::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय 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-20211264SX000000F2E2

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/53/RAJ/2021	**06/DC/KG/2020-21**	**10-02-2021**

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

RAJ-EXCUS-000-APP-058-2021

आदेश का दिनांक / Date of Order:	**29.12.2021**	जारी करने की तारीख / Date of issue:	**30.12.2021**

श्रीअखिलेश कुमार, आयुक्त (अपील्स), 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 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. Mehta Herbals Pvt Ltd (G-523, GIDC, Lodhika), Metoda-GIDC, Rajkot-360021, .

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 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 असावी 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 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।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 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 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 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।/

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,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 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 इकाई, 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 outside India 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 समायावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख 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 पढी 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 various umbers 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 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 है । /
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. Mehta Herbals Pvt. Ltd., Rajkot (hereinafter referred to as "appellant") has filed Appeal No. V2/53/RAJ/2021 against Order-in-Original No. 6/DC/KG/2020-21 dated 10.2.2021 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, Central GST, Division-II, Rajkot (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant was engaged in the manufacture of 'Ayurvedic medicines falling under Chapter Sub-Heading No. 30049011 of the Central Excise Tariff Act, 1985 and was registered with Central Excise Department having Registration No. AABCM4331JXM001. During the course of Audit of the records of the Appellant undertaken by the Departmental officers, it was observed that the Appellant had availed and utilized Cenvat credit of 'sugar cess' during the period from April, 2014 to June, 2017. It was observed that Cenvat credit of sugar cess is not covered under specified duty/tax/cess, which can be availed as Cenvat credit in terms of Rule 3(1) of the Cenvat Credit Rules, 2004 (*hereinafter referred* to as "CCR, 2004"). It was further observed that cess on sugar was not covered under Rule 3(4) and Rule 3(7b) of CCR, 2004, which provided manner in which various duty/tax/cess could be utilised. It appeared to the Audit that the Appellant had wrongly availed and utilized Cenvat credit of sugar cess amounting to Rs. 1,35,240/- during the period from April, 2014 to June, 2017.

2.1 Show Cause Notice No. VI(a)/8-283/Circle-I/AG-05/2017-18 dated 29.8.2019 was issued to the appellant for recovery of wrongly availed Cenvat credit amount of Rs. 1,35,240/- along with interest under Rule 14(1)(ii) of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 and proposing imposition of penalty under Rule 15(2) of CCR, 2004 read with Section 11AC of Central Excise Act, 1944.

2.2 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat Credit of Rs. 1,35,240/- and ordered for its recovery along with interest, under Rule 14 of CCR, 2004 read with Section 11A of the Central Excise Act, 1944 and imposed penalty of Rs. 1,35,240/- under Rule 15 of CCR, 2004 read with Section 11AC of Central Excise Act, 1944.

3. Being aggrieved, the appellant preferred the present appeal on the following grounds, *inter alia*, contending that,

(i) The impugned order was passed on the basis of assumption and presumption basis disregarding the legal provisions.

(ii) The wordings used in Section 3 of Sugar Cess Act, 1982 makes it clear that, although a cess is levied and collected for the purpose of the Sugar Development Fund Act, 1982, it is in the nature of a duty of excise. The duty of excise levied under sub Section (1) shall be in addition to the duty of excise leviable on sugar under the Central Excise Act or any other law for the time being in force as is clear from sub-Section (2). The way sub-Section (2) is worded makes it clear that what is levied and collected as a cess under sub Section (1) of Section 3 is characterized as a "duty of excise" levied under the Central Excise Act, 1944. Further, sub-Section (4) makes it clear that the provisions of the Central Excise Act and the Rules made there under including those relating to refunds and exemptions from duty shall, so far as may be, apply in relation to the levy and collection of the said duty of excise as they apply in relation to the levy and collection of the duty of excise on sugar under that Act. Therefore, appellant is entitled to the benefit of Cenvat Credit.

(iii) It is settled proposition of law that when the provisions of the Central Excise Act, 1944 and rules made thereunder are made applicable to the Sugar Cess Act in terms of Section 3(4) of the Sugar Cess Act, then it goes without saying that the provisions of Cenvat Credit Rules, 2004 would also be applicable and relied upon judgement of the Hon'ble Karnataka High Court in the case of Shree Renuka Sugars Ltd - 2014 (302) ELT. 33 (KAR).

(iv) That the show cause notice is barred by the limitation and hence, liable to be dismissed. When there are two different interpretations possible and simply because they had interpreted a provision beneficial to him, it cannot be said that there is mala fide on their part and relied upon case law of Lanxess ABS Ltd. - 2011 (22) S.T.R. 587 (Tri. - Ahmd.)

