::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-20210464SX000000C1C6

क	अपील / फाइलसंख्या/Appeal /File No.	मूलआदेशसं /OIO No.	दिनांक/Date
	V2/30/GDM/2020	IV/Ref/CEX/Rudraksh/2019-20	06.05.2020

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

KCH-EXCUS-000-APP-153-2021

आदेश का दिनांक / Date of Order: **12.04.2021** जारी करने की तारीख / Date of issue: **16.04.2021**

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 Lt., 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 वित 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, 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) वित 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 वितीय (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,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 इयूटी 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 रूपये 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 Rudraksh Detergent & Chemicals Pvt. Ltd, Padana, District - Kutch (hereinafter referred to as "Appellant") has filed Appeal No. 30/GDM/2020 against Order-in-Original No. IV/Ref/CEX/Rudraksh/2019-20 dated 6.5.2020 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, CGST Rural Division, Gandhidham (hereinafter referred to as "refund 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.

2.1 The appellant vide letter dated 24.12.2019 brought to the notice of the refund sanctioning authority that their refund / re-credit claims for the months of February-2008, March-2008, April-2008, August-2010 and September-2010 were pending in whole / part before the refund sanctioning authority due to pendency of disputes before the Hon'ble Supreme Court. The Appellant requested the refund sanctioning authority to sanction pending refund / re-credit claims, since all the issues involved in said refund/re-credit claims were finally decided in their favour and that the matter attained finality.

2.2 The refund sanctioning authority observed that,

(i) the Hon'ble Supreme Court's Order dated 5.9.2019 passed in Appellant's case only covered period from November, 2006 to January, 2008 and April, 2008 and hence, the Appellant was not eligible for refund for the months of February-2008, March-2008, August-2010 and September-2010 on the basis of

said Order of the Hon'ble Supreme Court;

(ii) that the Appellant had again applied for re-credit for the month of April, 2008 on 24.12.2019 on the basis of the Hon'ble Supreme Court's Order dated 5.9.2019 but due to restructuring as well as relocation of the office in FY 2014-15, the relevant re-credit claim filed by the Appellant at the material time was not available in the office.

(iii) that there was no communication by the Appellant after 27.4.2011 about their pending claim for the month of April, 2008. In absence of any record and no communication by the Appellant after 27.4.2011 for non-sanctioning of re-credit for the month of April, 2008, the Appellant is not eligible for refund /re-credit.

3. The refund sanctioning authority vide the impugned order rejected refund /re-credit claims for the months of February-2008, March-2008, April-2008, August-2010 and September-2010 totally amounting to Rs. 4,19,94,233/.

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

(i) After the issue was decided by the Hon'ble Supreme Court in their favour, they requested the refund sanctioning authority to decide pending refund /re-credit claim for the month of February, 2008, March, 2008, April, 2008, August, 2010 and September, 2010. However, the refund sanctioning authority erroneously rejected the said refund claims on the ground that the same were not forming part of the proceedings before the CESTAT and the Hon'ble Supreme Court.

(ii) That there is no dispute that they had filed their refund claims for the month of February, 2008 on 13.3.2008 and for the month of March, 2008 on 9.4.2008. Similarly, they had filed re-credit applications for the months of August, 2010 and Sept., 2010. The said refund / re-credit claims are still pending with the refund sanctioning authority. There is no indication nor any findings in the impugned OIO that the said refund claims have already been decided.

(iii) That the impugned order is not only incorrect but also contrary to the principles of natural justice and statutory provisions of the exemption notification. Even if the said refund claims for February, 2008 and March, 2008 were not the part of the proceeding before CESTAT the said two refund claims ought to be independently decided taking in to

consideration the principles laid down by the Hon'ble Supreme Court in Appellant's own case vide Order dated 5.9.2019.

(iv) That the refund claim for the month of April, 2008 has been rejected on the basis of presumption and because the documents were not available with the Division Office. The restructuring of Commissionerate was carried out but the Gandhidham Division continued to be the Division Office and such re-structuring of Commissionerate shall not take away the right of the assessee to get its refund/re-credit claim so filed by them. If the Division Office was not able to trace the original refund claim/re-credit claim, then the Division Office could have asked the appellant to provide the certified copies of the said pending claims and then should have processed the same on merits. That it is on record that they have provided complete set of refund claim on 20.1.2020 on being asked by the refund sanctioning authority.

