



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी.द्वारा:-DIN-20210864SX0000621496

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/371/RAJ/2009	128-139/2009-10	25.08.2009
	V2/148/RAJ/2010	386-394/2009-10	17.02.2010
	V2/483-487/RAJ/2010	141-145/2010-11	12.07.2010
	अपील आदेश संख्या(Order-In-Appeal No.):		

KCH-EXCUS-000-APP-192-TO-198-2021

आदेश का दिनांक /
Date of Order: **18.08.2021**

जारी करने की तारीख /
Date of issue: **18.08.2021**

श्रीअखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by ShriAkhilesh Kumar, Commissioner (Appeals), Rajkot.

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम / द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham ;
- घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of theAppellant&Respondent :-

M/s. Mono Steel (India) Ltd, Survey No. 374, Village Dhamadka, Taluka: Anjar, District: Kutch.

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

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत 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 उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमानी भवन असर्वा 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 क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

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 dutydemanded/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रामाणित 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 क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
Application made for grant of stay shall be accompanied by a fee of Rs.500/-

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 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, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उक्त 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 Commissioner authorizing 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 (सेन्टेट) के प्रति अपील 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 इस करोड़ रूपए 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 (नं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (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 को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन 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, जहाँ 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 an 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 outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी केरीट 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 समायाचिधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियाँ 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (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 Mono Steel (India) Ltd, Kutch (hereinafter referred to as "Appellant") has filed Appeal Nos. V2/371/RAJ/2009, V2/148,483-487/RAJ/2010 against Re-Credit Orders as per details given below (*hereinafter referred to as "impugned orders"*) passed by the Deputy Commissioner, erstwhile Central Excise Division, Gandhidham (*hereinafter referred to as "refund sanctioning authority"*)

Sl. No.	Appeal Nos.	Refund Order No. & Date	Period	Refund claim amount (in Rs.)	Refund Sanctioned Amount (in Rs.)	Refund rejection amount (in Rs.)
1	2.	3.	4.	5.	6.	7.
1.	371/2009	128-139/2009-10 dated 25.8.2009	April, 2008 to March, 2009	13,56,40,722	11,91,93,632	1,64,47,090
2.	148/2010	386-394/2009-10 dated 17.2.2010	April, 2009 to December, 2009	6,17,12,684	5,91,79,531	25,33,153
3.	483-487/2010	141-145/2010-11 dated 12.7.2010	January, 2010 to May, 2010	5,89,81,244	4,79,66,556	1,10,14,688

1.1 Since issues involved in above mentioned appeals are common, I take up all appeals together for decision vide this common order.

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of excisable goods falling under Chapter Nos. 72,73 and 74 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AADCM3137CXM001. 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(c) of the said notification.

2.1 The Appellant had filed Re-credit applications for the period as mentioned in column No. 4 of Table above for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA as detailed in column No. 5 of Table above in terms of notification *supra* on clearance of finished goods manufactured by them.

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

(i) The Appellant was eligible for re-credit considering value addition computed @75% in respect of goods manufactured from specified inputs in terms of Notification No. 39/2001-CE dated 31.07.2001, as amended and the Appellant was eligible for re-credit considering value addition computed @39% in respect of goods manufactured from non-specified inputs.

(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 Appellant was not entitled for re-credit of Education Cess and S.H.E. Cess.

3. The refund sanctioning authority vide the impugned orders determined re-credit amount as mentioned in column No. 6 of Table above and rejected remaining claimed amount as mentioned in column No. 7 of Table above and ordered the Appellant to reverse the excess amount claimed along with interest in terms of Para 2C(e) of the said notification.