(v) It is also a settled preposition of law that when a statutory periodical return is filed and that all the required columns of the said return are filled-up in accordance with law, if format of return do not provide for giving information regarding what sort of credit is availed, appellant is not supposed to separately make such declaration. Therefore, not doing so would not mean that he has suppressed facts. The fact that statutory periodical returns are filed regularly, that by itself would mean that there is no fraud, mala-fide, willful intend to evade payment of duty etc. With regard to above, CESTAT Ahmedabad in Parekh Plast (India) Pvt.

Ltd. - 2012 (25) S.T.R. 46 (Tri-Ahmd). Further, in cases involving interpretation of provision of statute, it cannot be concluded that an interpretation was made with mala-fide intention. Likewise, there are number of decisions/ judgements which would say that in order to conclude that there was a mala-fide intention on part of an appellant, it is a must to find out that there was some positive act on part of the appellant. Meaning thereby, simply because appellant has not made any declaration before the department which statutorily he is not supposed to make, in that case, it cannot be said that the appellant has suppressed facts.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 17.12.2021. Shri Devashish K. Trivedi, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order, and written as well as oral submission of the Appellant. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing Cenvat Credit of Sugar Cess amounting to Rs. 1,35,240/-, is correct, proper and legal or not.

6. I find that the Appellant had availed and utilized Cenvat Credit of sugar cess during the period from April, 2014 to June, 2017. The impugned order denied the said Cenvat credit on the grounds that Cenvat credit of sugar cess is not covered under specified duty/tax/cess, which can be availed as Cenvat credit in terms of Rule 3(1) of CCR, 2004 and that cess on sugar was not covered under Rule 3(4) and Rule 3(7b) of CCR, 2004, which provided manner in which various duty/tax/cess could be utilised.

6.1 The Appellant has contended that the sugar cess, levied and collected for the purpose of the Sugar Development Fund Act, 1982, is in the nature of a duty of excise. Further, Section 3(4) of the Sugar Cess Act, 1982 makes it clear that the provisions of the Central Excise Act and the Rules made thereunder including those relating to refunds and exemptions from duty shall, so far as may be, apply in relation to the levy and collection of the said duty of excise as they apply in relation to the levy and collection of the duty of excise on sugar under that Act. Therefore, appellant is entitled to the benefit of Cenvat Credit.

7. I find that eligibility of Cenvat credit availed on sugar cess is under dispute. Hence, it is pertinent to examine the provisions of Rule 3 of the Cenvat Credit Rules, 2004, which are reproduced as under:

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act :

Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -
(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or
(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v), (vi) and (via):

(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act :
Provided that a provider of output service shall not be eligible to take credit of such additional duty;

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act;

(ixa) the service tax leviable under section 66A of the Finance Act;

(ixb) the service tax leviable under section 66B of the Finance Act;

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(xi) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005),:
paid on -

(i) any input or capital goods received in the factory of manufacture of final product or by the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,
including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance

> (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004 :"

7.1 On plain reading of Rule 3 of CCR, 2004 *supra*, it is apparent that it did not provide for Cenvat credit of every duty of Excise and cesses but only those listed therein and this list does not include sugar cess levied under the Sugar Cess Act, 1982. If the intention was to allow credit of all forms of duties of excise and cesses, the Cenvat Credit Rules, 2004 would have been drafted accordingly. Instead, it only listed some forms of duties of excise, additional duties of customs and cesses on which credit will be admissible and sugar cess is not one of them. Even though, Section 3(1) of the Sugar Cess Act, 1982 specified that sugar cess is a duty of excise and that Section 3(4) ibid stipulated that the provisions of the Central Excise Act, 1944 and Rules made thereunder shall apply to levy of cess on sugar, the fact remains that Rule 3(1) of CCR, 2004 did not specify cess on sugar for the purpose of availing Cenvat credit. I rely on the decision of the Hon'ble Gujarat High Court rendered in the case of Sahakari Khand Udyog Mandli Ltd. reported as 2011 (263) E.L.T. 34 (Guj.), wherein the Hon'ble Court has held that,