(v) The impugned order is required to be set aside and remanded back to the refund sanctioning authority with specific directions to decide the pending refund/re-credit claim for the period of February, 2008, March, 2008, April, 2008, August, 2010 and September, 2010.

5. Personal hearing in the matter was held on 11.2.2021. Shri Vinay Sejpal, Advocate, and Shri Rajesh Devpura, General Manager (Commercial), appeared for hearing on behalf of the Appellant. The advocate reiterated the submissions made in the appeal memoranda and submitted written synopsis and requested to consider the same.

5.1 In written submission, grounds of appeal memorandum are reiterated and it has been further contended that,

(i) The refund /re-credit claims for the period February, 2008, March, 2008, August, 2010 & September, 2010 were kept pending by the Assistant Commissioner for final decision since the matter was pending before the CESTAT and the Hon'ble Supreme Court under department's appeal. That both the issues under dispute have now been finally decided in their own case and the matter has attained finality.

(ii) That both the said issues of interpretation of the exemption Notification in the appellants own case was taken up by the Department before the CESTAT which was decided in their favour vide Order No. A/1713-1714/2010 dated 15.7.2010. The Department preferred appeal before the Hon'ble Supreme Court which was dismissed vide Order dated

5.9.2019. Once the said issue stands settled then the refund claims so filed by then under Para-2(a) of Notification No.39/2001-C.E for the month of February, 2008 and March, 2008 and re-credit claims for the months of August, 2010 and September, 2010 should be passed by the refund sanctioning authority.

(iii) That the benefit flowing from the final decision of the Hon'ble CESTAT merging with the Order of the Hon'ble Supreme Court cannot be denied to the appellants / assessee for the period covered under the said exemption Notification, merely on the ground that the relevant months were not under appeal. The issue settled by the Hon'ble Supreme Court is the interpretation and applicability of the benefit of the Notification No.39/2001-C.E dated 31.7.2001. The said ground for rejection of refund /re-credit claims is bad in law.

6. I have carefully gone through the facts of the case, impugned order and submissions made by the appellant in grounds of appeal and in written synopsis submitted at the time of hearing. The issues to be decided in the present appeal are,

(i) Whether rejection of refund /re-credit claims for the months of February-2008, March-2008, August-2010 and September-2010 on the ground that Hon'ble Supreme Court's Order dated 5.9.2019 only covered period from November, 2006 to January, 2008 and April, 2008, is correct, legal and proper ?

(ii) Whether rejection of re-credit claim for the month of April, 2008 on the grounds of non-availability of relevant record due to restructuring and relocation of office and non-persuasion of the matter by the Appellant after 27.4.2011 for non-sanctioning of re-credit is correct, legal and proper ?

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 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, 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. I find that the Appellant had opted for availing the facility of re-credit, in terms of para 2C(a) of the said notification for the months of April-2008, August, 2010 and September, 2010. The Appellant vide letter dated 24.12.2019 brought to the notice of the refund sanctioning authority that their refund / re-credit claims for the months of February-2008, March-2008, April-2008, August-2010 and September-2010 were pending in whole / part before the refund sanctioning authority due to pendency of disputes before the Hon'ble Supreme Court. The Appellant requested the refund sanctioning authority to sanction pending refund / re-credit claims, since all the issues involved in said refund/re-credit claims were finally decided in their favour and that the matter attained finality.

7.1 The refund sanctioning authority vide the impugned order held that the Appellant was not eligible for refund for the months of February-2008, March-2008, August- 2010 and September-2010 on the basis of Order dated 5.9.2019 of the Hon'ble Supreme Court as the said Order only covered period from November,2006 to January,2008 and April, 2008.

