::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-20211064SX000000C147**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/717 to 722 /RAJ/2010	**252 to 257/2008-09**	**05.03.2009**

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

KCH-EXCUS-000-APP-242 TO 247-2021

आदेश का दिनांक / Date of Order:	**21.10.2021**	जारी करने की तारीख / Date of issue:	**21.10.2021**

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. Renaissance Corporation Ltd.,, Survey No. 445, Village: Bhimasar, Taluka: Anjar (Kutch). Fax:(02836)285311

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६को की जानी चाहिए ।/

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

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

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना,रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the 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 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 अर्जी 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 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 ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

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

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख 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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते है । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER-IN-APPEAL ::

M/s Renaissance Corporation Ltd, Kutch (hereinafter referred to as "Appellant") has filed below mentioned Appeals against Re-credit 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	Re-credit claim amount (in Rs.)	Re-credit sanctioned Amount (in Rs.)
1	2.	3.	4.	5.	6.
1.	717/RAJ/ 2010	252/2008-09 dated 5.3.2009	July, 2008	40,04,151/-	Nil
2.	718/RAJ/ 2010	253/2008-09 dated 5.3.2009	August, 2008	25,56,229/-	Nil
3	719/RAJ/ 2010	254/2008-09 dated 5.3.2009	September, 2008	22,61,195/-	Nil
4.	720/RAJ/ 2010	255/2008-09 dated 5.3.2009	October, 2008	33,83,376/-	Nil
5.	721/RAJ/ 2010	256/2008-09 dated 5.3.2009	November, 2008	38,31,440/-	Nil
6.	722/RAJ/ 2010	257/2008-09 dated 5.3.2009	December, 2008	14,48,735/-	Nil

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. 39 and 55 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AACCD0975AXM001. 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. The Appellant exercised the option of re-credit for the Financial Year 2008-09 in terms of para 2C(a) of the said notification

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

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

(i) Verification of the unit carried out by the Jt. Commissioner, Central Excise, Rajkot and jurisdictional Asst. Commissioner revealed that final products Pet Straps and Staple Fibers were being manufactured exclusively from the machines/production lines installed after 31.12.2005 and hence, benefit of Notification No. 39/2001-CE dated 31.7.2001 is not admissible on these two products. Further, there was substantial increase in machine for manufacture of Pet Flakes and Pet Pallets after 31.12.2005 but no separate records for goods manufactured from machines installed prior to 31.12.2005 and after 31.12.2005 were maintained and hence, exact quantity manufactured from each machine cannot be ascertained.

(ii) The Appellant vide their letter dated 10.2.2009 informed the jurisdictional Range Superintendent that for manufacture of Pet Flakes, they have installed 3 production lines before 31.12.2005 and seven new production lines after 31.12.2005 and that they have not maintained separate records for the goods manufactured from old production lines and new production lines installed after 31.12.2005. They have installed one production line for manufacture of Pet Pallet before 31.12.2005 and one new production line after 31.12.2005 and have not maintained separate records for the goods manufactured from old line and

new line.

2.3 The refund sanctioning authority vide the impugned orders mentioned at column No. 3 of Table above rejected the re-credit claims and ordered to pay / reverse irregularly availed re-credit amount along with interest in terms of Para 2C(e) of the said notification.

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

(i) It is a fact that their unit was established on or before 31.12.2005 under Notification No. 39/2001-C.E., dated 31.7.2001 and commercial production of the Unit, as a whole, had been commenced on or before the cut off date of 31.12.2005. That all the necessary Machinery, Plant, Equipment and other facilities, were already installed in their new Unit for production of Pet Flakes, Pet Fiber, Pet Pallets, Pet Strapping.

(ii) That Pet Flakes is the basic finished excisable goods, wherefrom, further products, namely, Pet Fibre, Pet Pallets and Pet Strapping, are being produced. All the Machinery, for all the categories of products, were already installed on or before 31.12.2005 and production of all the products commenced on or before 31.12.2005.