> "6. Under Section 3(1) of the Cess Act, a provision is made for imposition of cess and it is specifically provided that "There shall be levied and collected as a cess". Meaning thereby, the levy and collection is of a cess for the purposes of the Sugar Development Fund Act, 1982. Thereafter, the provision goes on to state, what should be the rate at which the cess is to be levied and for sake of convenience, the same is described as duty of excise. In the event it was a central excise duty, as contended, the rate would have been provided in the Tariff Act and not in this provision.
>
> 7. Similarly, when one reads sub-section (2) of Section 3 of the Cess Act, it becomes clear that what is levied under sub-section (1) is in addition to the duty of excise leviable on sugar under the Central Excise Act, 1944, or any other law for the time being in force. Once again, pointing out to the Scheme which is distinct from the provisions of the Central Excise Act read with the Tariff Act. When one reads sub-section (4) of Section 3 of the Cess Act, it becomes clear that for the purposes of levy and collection of the cess levied under sub-section (1) of Section 3 of the Cess Act, the procedural provisions relatable to levy and collection of the duty of excise, provisions relating to refund and exemption from duty, etc., are made applicable by invoking principle of incorporation. In other words, instead of bodily repeating the provisions of levy and collection of cess by this provision, the provisions under the Central Excise Act and the Rules thereunder have been incorporated and are to be read as part and parcel of the Cess Act. By adopting this legislative procedure, the legislature has used a well known legislative tool, but from the said exercise, it cannot be inferred or stated that the sugar cess imposed under the provisions of the Cess Act assume the characteristic of central excise duty so as to warrant calculation of education cess on the amount of cess so collected.
>
> 8. Section 4 of the Cess Act is again an inherent indicator when it provides that the proceeds of the duty of excise levied under Section 3 (sugar cess) shall

be credited to the Consolidated Fund of India. For the purposes of utilization of the said fund, one has to consider provisions of Sugar Development Fund Act, 1982 simultaneously to ascertain as to whether the sugar cess is in fact and in law only a cess or is a duty of central excise.

9. Under the Sugar Development Fund Act, 1982, 'fund' means sugar development fund formed under Section 3 of the said Act, Under sub-section (2) of Section 3 of the Sugar Development Fund Act, 1982, it is provided that an amount equivalent to the cess collected under the Cess Act, reduced by the cost of collection, together with any moneys received by the Central Government for the purposes of the Sugar Development Fund Act, shall, after due appropriation made by parliament by law be credited to the sugar development fund. To put it differently, amount which was collected by way of sugar cess under the Cess Act is in the first instance, credited to the Consolidated Fund of India and thereafter, by due appropriation made by the parliament by law credited to the sugar development fund.

10. For the present, it is not necessary to consider other provisions of the Sugar Development Fund Act, 1982 relating to application of the sugar development fund etc. Suffice it to state that the Cess Act and the Sugar Development Fund Act both have been brought on the statute book simultaneously on the same day and operate as a consolidated scheme and the provisions of both the Acts have to be read together. On such conjoint reading, it is apparent that a plain reading by itself would indicate that the sugar cess levied and collected cannot be equated with duty of central excise and therefore, cannot be treated to be part and parcel of the amount on which education cess has to be calculated. In the circumstances, there is no infirmity in the impugned order of Tribunal to warrant interference."

7.2 Although, the issue before the Hon'ble Court in above case was whether Education Cess is payable on sugar cess or not but the Hon'ble Court has held that sugar cess cannot be equated with duty of excise and, therefore, education cess is not payable on sugar cess. I find that ratio of the above decision is applicable to the facts of the present case to decide whether sugar cess can be considered as duty of excise or not.

8. I also take note of the Board's Circular No. 978/2/2014-CX, dated 7-1-2014 issued from F.No. 262/2/2008- CX.8, wherein it has been clarified that,

"2. Representations have been received from trade and field formations seeking clarification as to whether the Education Cess chargeable under Section 93(1) of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess chargeable under Section 138(1) of the Finance Act, 2007 should be calculated taking into account the cesses which are collected by the Department of Revenue but levied under an Act which is administered by different departments such as Sugar cess levied under Sugar Cess Act, 1982, Tea Cess levied under Tea Act, 1953 etc.

3. The matter has been examined. A cess levied under an Act which is not administered by Ministry of Finance (Department of Revenue) but only collected by Department of Revenue under the provisions of that Act cannot be treated as a duty which is both levied and collected by the Department of Revenue."

9. Now I examine various case laws relied upon by the Appellant as under:

(i) Shree Renuka Sugars Ltd. - 2014 (302) E.L.T. 33 (Kar.) :

In the said case, the appellant, a sugar manufacturer, imported raw sugar and availed Cenvat credit of CVD equivalent to Cess levied and paid under the Sugar Cess Act, 1982 and this levy was in addition to the CVD levy equal to Central Excise duty. Proceedings were initiated on the ground that the appellant was not entitled for the Cenvat credit for the reason that the sugar cess is not one of the duties allowed for Cenvat credit as per the Cenvat Credit Rules, 2004. In backdrop of above facts, the Hon'ble High Court held that appellant was eligible to avail Cenvat credit of CVD paid on sugar cess. However, facts of the present case are not identical to above case. Further, when there are contradictory decisions available on any issue, decision rendered by the jurisdictional High Court will prevail over decision of other High Court as held by the Larger Bench of Tribunal in the case of Madura Coats reported as 1996 (82) E.L.T. 512 (Tribunal). Accordingly, decision rendered by the Hon'ble Guajrat High Court in the case of Sahakari Khand Udyog Mandli Ltd *supra* shall prevail over relied upon case law.