7.2 The Appellant has contended that they had filed their refund claims for the month of February, 2008 on 13.3.2008 and for the month of March, 2008 on 9.4.2008. Similarly, they had filed re-credit applications for the months of August, 2010 and September, 2010 at material time. It was contended that the said refund / re-credit claims are still pending with the refund sanctioning authority and there is no indication nor any findings in the impugned order that the said refund claims have already been decided. The Appellant further contended that the impugned order is contrary to the principles of natural justice and statutory provisions of the exemption notification in as much as even if the said refund / re-credit claims for the months of February-2008, March-2008, August-2010 and September-2010 were not part of the proceeding before CESTAT / Supreme Court, then also the said refund/re-credit claims ought to be independently decided.

8. I find it is pertinent to examine facts involved in the case decided by the Hon'ble Supreme Court vide Order dated 5.9.2019, since the refund sanctioning authority rejected refund claims solely on the ground that period involved in the refund claims under consideration was different than the period involved in the case decided by the Hon'ble Supreme Court. I find that the Appellant had filed refund claims for the months of November, 2006 to January, 2008 and April, 2008 for refund of Central Excise duty, Education Cess and Secondary and

Higher Education Cess paid on the goods manufactured by them. The refund sanctioning authority, inter alia, observed 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/re-credit of duty paid on production obtained out of said new machineries. The Appellant filed appeals before the then Commissioner (Appeals), Central Excise, Rajkot, who vide his Order-in-Appeal No. 338-353/2008 dated 12.12.2008 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/re-credit 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), Rajkot and upheld the said Order-in-Appeal. The said Order of the Tribunal was also upheld by the Hon'ble Supreme Court vide its Order dated 5.9.2019.

8.1 Thus, issue involved before the Hon'ble Supreme Court was decided in favour of the Appellant pertaining to previous period. However, there is nothing in the said CESTAT/ Supreme Court Order, which will make the present refund/re-credit claims as redundant. The refund sanctioning authority failed to observe that these were fresh refund / re-credit claims filed in terms of Notification No. 39/2001-CE dated 31.7.2001, which were required to be disposed of by way of issuing speaking order. It is not under dispute that refund/re-credit claims for the months of February-2008, March-2008, August-2010 and September-2010 were not processed and disposed of in the past. The refund sanctioning authority has not brought on records any evidence indicating that the said refund/re-credit claims were already sanctioned in the past. In fact, the refund sanctioning authority has rejected the said refund /re-credit claims vide the impugned order, as per order portion of the impugned order but, the reason given by the refund sanctioning authority for rejection of said refund/re-credit claims are not justifiable and beyond any rationale.

8.2 In view of above discussion, I am of the opinion that the refund sanctioning authority has erred in rejecting the refund /re-credit claims for the months of February-2008, March-2008, August-2010 and September-2010 on unreasonable ground that period of claims was not covered by the Supreme Court's Order. I, therefore, direct the refund sanctioning authority to process the refund /re-credit claims for the months of February-2008, March-2008, August-2010 and September-2010 on merits and in terms of Notification No. 39/2001-CE dated 31.7.2001, as amended.

9. As regards the second issue, I find that the Appellant had filed re-credit claim for the month of April, 2008, which was disposed of by the Assistant Commissioner, erstwhile Central Excise Division, Gandhidham vide re-credit Order No. 165/2008-09 dated 4.6.2008, who determined re-credit amount at Rs. 98,76,749/- and ordered the Appellant to reverse credit taken in excess of the said amount in their PLA. The Appellant preferred appeal before the then Commissioner (Appeals), Central Excise, Rajkot. The subsequent proceedings are as narrated in para 8 above.

9.1 In pursuance of the Hon'ble Supreme Court's Order dated 5.9.2019, the Appellant vide letter dated 24.12.2019, *inter alia,* requested the refund sanctioning authority to sanction refund for the month of April, 2008 in respect of (i) denial of re-credit on the ground that there was increase in production capacity (ii) denial of credit on the ground that exemption was restricted to prescribed rate of value addition in terms of Notification No. 16/2008-CE dated 1.4.2008 and (iii) denial of re-credit of Education Cess and Secondary and Higher Education Cess on the ground that it is not covered under Notification No. 39/2001-CE dated 31.7.2001. The refund sanctioning authority vide impugned order rejected the request of the Appellant on the grounds that due to restructuring as well as relocation of the office in FY 2014-15, the relevant re-credit claim filed by the Appellant at the material time was not available in the office and that the Appellant failed to pursue the matter after 27.4.2011.

