



::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-20211064SX000000C939

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/267/RAJ/2010	17/2011-11	09.04.2010
	V2//264-266/RAJ/2010	505to507/2009/10	17.03.2010
	V2/69/RAJ/2010	368to375/2009/10	20.01.2010
	V2/263/RAJ/2010	17/2011-11	05.04.2010

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

KCH-EXCUS-000-APP-228 to 231-2021

आदेश का दिनांक /
Date of Order: **30.09.2021** जारी करने की तारीख /
Date of issue: **11.10.2021**

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 / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से मुक्ति: /
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. Sky Appliances Ltd., Survey No. 46/1, 2, 3, Village: Varsamedi,, Tal.: Anjar, Dist. Kutch.,

इस आदेश(अपील) से ब्यथित 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 (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असर्वा अहमदाबाद- 380016 को की जानी चाहिए /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in 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 मांग, ब्याज की मांग 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 मार्बजिनल 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। स्वयं 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 duty/demand/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 प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग 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 मार्बजिनल 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। स्वयं 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 shall be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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 सकती 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 महायुक्त 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 Form 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 (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 हैं
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनबेट जमा की ली गई गलत राशि
(iii) सेनबेट 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 स्वगन 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 मंचिव, 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 चरी 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 क्रेडिट केडीट 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 निर्यात 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 प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत चिनिर्दिष्ट 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 साध्य 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 चाहिए। इस तथ्य के होते हुए भी भी लिखा पढी कार्य में 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 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 Appellate 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 स्वगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होगा 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-1 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 बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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. Sky Appliances Ltd., Village Varsamedi, Taluka: Anjar, District: Kutch (hereinafter referred to as "Appellant") has filed Appeal Nos. V2/69, 263-267/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.	Re-credit Order No. & Date	Period	Recredit claim amount (in Rs.)	Re-credit sanctioned amount (in Rs.)
1.	2.	3.	4.	5.	6.
1.	69/2010	368-375/2009-10 dated 20.1.2010	2008-09 & April 2009 to October, 2009	32,14,046/- 5,27,25,479/-	Nil
2.	264-266/2010	505 to 507/2009-10 dated 17.3.2010	November 2009 to January 2010	1,07,56,672/-	Nil
3.	263/2010	02/2010-11 dated 05.4.2010	February 2010	54,61,665/-	Nil
4.	267/2010	17/2010-11 dated 09.4.2010	2010-11	Forfeited the facility of recredit in terms of para 2(c)(f) of notification No. 39/2001-CE dated 31.7.2001	

1.1 Since issues involved in above mentioned appeals are common / inter-linked, 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 Colour Television, Receiver Set, DVD Player, Glass Shell, Cathode Ray Tube etc. falling under Chapter Nos. 70 & 85 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAICS8688MXM001. 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. The said notification defined



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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. Further, as per proviso to Para 1 of the said Notification, in the case of a unit having an original value of investment in plant and machinery installed in the factory below rupees twenty crore on the date of commencement of commercial production in that unit, the exemption contained in said notification shall apply only for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year.

2.1 As per certificate dated 7.7.2006 issued by the committee consisting of Chief Commissioner of Central Excise, Ahmedabad and the Principal Secretary, Department of Industries, Government of Gujarat, Gandhinagar to the Appellant in terms of para 3(ii) and para 3(iv) of the said notification, the unit is a new industrial unit set up with original value of investment in plant and machinery of Rs. 39,10,26,524/-. The Appellant exercised the option of re-credit for the year 2009-10 vide letter dated 27.3.2009 in terms of para 2C(a) of the said notification.

3. The refund sanctioning authority forfeited the facility of re-credit for the year 2009-10 vide Re-credit Order No. 233/2009-10 dated 04.11.2009 on the grounds that,

(i) Audit of the records of the Appellant by the Departmental officers revealed that the Appellant was manufacturing Colour Picture Tube (CPT), which was captively used for manufacture of their finished goods i.e. Colour TV (CTV) upto May, 2008, but after May, 2008, the CPT plant was shut down and the Appellant was purchasing flat/slim CPT from market and using the same in the manufacture of CTVs.

(ii) The phrase used in the said notification '*initial investment in plant and machineries installed and commencement of commercial production on or before 31.12.2005*' indicated that exemption is available only if goods are manufactured by using Plant and Machinery so installed upto 31.12.2005. The claimant submitted undertaking along with every re-credit claims that the goods were manufactured using plant and machinery installed upto the cutoff date, i.e., 31.12.2005. However, the fact is that subsequently CPT plant was shut down resulting in decrease in value of plant and machinery used for manufacture of finished goods



below Rs. 20 Crore, for which there is restriction in the said notification with reference to value of clearance each year.