(iii) A close scrutiny of the Re-credit Order, reveals that the Adjudicating Authority, has taken a stand that Declaration, filed by the Appellants, regarding addition of new products/expansion of capacity of production after 31.12.2005, for the month of December, 2005, has been found incorrect, incomplete and improper. But such an observation, can not deny the Refund, available to the Appellants, in respect of the goods, cleared in the respective month, when the commercial production of the Unit, as a whole, commenced on or before 31.12.2005. Nowhere, the said Notification, maintains that any new goods, produced on or after 31.12.2005 or any goods, produced out of new Machinery, installed on or after 31.12.2005, would not be eligible for concessions, contained in the Notification No. 39/2001-C.E. (N.T.), dated 31.7.2001 and therefore, Re-credit Order, denying the Re-credit, is bad in Law.

(iv) That commercial production of their commenced on or before 31.12.2005 and all the products, produced out of the said Machinery, already installed in their factory premises on or before 31.12.2005 would enjoy all the benefits of the said Notification, even though some of the down stream products, were produced out of the said Machinery after

31.12.2005. This clearly means that once the Machineries, have been installed in their factory premises on or before 31.12.2005 and once the commercial production of the unit, has begun, with production of basic finished excisable goods, on or before 31.12.2005, the exemption, contained in the said Notification, must apply to the downstream products, produced even after 1.1.2006, out of the Machinery, installed in the Unit, on or before 31.12.2005.

(v) Their finished products produced on or after 1.1.2006, out of Machinery, installed in their Unit on or before 31.12.2005, as downstream products, produced out of Pet Flakes, commercial production of which, had already commenced on or before 31.12.2005, are fully eligible for concessions, contained in the abovementioned Notification. Throughout the period, there is no dispute, raised by the Excise Authorities, that Pet Flakes, were already produced on or before 31.12.2005 and accordingly, downstream products, produced out of Pet Flakes, must be allowed Refund, under the afore stated Notification, notwithstanding that the impugned goods, are produced on or after 1.1.2006.

4. The then Commissioner (Appeals), Central Excise, Rajkot vide his Stay Order dated 26.10.2009 directed the Appellant to make pre-deposit of entire amount of re-credit amount involved in all appeals. Their appeals were subsequently dismissed for non compliance of the provisions of Section 35F of the Central Excise Act, 1944 vide Order-in-Appeal No. 583 to 588/2009/Comm(A)/Raj dated 23.12.2009.

4.1 Being aggrieved, the Appellant filed appeals before the Hon'ble CESTAT, Ahmedabad who vide its Order No. A/1928-1933/WZB/AHD/2010 dated 14.12.2010 reduced the pre-deposit amount to Rs. 40 lac. The Appellant thereafter filed Special Civil Application No. 2165/2011 before the Hon'ble Gujarat High Court which was decided vide Order dated 18.3.2011 whereby the Hon'ble Court had reduced the pre-deposit amount to Rs. 25 lac and directed the Commissioner(Appeals) to decide the appeals on merits.

4.2 The Superintendent, Central Excise, Gandhidham vide letter F.No. CEX/GIM/ AR/TECH/2010-11 dated 13.4.2011 reported that the Appellant has debited Rs. 25 lac in their PLA being pre-deposit amount in compliance with Order dated 18.3.2011 of the Hon'ble Gujarat High Court.

5. The Appeals were restored but subsequently 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 22.9.2021, 30.9.2021 and 8.10.2021 which was communicated to the Appellant by Speed Post at the address mentioned in Appeal Memorandum as well as through email. 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 issue to be decided in the present appeals is whether the rejection of re-credit claims by the refund sanctioning authority is correct legal and proper 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 re-credit applications for re-credit 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 rejected the re-credit applications on the grounds that final products Pet Straps and Staple Fibers were being manufactured exclusively from the machines/production lines installed after 31.12.2005 and hence, benefit of Notification No. 39/2001-CE dated 31.7.2001 is not admissible on these two products. Further, there was substantial increase in machine for manufacture of Pet Flakes and Pet Pallets after 31.12.2005 but no separate records for goods manufactured from machines installed prior to 31.12.2005 and after 31.12.2005 were maintained and hence, exact quantity manufactured from each machine cannot be ascertained.