9.2 The Appellant has contended that restructuring of Commissionerate was carried out but the Gandhidham Division continued to function as Division Office and such re-structuring of Commissionerate shall not take away their right to get re-credit. The Appellant further contended that if the Division Office was not able to trace the original re-credit claim, then the Division Office could have asked the Appellant to provide the certified copies of the said pending claims and then should have processed the same on merits.

9.3 I find that the said issue of denial of re-credit on the ground that there was increase in production capacity is finally settled in favour of the Appellant, as the Hon'ble Supreme Court vide Order dated 5.9.2019 upheld the Order of the Hon'ble CESTAT, Ahmedabad. Hence, the Appellant is eligible for re-credit of duty on this count. I find that the Appellant had already availed re-credit of duty in their PLA pertaining to this issue at material time and hence, they were ordered by the Assistant Commissioner, erstwhile Central Excise Division, Gandhidham to reverse said re-credit in their PLA vide Re-credit Order No.

165/2008-09 dated 4.6.2008. However, the Appellant has not produced any evidence in the Appeal Memorandum to the effect that they had reversed said re-credit in their PLA in pursuance of said Re-credit order. The Appellant is, therefore, not eligible for re-credit on this issue. However, if the Appellant had reversed corresponding re-credit in their PLA in pursuance of Re-credit Order No. 165/2008-09 dated 4.6.2008, then evidence to that effect should be produced before the refund sanctioning authority, who shall process the same under speaking order. I further find that the reasons cited by the refund sanctioning authority in the impugned order for rejection of re-credit for the month of April, 2008 are not acceptable. The refund sanctioning authority is directed to trace the relevant records and process the re-credit claim by adhering to the principles of natural justice.

9.4 Now I examine admissibility of re-credit in respect of other two issues raised by the Appellant, which are involved in re-credit claim for the month of April, 2008. I find that the issue whether the Appellant was 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 stands decided by the Hon'ble Supreme Court vide judgement dated 22.4.2020 passed in the case of Union of India Vs. VVF Ltd & Others as reported in 2020 (372) E.L.T. 495 (S.C.), wherein it has been held that Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 were not hit by the doctrine of promissory estoppel, the same are to be applied retrospectively and they cannot be said to be irrational and/or arbitrary. The relevant portion of the judgement is reproduced 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."

9.5 By respectfully following the above judgement, 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 and conditions prescribed therein.

9.6 As regards admissibility of refund of Education Cess and Secondary and Higher Education Cess under Notification No. 39/2001-CE dated 31.7.2001, I find that the issue 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). "

9.7 By following the above judgement, I hold that the appellant is not eligible for re-credit of Education Cess and Secondary & Higher Education Cess.

9.8 In view of the above, I hold that the Appellant is not eligible for re-credit on the above two issues i.e. (i) re-credit at full rate of duty under Notification No. 39/2001-CE dated 31.7.2001, as amended and (ii) re-credit of Education Cess and Secondary & Higher Education Cess. The Appellant is required to pay corresponding re-credit amount along with interest, if not already reversed in their PLA pursuant to Re-credit Order No. 165/2008-09 dated 4.6.2008.

10. In view of above discussion and findings, I order as under :

(i) The refund sanctioning authority is directed to process refund / re-credit claims for the months of February, 2008, March, 2008, August, 2010 and September,2010 on merits and in terms of notification No. 39/2001-CE dated 31.7.2001, as amended.

(ii) The refund sanctioning authority is directed to process consequential claim for the month of April, 2008 in terms of directions contained in Para 9.3 supra.

11. In view of above, I set aside the impugned order and dispose of the appeal by way of remand.

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

12. The appeal filed by the Appellant is disposed off as above.

24 April, 2021.

(Akhilesh Kumar)
Commissioner(Appeals)

Attested

सत्यापित

Superintendent(Appeals)
जे. एस. नाग्रेचा
अधीक्षक (अपील्स)

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 फाइल।