(iii) The claimant mis-declared that they had manufactured the goods by using the plant and machinery installed upto 31.12.2005. The claimant was availing the exemption on the goods procured from outside and assembling the same in the factory premises, thus, the goods cannot be considered manufactured by the claimant using the Plant and Machinery installed upto 31.12.2005 for the purpose of availing the benefit of the Notification.

3.1 Being aggrieved, the appellant preferred appeal before the then Commissioner (Appeals), Central Excise, Rajkot who vide Order-in-Appeal No. 13/2010/COMMR(A)/RAJ dated 10.01.2010 remanded the matter to the refund sanctioning authority with a direction to decide the case after issuance of show cause notice and following the principles of natural justice.

4. The Appellant filed re-credit application for the period from April, 2009 to October, 2009 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. The Appellant also filed annual re-credit claim for the year 2008-09 for differential duty in terms of Para 2.2 of the said Notification. The refund sanctioning authority vide the impugned order mentioned at Sr. No. 1 of Table above rejected the re-credit claims and ordered to pay / reverse irregular re-credit amount along with interest in terms of Para 2C(e) of the said notification on the ground as mentioned in Para 3 above and also on the ground that the claimant had failed to submit the original value of investment in Plant and Machinery of the Assembly Line installed before 31.12.2005, without which the claims are unsubstantiated and eligible amount of re-credit cannot be ascertained under para 2C(e) of the Notification.

4.1 The Appellant filed two re-credit applications for the period from November 2009 to January 2010 and for the month of February, 2010, respectively, 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. The refund sanctioning authority rejected the re-credit applications vide the impugned orders mentioned at Sr. No. 2 and 3 of Table above



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respectively on the same ground as mentioned in Para 3 above and also on the ground that the claimant had failed to submit the original value of investment in Plant and Machinery of the Assembly Line installed before 31.12.2005, without which the claims are unsubstantiated and eligible amount of re-credit cannot be ascertained under para 2C(e) of the Notification.

4.2 The Appellant vide letter dated 15.3.2010 exercised their option for availing the facility of re-credit for the financial year 2010-11 in terms of Para 2C(a) of the said notification. The Dy. Commissioner, erstwhile Central Excise Division, Gandhidham-Kutch vide impugned order mentioned at Sr. No. 4 of Table above forfeited the facility of re-credit, *inter alia*, on the above said grounds that the re-credit facility merits rejection on account of non-determination of eligible amount of re-credit.

5. In pursuance of remand directions of the then Commissioner (Appeals) vide Order-in-Appeal dated 10.1.2010 referred in Para 3.1 *supra*, the refund sanctioning authority vide Order No. 283/2010-11 dated 23.03.2011 restored the re-credit facility for the period from November, 2009 to March, 2010.

6. Being aggrieved, the Appellant preferred the present appeals against impugned orders mentioned at Sr. No. 1 to 4 of Table above, *inter-alia*, on the grounds that,

(i) The refund sanctioning authority has wrongly interpreted the proviso to Para 1 of the said notification. The said proviso merely provides that if the value of the installed plant & machinery is less than Rs.20 crore then exemption will apply only for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year. The said proviso only speaks of value of installed plant & machinery and not value of machinery put to use for the manufacture of goods. The department cannot supply words to the notification when the language of the notification is clear and unambiguous. It is well settled legal position of law that courts or authorities cannot read anything into a statutory provision which is plain and unambiguous.

(ii) The plant & machinery of CPT line are still installed in the factory and at present can be used to manufacture the colour picture tubes and submitted certificate issued by the Chartered Engineer certifying that the plant is installed and is in working condition. Even bought out picture



tubes were assembled on the assembling line which the Department is contemplating has been shut down. They had undertaken the process such as deflection yoke, and other assemblies on the assembling line, which is an integrated line and televisions are being manufactured and cleared on payment of duty.

(iii) There is nothing in the notification which even remotely suggests that if the value of investment goes below Rs. 20 crore in subsequent period then full exemption will not be admissible. Therefore, bringing any condition to the notification which is not present in the notification is illegal and the impugned order is liable to be set aside on this ground itself.

(iv) The notification uses the phrase 'original value of investment'. The word 'original' has been defined in Oxford Advanced Learners Dictionary to mean existing at the beginning of a particular period i.e. to say when the notification provides original value of investment on date of commercial production it means investment existing at the date of commencement of commercial production i.e. prior to 31.12.2005. Thus, the value of investment prior to 31.12.2005 alone is relevant and what happens to that investment subsequently is irrelevant. Keeping this intention of notification in mind the Board has also clarified that subsequent investment i.e. any investment in plant & machinery after 31.12.2005 is irrelevant and the products manufactured out of such investment will not be eligible for exemption. However, this cannot be relied upon to say that even for the investment made prior to 31.12.2005 manufacture of finished goods out of such investment is compulsory because notification does not provide such condition.

