



::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 / 2<sup>nd</sup> 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-20211064SX000000CFE7

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश सं / O.I.Q. No.	दिनांक/ Date
	V2/297/RAJ/2009	77/2009-10	30.09.2020

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

**KCH-EXCUS-000-APP-240-2021**

आदेश का दिनांक / Date of Order:	21.10.2021	जारी करने की तारीख / Date of issue:	21.10.2021
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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 एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सूचित: /  
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. Meena Agency Ltd., Survey No. 548-552/2, National Highway No. 15, Near Samkhiyali, Vill: Lkadiya,**

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 मामलों में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को जाननी 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असर्वा अहमदाबाद- 380016 को जाननी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार 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 जहाँ 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 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 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 रजिस्टार 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 जहाँ 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 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 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 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 रुपये 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 गयी 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 स्वयंम 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 कोपुनरीक्षण 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 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 छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी क्रेडिट 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 समयावधि 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 विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 माध्यम 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 Challian 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 कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त दंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various 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-1 के अनुसार मूल आदेश एवं स्वयंम 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 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](http://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](http://www.cbec.gov.in).



:: ORDER-IN-APPEAL ::

M/s Meena Agency Limited (formerly known as Meena Agency Pvt. Ltd), Kutch (hereinafter referred to as "Appellant") has filed appeal against Refund Order No. 77/2009-10 dated 27.05.2009 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, erstwhile Central Excise Division, Gandhidham (hereinafter referred to as "adjudicating authority") :

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of excisable goods falling under Chapter Heading Nos. 69, 38 and 26 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AABCM4325QXM004. The Appellant was availing benefit of exemption under Notification No. 39/2001-CE dated 31.07.2001, as amended (hereinafter referred to as 'said notification'). As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per prescribed rates and refund was subject to condition that the manufacturer has to first utilize all Cenvat credit available to them on the last day of month under consideration for payment of duty on goods cleared during such month and pay only the balance amount in cash. The said notification was subsequently amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which altered the method of calculation of refund by taking into consideration the duty payable on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity.

2. The appellant had filed refund claims for the period from April-2008 to Feb-2009 before the adjudicating authority. On scrutiny of re-credit applications, it was observed by the sanctioning authority that,

(i) the Appellant was eligible for exemption only at the rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and the Appellant was not entitled to refund of full amount paid through PLA.

(ii) exemption under the said notification was available only to Central Excise Duty and the said notification did not cover Education Cess and Secondary & Higher Education Cess and hence, the appellant was not entitled for refund of Education Cess and S.H.E. Cess and hence, the same is not required to be considered while working out eligible refund;

(iii) As per Notification No. 37/2007 dated 17.09.2007, goods for export can only be cleared under LUT or bond; that the Appellant had cleared goods for export on payment of duty from PLA which is not admissible; that refund of Rs. 11,21,270/- on this ground is to be deducted;

(iv) The Appellant had defaulted in payment of duty and paid the same in subsequent months along with interest, but failed to pay the duty consignment wise for which he was liable for payment of interest amount of Rs. 2,97,232/-, which was required to be recovered from the refund amount;

2.1 In view of above observations, the adjudicating authority vide the impugned order sanctioned eligible refund amount of Rs. 3,84,71,233/- to the Appellant.

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

(i) The adjudicating authority had wrongly rejected the refund of duty paid for export consignments as the matter was already decided in their favour with consequential relief by the Commissioner (Appeals), Rajkot vide OIA No. 302-304(299 to 301)/RAJ/COMMR(A)/RAJ dated 24.03.2009; that the said OIA had never been disputed by the department and no appeal had been filed in CESTAT;

(ii) The adjudicating authority cannot ignore the decision of the Commissioner (Appeal); that the order of Appellate Authority is binding on the subordinate authorities even in subsequent proceedings; that reliance is placed upon following judgments

(a) Ghanshyam Chejra Vs Cenvat Credit 1989(44)ELT 202(Cal.)

(b) Godrej and Boyce Mfg Co Pvt Ltd Vs. UOI 1984(18)ELT 172(Bom)

(iii) Instead of granting the refund in respect of disputed period, the adjudicating authority has further deducted their refund claim related to the month of March-2008 on the same identical matter and passed such highly illegal order which is liable to be quashed with immediate effect; grant them the refund not only for the current period but also for the preceding period along with interest and cost of this appeal;

(iv) The adjudicating authority has erred in rejecting refund of Education Cess and SHE Cess; that as per Section 93(3) of the Finance Act, 2004 and Section 138 of the Finance Act, 2007, Education Cess all provisions of Central Excise Act, including those relating to refund, exemption will also apply to Education Cess and SHE Cess. ; that the contention of the department that Education cess is outside the purview of the benefit of the exemption notification No. 39/2001-CE dated 31.07.2001 is not tenable ; that reliance is placed upon following judgments

(a) TTK LIG Ltd Vs. Cenvat credit (2006(193)ELT 169(Tri.LB)

(b) Sun Pharmaceutical Industries Vs. CCE 2007(207)ELT 673(Tri.Del.)