(ii) M/s Shah Paper Mills Ltd. - 2009 (236) E.L.T. 122 (Tri. - Ahmd) and M/s R.A. Shaikh Paper Mills Pvt. Ltd. - 2008 (228) E.L.T. 59 (Tri. - Ahmd):

In the said cases, it was held by the Hon'ble CESTAT, Ahmedabad that paper cess was a duty of excise and hence, Education Cess was chargeable on paper cess. I find that Hon'ble Gujarat High Court in the case of Sahakari Khand Udyog Mandli Ltd. *supra* has held that sugar cess is not a duty of excise and Education Cess is not payable on sugar cess. Further, the Board vide Circular dated 7.1.2014 has clarified that a cess levied under an Act which is not administered by Ministry of Finance (Department of Revenue) but only collected by Department of Revenue under the provisions of that Act cannot be treated as a duty of excise. Hence, reliance placed on the said case laws is not sustainable.

(iii) Ramco Cements Limited - 2018 (362) E.L.T. 841 (Tri. - Bang.):

In the said case, it was held by the Hon'ble CESTAT, Banglore that Clean Energy Cess was paid as duty of excise and hence, appellant was entitled to Cenvat Credit even if cess was not specifically mentioned under Rule 3 of Cenvat Credit Rules, 2004. I find that Hon'ble CESTAT, New Delhi in the case of ACC Ltd. reported as 2019 (31) G.S.T.L. 103 (Tri. - Del.) has held that Clean Energy Cess was levied on coal for specific

purpose of funding the clean energy initiatives and was deposited into the Consolidated Fund of India. It was further held that the impugned cess, irrespective of its nomenclature, not at all the duty of Excise or tax but was a fee and hence, Cenvat credit of Clean Energy Cess was not available under Rule 3 of Cenvat Credit Rules, 2004. The Order in the case of M/s ACC Ltd was passed by the Division Bench of the Hon'ble CESTAT, New Delhi, which will prevail over Order passed by single member Bench of the Hon'ble CESTAT, Banglore passed in the relied upon case of M/s Ramco Cements Ltd. I, therefore, discard the reliance placed on the said case law.

10. In view of the above discussion and findings, I hold that the Appellant is not eligible to avail Cenvat credit of sugar cess. I, therefore, uphold the confirmation of demand of Rs. 1,35,240/-. Since demand is upheld, it is natural consequence that confirmed demand is required to be paid along with interest. I, therefore, uphold impugned order for recovery of interest.

11. Regarding penalty imposed under Rule 15 of CCR, 2004, the Appellant has contended that show cause notice is barred by the limitation and hence, liable to be dismissed. In order to conclude that there was a mala-fide intention on their part, it has to be proved that there was some positive act on their part. Simply because they had not made any declaration before the department which was statutorily required, it cannot be said that they had suppressed the facts.

11.1 I find that wrong availment of Cenvat credit on sugar cess was revealed during audit of the records of the Appellant. Had there been no audit of Appellant's records, such wrong availment of Cenvat credit would have gone unnoticed and hence, ingredients for invoking extended period under Rule 14 of CCR, 2004 exist in the present case. Hence, I hold that the demand is not barred by limitation. I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

> "6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.

6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."

(Emphasis supplied)

11.2 Since suppression of facts has been held to be applicable in this case, penalty under Rule 15 of CCR, 2004 read with Section 11AC of the Act is mandatory. The Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) has held that once there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 1,35,240/- imposed under Rule 15 of CCR, 2004.

12. In view of above, I uphold the impugned order and reject the appeal.

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

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

सत्यापित,

बिपुल शाह
अधीक्षक (अपील)

(AKHILESH KUMAR)
Commissioner (Appeals)

By RPAD

To, M/s Mehta Herbals Pvt Ltd G-523, GIDC Lodhika, Metoda, Rajkot.	सेवा में, मे॰ मेहता हर्बल्स प्राइवेट लिमिटेड जी-523, जीआईडीसी लोधिका, मेटोडा, राजकोट।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट मंडल-2, राजकोट को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।