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

(i) They were engaged in the manufacture of Sponge Iron and MS Billets. As per the manufacturing process, Iron Ore and Coal are mixed in required proportion to manufacture Sponge Iron. Thereafter, Sponge Iron is mixed with Scrap in required proportion to manufacture MS Billets. Since Sponge Iron and MS Billets were manufactured from Iron Ore in the same factory, they were eligible for re-credit @75% as per Sl. No. 15 of Notification No. 39/2001-CE dated 31.7.2001, as amended. However, instead of granting the 75% rate, the sanctioning authority



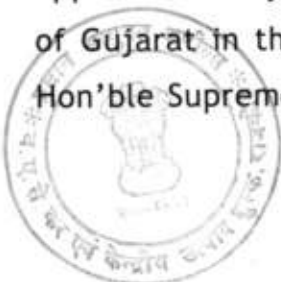
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granted proportionate benefit of 75% in the proportion in which Iron Ore was used in manufacturing of MS billets. When the notification clearly stated that the exemption shall be applied at 75% when the product is manufactured from the iron ore as specified in the table, allowing proportionate re-credit is not tenable in law and liable to be quashed with consequential relief. Further, when the notification itself states on the issue then restrictive interpretation in such manner is always considered as ultra vires. The exemption notification has to be strictly interpreted on the wording of the notification itself.

(ii) When Sponge Iron was considered for refund @75% despite the fact that major quantity of Coal was mixed with Iron Ore, then how mixing of bought out Scrap with Sponge Iron for manufacturing MS Billet can be considered as manufactured from the non-specified input? Thus, proportionate disallowance to that extant is not tenable in law. MS billet will also eligible for the 75% exemption.

(iii) The sanctioning authority has not granted re-credit of Education Cess and Secondary and Higher Education Cess. The reason for not granting both cess is beyond any understanding. The sanctioning authority simply mentioned a direction letter from Commissioner's office and deducted the refund claim without giving any reasons for deduction of cess amount. As per Section 93(3) of the Finance Act, 2004, all provision of the Central Excise Act, 1944 including those relating to refund, exemption, penalties will also apply to education cess. Therefore, this declaration in the Section levies no room for doubt as to whether Education Cess is a duty of excise for the purpose of the exemption notification and other purposes and exemption related to the excise duty will automatically apply to education cess also. The contention of the department that education cess is Outside the purview of the benefit of the exemption notification 39/2001 CE dated 31.07.2001 is clearly illegal and not tenable and liable to be quashed with immediate effect and relied upon case laws of Sun Pharmaceuticals Industries Ltd - 2007 (207) ELT 673 and Godrej Consumer Products Ltd - 2007 (219) ELT 585.

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 in similar matters 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. Hearing in the matter was scheduled in virtual mode on 8.6.2021, 30.6.2021 and 15.7.2021 and communicated to the Appellant by Speed Post at the address mentioned in Appeal Memorandum. However, no consent was received from the Appellant nor any request for adjournment was received. I, therefore, take up the appeal for decision on merits on the basis of available records and grounds raised in Appeal Memorandum.

7. I have carefully gone through the facts of the case, impugned orders and submissions made by the Appellant in appeal memoranda. The issues to be decided in the present appeals are whether,

- (i) Sponge Iron and MS Billets manufactured by the Appellant are eligible for re-credit @75% under Sl. No. 15 of Table Para 2 of Notification No. 39/2001-CE dated 31.7.2001, as amended or not ?
- (ii) the Appellant is eligible for refund/re-credit of Education Cess and Secondary & Higher Education Cess under the provisions of the Notification No. 39/2001-CE dated 31.07.2001, as amended ?

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 April, 2008 to May, 2010 for re-credit of Central Excise Duty paid from PLA on clearance of finished goods manufactured by them. The refund sanctioning authority, after determination, restricted the re-credit amount as mentioned in column No. 6 of Table reproduced in Para 1 above and rejected remaining claimed amount as mentioned in column No. 7 of Table ibid and ordered for its recovery vide the impugned orders on various counts mentioned in the impugned orders.

