::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-20211064SX0000111A3B

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/300/RAJ/2009	**78/2009-10**	**11.06.2009**
	V2/301/RAJ/2009	79/2009-10	**11.06.2009**
	V2/351/RAJ/2009	113/2009-10	**13.08.2009**
	V2/100-102/RAJ/2010	189-191/2009-10	**25.01.2010**

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

KCH-EXCUS-000-APP-219 to 224-2021

आदेश का दिनांक / Date of Order: **30.09.2021**

जारी करने की तारीख / Date of issue: **01.10.2021**

श्री अखिलेश 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 the Appellant/Respondent :-

M/s. Varsana Ispat Ltd.,Survey No. 116/1-2,,Village VARSANA,Talika : Anjar- Kutchh,

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 असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,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 सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/-, where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत॰सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी 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 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 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 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 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 laich 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 Varrsana Ispat Ltd, Kutch (hereinafter referred to as "Appellant") has filed below mentioned Appeals against Refund Orders as per details given below (*hereinafter referred to as "impugned orders"*) passed by the Assistant 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.)
1	2.	3.	4.	5.	6.
1.	300/RAJ/ 2009	78/2009-10 dated 11.6.2009	July, 2008 to November, 2008 and March, 2009	11,07,98,318	4,48,36,603
2.	301/RAJ/ 2009	79/2009-10 dated 11.6.2009	June, 2008	87,36,806	80,02,262
3.	351/RAJ/ 2009	113/2009-10 dated 13.8.2009	December, 2008 to February, 2009	1,18,75,795	Nil
4 to 6	100-102/ RAJ/ 2010	189 to 191/ 2009-10 dated 25.1.2010	October, 2009 to December, 2009	1,93,09,695	1,02,58,360

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 No. 72 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AACCV1058NXM001. 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 notification applied only to those units which were set up on or after 31.7.2001 but not later than 31.12.2005. Further, the said notification defined the expression 'set

up' to mean that the new unit commenced civil construction work in its factory and any installation of plant and machinery on or after 31.7.2001 but not later than 31.12.2005 and that unit commenced commercial production on or before 31.12.2005. 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 had filed Refund applications for the period as mentioned in column No. 4 of Table above for refund 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 refund applications, it was observed by the refund sanctioning authority that,

(i) The Appellant was eligible for refund 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 refund considering value addition computed @39% in respect of goods manufactured from non-specified inputs.

(ii) The finished products MS Beams, MS Angle, Tower line products etc. were manufactured out of plant and machinery installed after cut off date of 31.12.2005 and hence, the said products were not eligible for benefit of said notification.

(iii) 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 refund of Education Cess and S.H.E. Cess.

3. The refund sanctioning authority vide the impugned orders sanctioned refund amount as mentioned in column No. 6 of Table above and rejected remaining claimed amount.

4. Being aggrieved, the Appellant has preferred the present appeals, *inter-*

alia, on the grounds that,

(i) The refund of duty paid on MS Beams, MS Angles etc. was rejected by the refund sanctioning authority solely on the ground of (i) D.O. letter issued by the Joint Secretary (TRU) from F. No. 356/2/2001 – TRU dated 17.10.2001; and (ii) letter issued by the Director (TRU) from F. No. 332/07/2006-TRU dated 25.04.2006. The clarification issued vide letter issued by the Joint Secretary (TRU) from F. No. 356/2/2001 – TRU dated 17.10.2001, which is referred in the impugned orders is not applicable to units having original investment in plant and machinery above Rs. 20 Crore as per the provisions of proviso of para 1 of the above stated notification. The clarification issued vide letter of the Director (TRU) from F. No. 332/07/2006TRU dated 25.04.2006, which is referred in the impugned Refund Order, is also not applicable to the instant case. The same is applicable to particular kind of specified goods of which commencement of commercial production after 31.12.2005. Here, the term "particular kind of specified goods" is very important. On plain reading it appears that the intention of the clarification may be such that any particular kind of specified goods which cannot be manufactured out of the plant and machinery installed up to 31.12.2005 but requires totally different types of plant and machinery altogether and which is falling under totally different segment like goods of iron and steel of Chapter 72, 73 and textile articles of Chapter 51 to 63. In their case, the MS Beams and Angles i.e. Structure Steel falling under Chapter 72 pertains to same type of the products of which appellant has started commercial production before 31.12.2005. Thus, the refund rejected of duty paid on structural steel i.e. MS Beams and Angles, relying the above stated clarification letter is not legal and sustainable and is liable to be set aside.