(v) That they have availed the benefit of the notification only after complying with all the conditions of the notification including the condition which requires them to obtain certificate from committee as to the fact that the unit is a new industrial unit and certificate of original value of investment. The Committee has granted certificate dated 7.7.2006 to the effect that the Original value of investment is Rs. 39,10,26,524/- and the said certificate is still in force. Once, the certificate on the strength of which they have availed benefit of Notification is in force the impugned order of the refund sanctioning authority that the value of investment is less than Rs.20 crore is bad in



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law and not sustainable.

(vi) That the present case is not the one where they are not undertaking any manufacturing activity. They are manufacturing Colour Televisions and clearing on payment of duty though out of bought out glass tubes which are further processed to manufacture television.

(vii) The finding of the refund sanctioning authority in the impugned order that the notification speaks of initial investment is factually incorrect inasmuch as the notification uses the word 'Original investment' which means the total value of investment in plant & machinery installed prior to 31.12.2005. The notification does not use the phrase goods manufactured out of plant & machinery whose original value of investment is more than Rs.20 crore prior to 31.12.2005. The finding of the refund sanctioning authority is thus erroneous and the impugned order is liable to be set aside.

(viii) That the entire assembly line i.e. CPT line and Television line is an integrated line installed before 31.12.2005 therefore question of identifying the separate value for CPT line is not required and question of claim being unsubstantiated does not arise. Further, the CPT line was not shut down and was duly used as explained above. In any case, the same CPT line is functioning fully as on date. Therefore, the reasoning of the refund sanctioning authority to reject the re-credit claim is not sustainable.

7. 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.

8. Hearing in the matter was scheduled in virtual mode on 08.06.2021, 30.6.2021, 14/15.7.2021 and 17/18.08.2021 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 appeals for decision on merits on the basis of available records and grounds raised in Appeal Memoranda.



9. I have carefully gone through the facts of the case, impugned orders and submissions made by the Appellants in appeal memoranda. The issue to be decided in the present appeals is whether the impugned orders passed by the refund sanctioning authority denying the benefit of Notification No. 39/2001-CE dated 31.7.2001, as amended, to the appellant on grounds that all of the Plant and Machinery installed in the factory at the time commencement of commercial production is not used for manufacture of finished goods is legally sustainable or not?

10. 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 2008-09 to 2010-11 as mentioned in Table of Para 1 above for re-credit of Central Excise Duty paid from PLA on clearance of finished goods manufactured by them. The refund sanctioning authority, rejected the re-credit applications / forfeited re-credit facility on the grounds that benefit of said notification is available only if goods are manufactured by using Plant and Machinery installed upto 31.12.2005 but the Color Picture Tube (CPT) plant was shut down and the Appellant was purchasing flat/slim CPT from market and using the same in the manufacture of Colour TVs. The shut down of CPT plant resulted in decrease in value of plant and machinery below Rs. 20 Crore, for which there is restriction in the said notification with reference to value of clearance each year. Since, the Appellant failed to submit the original value of investment in Plant and Machinery of the Assembly Line installed before 31.12.2005, eligible amount of re-credit cannot be ascertained under para 2C(e) of the Notification.

10.1 The Appellant has contended that the refund sanctioning authority has wrongly interpreted the proviso to Para 1 of the said notification. The said proviso merely provides that if the value of the installed plant & machinery is less than Rs. 20 crore then exemption will apply only for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year. The said proviso only speaks of value of installed plant & machinery and not value of machinery put to use for the manufacture of goods. There is nothing in the notification



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which even remotely suggests that if the value of investment goes below Rs. 20 crore in subsequent period then full exemption will not be admissible. It is well settled legal position of law that courts or authorities cannot read anything into a statutory provision which is plain and unambiguous. The Appellant further contended that the plant & machinery of CPT line are still installed in the factory and at present can be used to manufacture the colour picture tubes and submitted certificate issued by the Chartered Engineer certifying that the plant is installed and is in working condition.

11. I find it is pertinent to examine the proviso to Para 1 of said notification involved in the present case, which is reproduced as under:

“Provided that in the case of a unit having an original value of investment in plant and machinery installed in the factory below rupees twenty crore on the date of commencement of commercial production in that unit, the exemption contained herein shall apply only for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year.”