8.1 The Appellant has contended that Sponge Iron and MS Billets were manufactured from Iron Ore in the same factory and hence, they were eligible

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for re-credit @75% as per Sl. No. 15 of Notification No. 39/2001-CE dated 31.7.2001, as amended but the sanctioning authority erroneously sanctioned re-credit @75% in the proportion in which Iron Ore was used in the manufacturing of MS billets. The Appellant further contended that when the notification clearly stated that the refund shall be admissible @75% when the product is manufactured from the Iron Ore, allowing proportionate re-credit is not tenable in law and the impugned orders are liable to be quashed.

9. I find that Notification No. 39/2001-CE dated 31.7.2001 was amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which altered the method of calculation of refund by taking into consideration the duty payable on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity. Thus, a manufacturer was eligible for refund of Central Excise duty only at the rates prescribed in the said notifications. I find that the Appellant had claimed re-credit @75% in respect of final products manufactured by them in terms of Sl. No. 15 of Table appearing at Para 2 of said notification, which is reproduced as under:

“2. The duty payable on value addition shall be equivalent to the amount calculated as a percentage of the total duty payable on the said excisable goods of the description specified in column (3) of the Table below (hereinafter referred to as the said Table) and falling within the Chapter of the said First Schedule as are given in the corresponding entry in column (2) of the said Table, when manufactured starting from inputs specified in the corresponding entry in column (5) of the said Table in the same factory, at the rates specified in the corresponding entry in column (4) of the said Table :

TABLE

S. No.	Chapter of the First Schedule	Description of goods	Rate	Description of inputs for manufacture of goods in column (3)
(1)	(2)	(3)	(4)	(5)
1.	29	All goods	29	Any goods
2.	30	All goods	56	Any goods
3.	33	All goods	56	Any goods
4.	34	All goods	38	Any goods
5.	38	All goods	34	Any goods
6.	39	All goods	26	Any goods
7.	40	Tyres, tubes and flaps	41	Any goods
8.	72 or 73	All goods	39	Any goods, other than iron ore
9.	74	All goods	15	Any goods
10.	76	All goods	36	Any goods
11.	85	Electric motors and generators, electric	31	Any goods

S. No.	Chapter of the First Schedule	Description of goods	Rate	Description of inputs for manufacture of goods in column (3)
(1)	(2)	(3)	(4)	(5)
		generating sets and parts thereof		
12.	25	Cement or cement clinker	75	Limestone and gypsum
13.	17 or 35	Modified starch/glucose	75	Maize
14.	18	Cocoa butter or powder	75	Cocoa beans
15.	72 or 73	Iron and steel products	75	Iron ore
16.	Any chapter	Goods other than those mentioned above in S. Nos. 1 to 15	36	Any goods

9. It is pertinent to examine relevant findings recorded by the sanctioning authority in the impugned orders, which are reproduced as under:

"The Superintendent of Central Excise Range - Gandhidham submitted that as declared by the claimant declared in Form ER-6 of the respective months, it is noticed that;

- (i) the inputs i.e. iron ore and coal, have been used for manufacture of Sponge Iron;
- (ii) the inputs i.e. MS Scrap (purchased from the other manufacturers/units) and Sponge Iron (manufactured in their own factory), have been used for manufacture of MS Billets;
- (iii) the inputs i.e. MS Plates (purchased from the other manufacturers/units) have been used for manufacture of TMT/Round Bars.

The Superintendent of Central Excise Range - Gandhidham submitted that in view of the facts as discussed above and as declared by the assessee in their Form ER-6 for the respective months, it has been found that the goods (Ch.72) manufactured/cleared during the period under consideration, have been manufactured using the common/mix inputs namely iron ore, coal, sponge iron, MS scrap (i.e. inputs specified and non specified). Further, the assessee has produced separate records of production, clearance, duty paid in respect of finished goods manufactured/cleared using the specified and non specified inputs respectively and also produced the Certificate issued by the Chartered Engineer regarding consumption of raw material and goods manufactured/cleared from sponge iron and other brought out raw material/scrap i.e. specified and non specified inputs, for the period under consideration, required as per the clarification dated 15.10.2008 issued by CBEC. Thus, the refund claim is computed @ 75% for the goods produced



from the specified inputs and @ 39% for the goods produced from the non specified inputs under the category mentioned at Sr. No. 8/15 (as the case may be) in the table inserted in para 2 of the Notification No. 39/2001-CE dated 31.7.2001, as amended, on the basis of records/information produced by the assessee and clarification issued vide CBEC letter no.101/18/2008-CX3 dated 15.10.2008 and HQ letter F. No. V/16-83/MP/2005 dated 23.10.2008.”