(ii) That the said notification No. 39/2001-CE dated 31.7.2001, as amended, does not contain any such provision that goods whose commercial production have been started after 31.12.2005 will not be eligible for benefit of the notification even though the unit has already started commercial production of their other products well before 31.12.2005. The above stated both the relied upon letters clarifies such matter which is not stated anywhere in the notification and the same has been clarified without any support of law. The above stated both the letters are not issued under Section 37B of the Central Excise Act, 1944. Hence, the same are not binding in nature. Hence, the refund rejected

on the grounds of the said clarification letters is not legal and sustainable and is liable to be set aside.

(iii) The refund sanctioning authority considered rate of value addition of 39%. However, they are eligible for refund on structural steel products i.e. MS Beams and Angles @ 75% of value addition as sometimes for manufacture of these products, they had used MS Billets manufactured out of own manufactured Sponge Iron which is captively consumed along with procured Sponge Iron and waste and scrap. Accordingly, in light of the CBEC Circular F. No. 101/18/2008 CX3 dated 15.10.2008, the appellant is eligible for refund considering value addition of 75%. Hence, the rate of value addition mentioned in the impugned refund order is not legal and sustainable.

(iv) That the rejection of Education Cess and Secondary and Higher Education Cess from the refund claimed under notification 39/2001-CE dated 31-7-2009, is not sustainable. As per Section 93(3) of the Finance Act, 2004 and Section 138 of the Finance Act, 2007, all provision of Central Excise Act, including those relating to refund, exemption will also apply to Education Cess and SHE Cess. The exemption provisions of notification 39/2001 CE dated 31.07.2001, as amended, is also applicable to the Education Cess & Secondary & Higher Secondary Education Cess. Hence, the appellant had been rightly claimed refund of Education Cess and of Secondary & Higher Secondary Education Cess. Thus, the impugned refund order rejecting refund of Education Cess and of Secondary & Higher Secondary Education Cess is not legal and sustainable and hence is liable to be set aside to that extent.

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 through video conferencing on 18.8.2021, 27.8.2021 and 22.9.2021 which was 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 appeals for

decision on merits on the basis of available records and grounds raised in Appeal Memoranda.

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) the finished goods manufactured by the Appellant are eligible for refund @75% under Sl. No. 15 of Table at Para 2 of Notification No. 39/2001-CE dated 31.7.2001, as amended or not ?

(ii) the Appellant is eligible for benefit of Notification No. 39/2001-CE dated 31.07.2001, as amended in respect of finished products MS Beams, MS Angle, Tower line products etc. or not ?

(iii) the Appellant is eligible for refund of Education Cess and Secondary & Higher Education Cess under the provisions of the Notification No. 39/2001-CE dated 31.07.2001, as amended or not ?

8. On perusal of the records, I find that the Appellant was availing the benefit of area based Exemption Notification No. 39/2001-CE dated 31.7.2001, as amended. As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 prevalent at the relevant time. The Appellant had filed refund applications for refund of Central Excise Duty, Education Cess and S.H.E. Cess paid from PLA on clearance of finished goods manufactured by them. The refund sanctioning authority partially rejected the refund claim amount on various counts mentioned in the impugned orders.

8.1 The Appellant has contended that the refund sanctioning authority erroneously considered rate of value addition of 39%, but they are eligible for refund on structural steel products i.e. MS Beams and Angles @ 75% of value addition as sometimes for manufacture of these products, they had used MS Billets manufactured out of own manufactured Sponge Iron, which is captively consumed along with procured Sponge Iron and waste and scrap. Accordingly, in light of the CBEC Circular F. No. 101/18/2008 CX3 dated 15.10.2008, the appellant is eligible for refund considering value addition of 75%. Hence, the rate of value addition mentioned in the impugned refund order is not legal and sustainable.

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 refund @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 generating sets and parts thereof	31	Any goods
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

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

> " In his aforementioned verification report the JRS has reported that the claimant is manufacturing the sponge iron, Billets, TMT Bars etc., using the iron ore in their Sponge iron plant, but said sponge iron plant has been installed after 31.12.2005 as intimated by the Claimant vide their letter dated 14.7.2008 (copy enclosed). Hence, the claimant is not eligible for refund @ 75% under category No. 15 as specified in Para-2 of the said notification.
>
> Further it is observed that the sponge Iron (captive use) is being manufactured by using Iron ore and coal. The M.S Scrap used by them is a CENVATABLE product and they have availed the Cenvat credit on the M.S. Scrap purchased from outside. They have not maintained any separate records for the goods manufactured exclusively from Iron ore and M.S. Scrap. The goods under reference have not been manufactured exclusively from Iron ore therefore again the applicant is eligible for refund of 39% only as per Sr. No. 8 of the Notification 33/2008-CE dated 10.6.2008."