(c) Godrej Consumer Products Ltd Vs. CCE 2007(219)ELT 585(Tri.Kolkata)

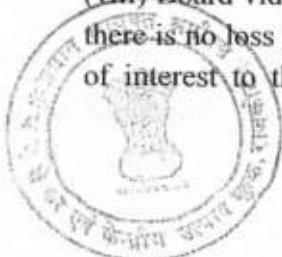
(d) Bharat Box Factory 2007(214) ELT 534 (Tri. Delhi)

(v) The adjudicating authority had deducted refund claim by Rs. 2,97,232/- for interest on goods on which duty not paid consignment wise; that the unit availing benefit of Notification No. 39/2001-CE dated 31.07.2001 has to pay the PLA amount only to satisfy the procedural aspect and conditions specified the para 2A of the notification; that since the exempted PLA duty was paid to satisfy the condition of Para 1A, it cannot be said that the PLA payment have to be made in accordance with Central Excise Rules; the manner specified in rule 8 of the Central Excise Rules will not be applicable to exempted units and exempted units will pay the exempted PLA amount only in terms of the para 2A of the notification

(vi) If the unit delay in the amount which they have to be paid through PLA the benefit of the exemption under this notification will also be delayed further the impact is revenue neutral because of the notification

(vii) The reliance is placed upon Pratibha Processors Vs. UOI(1988ELT12(SC) ) wherein it is held that interest is a mere accessory to principal and if principal is not payable interest is also not payable

(viii) Board vide Circular No. 10/2006 dated 14.02.2006 has taken the same view; that if there is no loss to the Government, then no compensation is required to be paid; that levy of interest to the extent of exemption shall be considered as illegal and liable to be



quashed]

(ix) In terms of Board's clarification dated 08.08.2008 issued from F.No. 101/19/2007-Cx.3, the Rule 8(3A) of Central Excise Rules, 2002 is not applicable in their case;

5. The Appeal was transferred to callbook in view of pendency of appeal filed by the Department before the Hon'ble Tribunal against the Order-in-Appeal No. 358 to 359(325 to 326)/RAJ/2009/Commr(A)/Raj dated 27.04.20019 passed by the then Commissioner (Appeals), Rajkot in the case of M/s. Mid India Power and Steel Limited. The said appeals were retrieved from callbook in view of the judgement dated 28.09.2021 passed by the Hon'ble Tribunal and have been taken up for disposal.

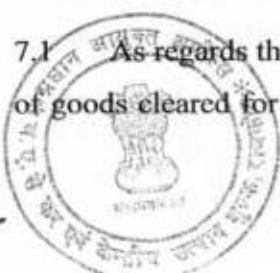
5.1 Hearing in the matter was scheduled in virtual mode on 15.09.2021, 30.09.2021 and 08.10.2021 and communicated to the Appellant by Speed Post at the address mentioned in appeal memorandum. However, no consent was received from the Appellant nor any request for adjournment was received. I, therefore, take up the appeals for decision on merits on the basis of available records and grounds raised in Appeal Memorandum.

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

- (i) The appellant is eligible for refund of duty paid from PLA, under Notification No. 39/2001-CE dated 31.07.2001 in respect of goods cleared for export on payment of duty?
- (ii) 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?
- (3) The appellant is liable for payment of interest for not paying duty consignment wise in terms of Rule 8 of the Central Excise Rules, 2002?

7. On perusal of the records, I find that the Appellant was availing the benefit of area-based Exemption Notification No. 39/2001-CE dated 31.7.2001, as amended. As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per rates prescribed 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 the period from April-2008 to February-2009 for refund of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA on clearance of finished goods manufactured by them. The adjudicating authority, after determination, partially restricted the refund amount and ordered for its recovery vide the impugned order on various counts mentioned in the impugned order.

7.1 As regards the restriction of refund/re-credit on account of duty paid from PLA in respect of goods cleared for exports, the Appellant's main contention is that the issue has already been



decided in their favor vide Order-in-Appeal No. No. 302-304(299 to 301)/RAJ/COMMR(A)/RAJ dated 24.03.2009. I find that the then Commissioner (Appeals), Rajkot at Para-9 of the above OIA has observed as under:-

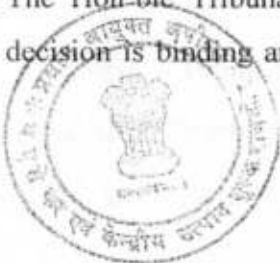
*I find that in the present case the goods manufactured by the Appellants who are availing the exemption under the said Notification and the same have been exported by the Merchant Exporter.\*In such a situation, the manufacturer could have cleared the goods under Bond or CT-1 Bond given by their Merchant Exporters to whom they have supplied the goods for exports. However, in absence of either of the Bonds, the goods are cleared on payment of duty from PLA, as submitted by the Appellants. Further, on going through copies of ARE-1 submitted by them, it transpires that they have not claimed any rebate on the goods exported vide the respective ARE-1 even though the duty has been paid in PLA. Even if they had filed rebate claim, in this situation the Appellants cannot claim rebate of duty on exported goods as per Notification 37/2007-CE (NT) dated 17.09.2007. But the Lower Authority rejecting the Appellant's refund claim of the duty paid on these exported goods under the Notification No. 39/2001-CE dated 31.07.2001 will amount to denial of the Area based exemption benefit to the Appellants in the first instance itself. The refund of duty paid from PLA on goods exported should have been granted under the said Notification, in absence of rebate facility in terms of the Notification 37/2007-CE (NT) dated 17.09.2007. Accordingly, I hold that the Appellants are eligible for refund on the said goods under the Notification No. 39/2001-CE dated 31.07.2001 and Lower Authority's order is liable to be set aside.*

I also find that the above OIA has been accepted by the department.