9.1 Considering the above findings as well as table showing detailed calculation in the impugned orders, I find that the sanctioning authority determined re-credit amount @75% in respect of Sponge Iron and Billets manufactured out of specified input i.e. Iron Ore, in terms of Notification No. 33/2008-CE dated 10.6.2008. Further, the sanctioning authority determined re-credit amount by considering value addition @ 39% in respect of MS Billets which were manufactured out of non specified input i.e. bought out scrap. Apparently, scrap is not listed as specified input under Notification No. 33/2008-CE dated 10.6.2008. Hence, the Appellant is not eligible for re-credit @75% in respect of MS Billets which were manufactured out of non specified input i.e. bought out Scrap. I also find that the Appellant had provided details of goods manufactured out of specified input and non specified input duly certified by the Chartered Engineer, as recorded in the impugned orders. Considering the facts emerging from records, I hold that the Appellant is not eligible for re-credit @75% in respect of MS Billets manufactured out of non specified input. I, therefore, uphold the impugned orders to that extent.

9.2 It is further observed that in Appeal No. 371/2009, period involved is from April, 2008 to March, 2009. During the period from 1.4.2008 to 9.6.2008, the rate of value addition was @ 39% in respect of goods falling under Chapter No. 72 and 73, as provided under Notification No. 16/2008-CE dated 27.3.2008, which was applicable during the material period. Further, value addition @75% was introduced only with effect from 10.6.2008 vide Notification No. 33/2008-CE dated 10.6.2008. Thus, the sanctioning authority has correctly determined re-credit amount @39% for the period from 1.4.2008 to 9.6.2008. I, therefore, uphold the impugned order No. 128-139/2009-10 dated 25.8.2009 to that extent.

10. As regards the second issue, I find that the refund sanctioning authority had sanctioned re-credit of Central Excise duty under Notification No. 39/2001-CE dated 31.7.2001, as amended, but had not sanctioned re-credit of Education



Cess and Secondary & Higher Education Cess on the ground that exemption under the said notification was available only to Central Excise Duty and the said notification did not cover Education Cess and Secondary & Higher Education Cess and hence, the appellant was not entitled for re-credit of Education Cess and S.H.E Cess. On the other hand, the Appellant has pleaded that as per Section 93(3) of the Finance Act, 2004 and Section 138 of the Finance Act, 2007, all provisions of Central Excise Act, including those relating to refund, exemption will also apply to Education Cess and SHE Cess; that this declaration in the section leaves no room for doubt that Education Cess is a duty of excise for the purpose of exemption notification.

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

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



three-Judge Bench of this Court in Modi Rubber Limited (supra), which has been followed by another three-Judge Bench of this Court in Rita Textiles Private Limited (supra). ”

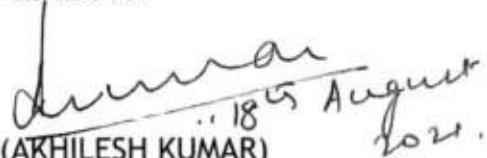
10.2 By respectfully following the above judgement, I hold that the appellant is not eligible for refund of Education Cess and Secondary & Higher Education Cess. I, uphold the impugned orders to that extent.

11. In view of above, I uphold the impugned orders and reject the appeals.

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

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

सत्यापित,
/ 
विष्णु भाट्ट
अधीक्षक (अपीलें)


18th August
2021.
(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To,
M/s Mono Steel (India) Ltd,
Survey No. 374,
Village Dhamadka,
Taluka : Anjar,
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, अंजार-भचाउ मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