9.2 Considering the above findings as well as table showing detailed calculation in the impugned orders, I find that the sanctioning authority determined refund amount by considering value addition @39% in respect of finished goods, which were manufactured out of non-specified inputs i.e. bought out Sponge Iron and scrap. The Appellant also manufactured Sponge Iron out of Iron Ore but the Sponge Iron plant was installed after cut-off date of 31.12.2005. These facts are not disputed by the Appellant. Apparently, Sponge Iron and scrap are not listed as specified inputs under Notification No. 33/2008-CE dated 10.6.2008. Hence, the Appellant is not eligible for refund @75% in respect of finished goods which were manufactured out of non-specified inputs. I also take note of the clarification issued by the Board vide letter F.No. 101/18/2008-CX.3 dated 15.10.2008, which is reproduced as under:

> "Issue : Rate of refund in cases where higher rate is prescribed but final product is not manufactured solely from prescribed raw material or where at intermediate stage other material is also used.
>
> Clarification: Notification prescribes a higher rate of value addition of 75% for specified goods when the goods are manufactured starting from the specified inputs in the same factory. The intention of the amendment is to prescribe a higher rate of value addition for the

units using non cenvatable raw materials like mineral ores and agriculture product. Therefore, if a unit is not manufacturing the final product starting from the specified raw material in the same factory then the higher rate should not be applicable to him. Therefore, if ingots are manufactured out of bought out Scrap / Sponge iron the benefit of higher rate cannot be given for the quantity of ingot manufactured out of non-specified input. However, the benefit of higher rate would be available only for the quantity of final products which have been manufactured starting from the specified inputs. Therefore, if a unit manufactures the final product (say iron and steel ingot) out of specified inputs (say iron ore) and also from bought out material (say scrap / sponge iron), in that case, the assessee needs to keep separate production records showing the quantity produced starting from specified inputs (say iron ore) and other bought out inputs and the higher rate shall be applicable only for the quantity of products manufactured from specified input. A certificate from Chartered Engineer may also be produced by the assessee for this purpose. "

10. As regards the second issue, I find that the refund sanctioning authority did not sanction refund in respect of MS Beams, MS Angle, Tower line products manufactured by the Appellant on the grounds that the same were manufactured out of plant and machinery installed after cut-off date of 31.12.2005. The Appellant has contended that the relied upon letter F. No. 332/07/2006-TRU dated 25.04.2006 of Director (TRU) is not applicable to their case as the same is applicable to particular kind of specified goods of which commercial production was commenced after 31.12.2005. The intention of the clarification may be such that any particular kind of specified goods which cannot be manufactured out of the plant and machinery installed up to 31.12.2005 but requires totally different types of plant and machinery altogether and which is falling under totally different segment like goods of iron and steel of Chapter 72, 73 and textile articles of Chapter 51 to 63. The Appellant further contended that in their case, the MS Beams and Angles i.e. Structure Steel falling under Chapter 72 pertains to same type of the products of which appellant has started commercial production before 31.12.2005. Thus, the refund rejected of duty paid on structural steel i.e. MS Beams and Angles, relying the above stated clarification letter is not legal and sustainable and is liable to be set aside.

10.1 I find that the said notification applied only to those units which were set up on or after 31.7.2001 but not later than 31.12.2005. Further, the said notification defined the expression 'set up' to mean that the new unit commenced civil construction work in its factory and any installation of plant and machinery on or after 31.7.2001 but not later than 31.12.2005 and that unit commenced commercial production on or before 31.12.2005. On examining the facts of the case, I find that the Appellant started manufacturing MS Beams, MS Angle, Tower line products etc. after cut-off date of 31.12.2005. Further, plant and machinery used for manufacture of said products were installed after 31.12.2005, as recorded by the refund sanctioning authority in the impugned orders. Under the circumstances, the Appellant is not eligible for refund of duty paid on said products under said notification, as correctly held by the refund sanctioning authority.

10.2 I rely on the Order passed by the Hon'ble CESTAT, Ahmedabad in the case of Ratnmani Metals And Tubes Ltd reported as 2012 (276) E.L.T. 230 (Tri. - Ahmd.), wherein it has been held that,