11.1 I find that the said notification granted exemption to the specified goods by way of refund of Central Excise duty and Additional Excise duty payable on value addition undertaken in the manufacture of goods. By virtue of above proviso, it was provided that if original value of investment in plant and machinery installed in the factory was below Rs. 20 Crore on the date of commencement of commercial production in that unit, then the exemption contained in the said notification shall apply only for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year. Thus, the above provisions took into consideration original value of investment in plant and machinery at the time of commencement of commercial production for determining quantum of exemption by a unit every year.

12. In backdrop of above legal provisions and on examining the facts of the case, I find that original value of investment in plant and machinery of the Appellant was Rs. 39.10.26.524/- at the time of commencement of commercial

that the Appellant was manufacturing Colour Picture Tube, which was captively used for manufacture of their finished goods i.e. Colour TV upto May, 2008, but after May, 2008, the Appellant admittedly used bought out flat/slim CPT for manufacture of Colour TV. However, I find from the provisions of said Notification that there is no bar in the said notification for use of bought out inputs in the manufacture of final product, so long as declared finished goods are manufactured in the unit. Similarly, there is no provision in the said notification that required the manufacture to use entire plant and machineries installed at the time of commencement of commercial production in order to become eligible for exemption under said notification. If some of the plant and machinery for manufacture of intermediate goods is not used and such goods are bought out from the market, as has been the case here, then in that case benefit of said notification cannot be denied. The Appellant cannot be forced to put into use all of the plant and machinery as the provisions of notification provided for the extent of benefits based on value of investment in plant and machinery. The benefit of said notification cannot be denied as long as the Appellant is manufacturing the declared finished goods in compliance of the terms and conditions of the said notification. The refund sanctioning authority, thus, erred in interpreting the provisions contained in proviso to Para 1 of the said notification and wrongly came to conclusion that exemption is available only if goods are manufactured by using Plant and Machinery installed upto 31.12.2005.

13. I further find that quantum of refund under said notification is determined on the basis of rate of value addition prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008. Further, the proviso to Para 1 of said notification comes into play only at the time of commencement of commercial production to determine whether an assessee would be eligible for exemption of the said notification without any limit or would be eligible only for the first clearances up to an aggregate value not exceeding twice the value of such investment, every year. However, it is not correct to consider non utilization of certain Plant and Machinery for manufacture of intermediate goods as decrease in value of Plant and Machinery and apply the provisions contained in proviso to Para 1 of said notification, while deciding re-credit claims. Such an interpretation is not supported by the provisions contained in the said notification.

14. It is also pertinent to mention here that the refund sanctioning authority, in *de novo* proceedings, has restored the re-credit facility of the Appellant for the period from November, 2009 to March, 2010 vide Re-credit Order No.



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283/2010-11 dated 23.3.2011 on the basis of physical verification carried out by the jurisdictional Range Superintendent as well as Chartered Engineer's Certificate dated 8.2.2010. The relevant portion of the order is reproduced as under:

“(i) The JRS has visited the factory premises on 15.07.10 and found that entire plant including manufacturing the colour tubes for C.T.V. along with the assembly line machinery for manufacturing the colour T.V. as well as L.C.D. Television is in working condition and manufacturing process was going on. This fact has also been reiterated and substantiated by the Chartered Engineer certificate issued on 08.02.10 in which it is certified that the appellant is an original equipment manufacturer of colour television sets along with major and vital sub-assemblies Colour Picture Tubes, etc. They further endorsed that Test Equipment of CPT manufacturing plant had some technical problems which have already been rectified. However, during the visit and personal inspection it was observed and confirmed that the said Test Equipment is in perfectly working condition to streamline the manufacturing process of CPT. The sub-assemblies of CPT were in work in process.”

15. In view of above, it is observed that the refund sanctioning authority has restored the re-credit facility to the appellant for period covered by appeal at Serial No. 2 and 3 above. However, it is not forthcoming from records whether the refund sanctioning authority has processed the pending re-credit applications involved in the present case, in terms of para 2C(e) of the said notification. I, therefore, find it fit to remand these appeals to the refund sanctioning authority with a direction to verify the records and process the pending re-credit applications involved in the present appeals as per law and in terms of provisions contained in Notification No. 39/2001-CE dated 31.7.2001, as amended and by adhering to the principles of natural justice.

16. I set aside the impugned orders and allow the appeals by way of remand.

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

17. The appeals filed by the appellant are disposed of in above terms.

By R.P.A.D.

सत्यापित,

[Signature]

विपुल साह
अधीक्षक (अपील)

[Signature]
30th September 2011
(AKHILESH KUMAR)
Commissioner (Appeals)



To,
M/s Sky Appliances Ltd.,
Survey No. 46/1,2,3,
Village : Varsamedi,
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-भचाड मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।



