plant and machinery after 31.12.2005 had resulted in increase in production capacity and hence refund is not admissible on such additional production.

9.2 On the other hand the Respondent has contended that the Departmental appeal has been dismissed by the Hon'ble CESTAT, Ahmedabad vide its Order No. A/1713-1714/2010-WZB/AHD dated 15.7.2010 reported as 2010(260) ELT 469(Tri.-Ahmd) and that Civil Appeal No. 5487-5488/2011 filed by the Department before the Hon'ble Supreme Court have also been dismissed as reported in 2019 (368) ELT A.341. The Respondent further contended that since the issue raised by the Department in present appeal proceedings stand decided and settled by the Hon'ble Supreme Court, the present appeals filed by the Department deserve to be set aside.

10. I find that the main contention raised by the Appellant Department in the present appeals is that the Respondent was not eligible for refund of duty paid on goods manufactured out of plant and machinery installed after cut-off date of 31.12.2005. I find that the Hon'ble CESTAT, Ahmedabad has dismissed

the appeals of the Department vide Order No. A/1713-1714/2010-WZB/AHD dated 15.07.2010 reported as 2010(260) ELT 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 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 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 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 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."

(Emphasis supplied)

10.1 I find that the said Order dated 15.7.2010 of the Tribunal was challenged by the Department before the Hon'ble Supreme Court, which has been dismissed by the Apex Court vide Order dated 5.9.2019 as reported in 2019 (368) ELT A341 (SC). Thus, the matter has attained finality and stand decided in favour of the Respondent. Thus, the Order-in-Appeal dated 12.12.2008 has been upheld by the Hon'ble CESTAT, Ahmedabad as well as by the Hon'ble Supreme Court. In view thereof, the refund sanctioned vide the impugned order in pursuance of directions contained in said Order-in-Appeal dated 12.12.2008 is legal and proper. I, therefore, hold that there is no infirmity in refund sanctioned by the sanctioning authority vide the impugned order.

11. In view of above, I uphold the impugned order and reject the appeals filed by the Appellant Department.

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

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

24.03.2021

(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।