> "6. After carefully considering submissions made by both the sides, we find that there is no dispute about the fact that the goods, in respect of which refund stands denied by lower authorities, were manufactured with the machinery installed after 31-12-05. The notification, in question, is available in respect of manufacturing units, which has made the investments and started their production before 31-12-05. As such, it can be reasonably concluded that the legislature intended to cover only those units in the Kutch area, wherein the investment was complete by 31-12-05. The benefit of the said notification is being extended to the appellant in respect of the goods manufactured with the plant and machinery installed prior to the said date.
>
> 7. The question which arises is as to whether subsequent expansion of the unit by installing new machines after 31-12-05 would get covered by the said notification or not. Admittedly the second tube mill was installed after 31-12-05. If viewed from another angle, it can be reasonably observed as if the appellant have installed a second factory in the said area for manufacture of the goods. If the machines, instead of being installed in the same factory, would have been installed in a separate factory, the benefit of the notification was admittedly not available to the appellant. As such, merely because the second tube mill stand installed in the same factory, which was earlier enjoying the exemption, would not result in grant of exemption to the second tube mill.
>
> 8. Even if viewed from the conditions of the notifications, it is clearly mentioned that the benefit of notification would be available in respect of those units which have been fully complete prior to 31-12-05 and has started their production prior to the said date. There is nothing in the said notification as regards extension of the said date of 31-12-05 in respect of the subsequent instalment of plant and machinery. As rightly contended by learned SDR, when the notifications are unambiguous and clearly lay down

the conditions, the scope of the same cannot be extended by referring to the legislative intent. Such notifications are required to be interpreted in accordance with the words of the notification.

9. Even if we go by the legislative intent, the same becomes clear from the various circulars and clarifications issued by the Government. The TRU letter F. No. 356/02/01-TRU, dated 17-10-01 addressed to the Chief Commissioner of Customs, Vadodara seeking clarifications raised by the Chief Commissioner supports the Revenue's case. For better, appreciation, we reproduce the clarification on issue No. '4' :-

Issue in brief	**View of Chief Commissioner, Customs & C. Ex., Vadodara**	**Board's decision**
4. Whether any extra benefit of exemption in terms of the proviso to the first para is to be given for the value of any subsequent investment increasing the capacity of the unit.	The reference in the Notification being only to the original value of investment in plant and machinery on the date of commencement of commercial production, subsequent investment should be ignored.	"We agree. The intention was to keep the operation of the scheme simple. Giving benefit of subsequent investments would not only complicate the scheme, the quantum of benefit available to a unit would also keep changing."

10. Reference may be made to Circular No. 110/11/2006/CX.3, dated 10-7-08. The relevant part of said circular clarifying the issue is as under :-

> *"Point No. 1 :* Whether the benefit of exemption would be available to goods/products that the units starts manufacturing after the cut off date for the commencement of commercial production i.e. 31-12-2005.
>
> *Comments :* There would be two situations. First is that where a unit introduces a new product by installing fresh plant, machinery or capital goods after the cut off date in such a situation, exemption would not be available to this new product. The said new product would be cleared on payment of duty, as applicable, and separate records would be required to be maintained to distinguish production of these products from the products which are eligible for exemption.
>
> The other situation is the one where a unit starts producing some products (after the cut off date) using the plant and machinery installed upto the cut off date and without any addition to the plant and machinery. For example, in case of plastic moulded products a unit may commence the production of different products simply by changing the moulds and dies. In that case, the unit would be eligible for the benefit of Notification because the plant and machinery used for manufacture has remained the same. In this connection, it is further clarified that for the purpose of computing the original value of plant and machinery, the value of plant and machinery installed on the date of commencement of commercial production only shall be considered."

11. Admittedly the clarification issued by the said letter reflects upon the

is another letter written by TRU on 25th April 2000 addressed to the Secretary General, Federation of Industries of India, indicating that the benefit of the notification would not be available to those new industrial units, which commences commercial production after 31-12-05."

(Emphasis supplied)

10.3 Regarding contention of the Appellant that MS Beams and Angles i.e. Structure Steel falling under Chapter 72 pertained to same type of the products of which appellant has started commercial production before 31.12.2005 and hence, they were eligible for benefit of said notification, I find that such an interpretation is not in line with the provisions contained in the said notification. Since, the plant and machinery for manufacture of said products were installed after the cut-off date of 31.12.2005 as found by the refund sanctioning authority in the impugned orders, they were not eligible for benefit of said notification, as discussed above.

11. As regards the third issue, I find that the refund sanctioning authority had sanctioned refund of Central Excise duty under Notification No. 39/2001-CE dated 31.7.2001, as amended, but had not sanctioned refund 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 refund 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. Since Education Cess & SHE Cess were duties of excise which were paid on the aggregate of duties of excise leviable under the Act, Education Cess & SHE Cess being in the nature of excise duty was also required to be refunded along with Central Excise duty.

11.1 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). "

11.2 By respectfully following the above judgement, I hold that the appellant is not eligible for refund of Education Cess and Secondary & Higher Education Cess.

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

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

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

सत्यापित,

विपुल शाह

(AKHILESH KUMAR)
Commissioner (Appeals)

30th September 2021.

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।