8.1 The Appellant has contended that their unit was established before 31.12.2005 and commercial production had also been commenced before 31.12.2005. That all the necessary Machinery, Plant, Equipment and other facilities, were already installed in their new Unit for production of Pet Flakes, Pet Fiber, Pet Pallets, Pet Strapping. That Pet Flakes is the basic finished excisable goods, wherefrom, further products, namely, Pet Fiber, Pet Pallets and Pet Strapping, were being manufactured. The Appellant further contended since Pet Flakes was already produced before 31.12.2005, downstream products produced out of Pet Flakes, must be allowed Refund under said Notification notwithstanding that the said goods were produced after 31.12.2005. That said notification nowhere stipulated that any new goods produced after 31.12.2005 or any goods produced out of new Machinery installed after 31.12.2005 would not be eligible for concessions and therefore, Re-credit Orders denying the Re-credit are bad in Law.

9. 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.

10. I find that physical verification of unit of the Appellant was carried out by the Joint Commissioner, Central Excise, Rajkot and jurisdictional Asst. Commissioner on 10.2.2009. The refund sanctioning authority has relied upon the said verification in the impugned orders, which is reproduced as under:

> "The Joint Commissioner of Central Excise, HQ, Rajkot along with the JAC visited the factory premises of the assessee on 10.02.2009 wherein he has noticed that:
>
> (1) The unit is operating under Notification No. 39/2001-CE dated 31.07.2001 and it has increased production capacity substantially after 31.12.2005. Further, the unit is availing the exemption by way of re-credit of the entire duty paid from PLA. It has been observed that though the refund/re-credit has been restricted in percentage terms, on the basis of value addition, vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, the unit is still taking 100% re-credit i.e. whole of the duty paid from PLA in the previous month. The unit has not applied for fixation of special rate of value addition so far and availing 100% re-credit, which is inadmissible.
>
> (2) Two of the final products viz. Pet Straps and Staple Fibers are being manufactured exclusively from the machines/production line installed after 31.12.2005 and hence refund/ re-credit in terms of Notification No. 39/2001-CE dated 31.07.2001 is not admissible on these two

items.

(3) There is also substantial increase in machinery for manufacture of Pet Flakes and Pet Pallets, after 31.12.2005, but the unit is not maintaining separate records for goods manufactured from old machinery (installed before 31.12.2005) and new machinery (installed after 31.12.2005). Therefore, it appears that exact quantity manufactured from each machinery can not be ascertained and thus re-credit claims are liable for rejection on this count also."

10.1 As per above facts recorded in the impugned orders, it appears that the Appellant had manufactured Two of their final products i.e. Pet Straps and Staple Fibers exclusively from the machines/production line installed after cut off date of 31.12.2005 and there was increase in machineries for manufacture of Pet Flakes and Pet Pallets after 31.12.2005. These facts are not disputed by the Appellant in the appeal memorandum. In fact, the Appellant had reported to the jurisdictional Range Superintendent vide letter dated 12.2.2009 about installation of seven production lines for manufacture of Pet Flakes and one production line for manufacture of Pet Pallets after cut off date of 31.12.2005, as recorded in the impugned orders. When goods are manufactured out of plant and machinery installed after cut off date of 31.12.2005, then in such situation, benefit of notification No. 39/2001-CE dated 31.7.2001 is not available, as correctly held by the refund sanctioning authority. Apart from this, the Appellant had, admittedly, not maintained separate records of goods manufactured from plant and machinery installed prior to 31.12.2005 and after 31.12.2005. So, it was not possible to identify goods which are eligible for benefit of said notification. In this regard, the Board has issued clarification vide Circular No. 110/11/2006/CX.3, dated 10-7-08. The relevant part of said circular 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.

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 legislative intent that the benefit under the said notification is intended to be restricted only to those units, which have started commercial production or before 31-12-05 and the benefit cannot be extended to the products manufactured by installing fresh plant and machinery. To the similar effect 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)

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

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

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

(ARHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To,
M/s Renaissance Corporation Ltd,
Survey No. 445,
Village : Bhimasar, Taluka : Anjar,
District : Kutch.

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंजार-भचाउ मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।