7.2 I find that identical view was taken by the then Commissioner (Appeals), while passing OIA No. 358 to 359(325 to 326)/Raj/2009/Commr(A)/Raj dated 27.04.2009 in the case of M/s. Mid India Power and Steel Limited. However, the above OIA was not accepted by the department and an appeal was filed before the Hon'ble Tribunal. The Hon'ble Tribunal vide Final Order No. A/12414/2021 dated 28.09.2021 has disposed off the appeal filed by the department with following observations:

*3. We have carefully considered the submission made by both the sides and perused the records. We find as per the amendment notification no. 37/07 C.E. N.T. dated 17.09.2007, respondent is clearly ineligible for rebate under Rule 18 in respect of exports from their unit which is under area-based exemption. This issue has been settled in the case of Welspun Corporation Ltd. (supra). Accordingly, the finding given by the learned Commissioner (Appeals) is not correct. Respondent is not entitled for rebate. Accordingly, the impugned order is modified to this extent. The matter is remanded to Adjudicating Authority to pass an order afresh in the light of amendment notification as well as the Hon'ble Gujarat High Court's decision in the case of Welspun Corporation Ltd. Appeal(supra) is disposed of by way of remand to the Adjudicating Authority. CO also stands disposed off.*

The Hon'ble Tribunal being higher Appellate Authority than Commissioner (Appeal), their decision is binding and required to be followed unreservedly as held by the Hon'ble Supreme



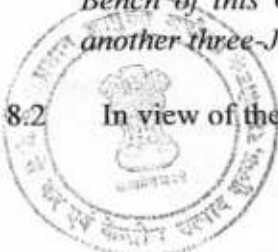
Court in the case of UOI Vs. Kamlakshi Finance Corporation Ltd. 1991 (55) E.L.T. 433 (S.C.). Accordingly, I find it fit to remand the present appeal to extent of refund of Rs. 11,21,270/- (pertaining to the duty paid from PLA in respect of goods exported), to the adjudicating authority with a direction to decide the eligibility of the refund in terms of the Hon'ble CESTAT's Order dated 28.9.2021 *supra*.

8. As regards the second issue, I find that the 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; that the impugned order rejecting re-credit of Education Cess and SHE Cess is not legal and sustainable and liable to be set aside. The Appellant also relied various judgments to support their contention.

8.1 I find that issue regarding refund of Education Cess and Secondary and Higher Education Cess in the subject matter 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)."*

8.2 In view of the above, I hold that the appellant is not eligible for refund of Education Cess



and Secondary & Higher Education Cess and, hence, I, uphold the impugned order to that extent.

9. As regards third issue, the Appellant has referred Board's Circular issued from F. No. 101/19/2007-CX.3 dated 08.08.2008 to support their contention. I find that Board vide this circular has clarified that the provisions of Rule 8(3A) of the Central Excise Rules, 2002 would not apply in case of manufacturers located in the areas of Kutch, J & K, Sikkim and NE region. In view of above clarification by Board, I find that provisions of Rule 8(3A) requiring *payment of excise duty for each consignment at the time removal, without utilizing the CENVAT credit till the date the assessee pay the outstanding amount including interest thereon*, would not apply in Appellant's case. Hence, I find that the Appellant was not required to pay interest for non-payment of excise duty consignment wise and accordingly amount of interest deducted by the adjudicating authority is required to be refunded to them.

10. In view of above, I pass the order as per details given below:

- (1) I set aside the impugned order so far as same relates to refund of Rs. 11,21,270/- and direct to decide the eligibility in terms of findings and directions at Para 7.2 above;
- (2) I uphold the impugned order so far as same relates to rejection of refund of Education cess and Higher Education cess;
- (3) I set aside the impugned order so far as same relates to deducting interest on account of Rule 8(3A) of the Central Excise Rules, 2002 from the eligible refund amount;

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

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

*Akhil Kumar*  
21st October, 2011  
(AKHILESH KUMAR)  
Commissioner (Appeals)

Attested

*Ketan Dave*

(Ketan Dave)  
Superintendent (Appeals)

By R.P.A.D.

To  
M/s Meena Agency Limited (formerly known as  
Meena Agency Pvt. Ltd),  
Survey No. 548-552/2, National Highway No. 15,  
Near Samakhiali, Vill:- Lakadia-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-भचाऊ मण्डल, को आवश्यक कार्यवाही हेतु
- 4) गार्ड फाइल

