::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-20211064SX0000919569

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/422 /RAJ/2009	234 to 256/2009-10	05.11.2009

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

KCH-EXCUS-000-APP-252-2021

आदेश का दिनांक / Date of Order:	29.10.2021	जारी करने की तारीख / Date of issue:	02.11.2021

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. SAL Steel Ltd.,, S. No. 245, Village : Bharapar, Gandhidham

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 अधिनेयम ,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 असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of 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 नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना,रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:

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

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

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

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

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

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

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

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

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

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

:: ORDER-IN-APPEAL ::

M/s. S.A.L. Steel Ltd, Kutch (hereinafter referred to as "Appellant") has filed Appeal No. V2/422/RAJ/2009 against Refund Order No. 234 to 256/2009-10 dated 5.11.2009 (*hereinafter referred to as "impugned order"*) passed by the Deputy Commissioner, erstwhile Central Excise Division, Gandhidham (*hereinafter referred to as "refund sanctioning authority"*).

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of excisable goods falling under Chapter No. 72 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAHCS8284JXM001. 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. The Appellant had exercised the option of re-credit for the Financial Years 2007-08, 2008-09 and 2009-10 in terms of para 2C(c) of the said notification.

2.1 The Appellant had filed re-credit applications for the period from July, 2007 to May, 2009 for re-credit of Central Excise Duty, Education Cess and Secondary and Higher Education Cess paid from PLA totally amounting to Rs. 59,84,75,404/- 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) The Appellant was eligible for exemption 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 considering value addition computed @75% in respect of goods manufactured from specified inputs. The Appellant was eligible for refund considering value addition computed

@39% in respect of goods manufactured from non-specified inputs.

(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.

3. The refund sanctioning authority vide the impugned order determined re-credit amount of Rs. 45,69,76,136/- and rejected remaining claimed amount of Rs. 14,14,99,268/- and ordered the Appellant to reverse the excess amount claimed along with interest in terms of Para 2C(e) of the said notification.

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

(i) The issue in the present case revolves around Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which prescribed specified rates for refund/re-credit as against the claim of the Trade for refund of entire duty paid on goods through PLA. If the writ petition filed before the Hon'ble High court is allowed and said amending notifications are held to be unconstitutional, then they would be entitled for refund of entire duty paid on their final products. The refund sanctioning authority should have waited for outcome of petition pending before the Hon'ble High Court instead of passing the impugned order.

(ii) The impugned order has denied special rate for various clearances of sponge iron as well as Ferro Alloys and re-credit claimed by them was rejected for the reason that they had used other inputs in addition to iron ore and chrome ore or manganese ore though the Notification does not create any bar on use of inputs other than iron ore, chrome ore or manganese ore. It is but natural that the goods like sponge iron and Ferro Alloys cannot be manufactured by using inputs in the nature of iron ore and chrome or manganese ore alone because various other inputs including binding materials are required for manufacturing the above referred final products, and hence, they had no alternative but to use such other inputs including binding materials also. For this reason, special rate could not have been denied by the refund sanctioning authority. In this view of the matter, reduction of their claim is wholly illegal and liable to be set aside.

(iii) The main Notification No. 39/2001-CE was amended by Notification No. 16/2008-CE dated 27.3.2008 thereby allowing exemption with reference to value addition by prescribing rates of value addition under para 2 of the Notification, and the rate of 39% which was prescribed for the goods of Chapter 72 was substituted by higher rate of 75% by Notification No. 51/2008-CE if the inputs for the goods were iron ore. The appellant has been using iron ore as inputs for manufacture of the final products namely Ferro Alloys and therefore, re-credit at the rate of 75% was available to them. That iron ore alone could not be the inputs for manufacture of goods of Chapter 72 namely Ferro Alloys and various other inputs in addition to iron ore would also be required for manufacturing these final products; and therefore, they had no alternative but to use other inputs like molasses, F.O., carbon pest and others also along with iron ore for manufacturing the above final products. Iron ore is brought by the appellant as inputs and the manufacturing process in the appellant's factory starts from that stage by using iron ore and other inputs, and therefore, the Range Superintendent could not have reported that the final products had not been manufactured exclusively starting from iron ore only; and denial of re-credit at the rate of 75% on this basis is wholly illegal. The Notification does not debar use of other inputs in addition to iron ore for manufacturing iron and steel products as final goods, and the Notification also does not debar use of cenvatable inputs in relation to manufacture of final goods like iron and steel products. The only condition in the Notification as regards cenvatable inputs is that Cenvat credit should be utilized first by a manufacturer for discharging duty liability on the final products and payment through PLA should be made only after exhausting the entire Cenvat credit available; but as aforesaid, there is no condition or restriction in the Notification that cenvatable inputs should not be used or that only iron ore should be used as inputs for manufacturing final products of Chapters 72 and 73. Therefore, the appellant's claim could not have been restricted to only 39% on the above two grounds which are wholly illegal and untenable. The impugned order restricting the re-credit for various consignments of final products of Chapter 72 to 39% on this basis is therefore, liable to be set aside.

(iv) The main Notification has been amended with effect from 27.3.2008 thereby prescribing reduced rate of 39% for re-credit/refund

but the same came to be enhanced to 75% by Notification No. 34/2008-CE dated 10.6.2008 for goods of Chapter 72 when inputs were iron ore; but by virtue of this amending Notification No. 34/2008-CE, it has been clarified that this special rate was to be made available to the eligible manufacturers from the beginning of financial year of 2008, and accordingly, the appellant has been entitled to the special rate of 75% from 1.4.2008. However, the calculations shown in the impugned order indicate, though no break is given therein, that the claim for Rs. 92,89,334/- is reduced/denied by the Deputy Commissioner by applying the special rate only from 10.6.2008 i.e. the date on which Notification No. 34/2008-CE was published although, as aforesaid, the Notification itself clarifies that a special rate was to be given from 1.4.2008. By another amending Notification No. 52/2008-CE issued on 3.10.2008, special rate of 75% is prescribed for Ferro Alloys also, and therefore, the appellant has claimed re-credit at the rate of 75% for Ferro Alloys from 1.4.2008 by virtue of para 5 of the above Notification which allows special rate to manufacturers from the beginning of the financial year of 2008. However, it appears that a claim for Rs. 5,04,68,771/- for the period from April, 2008 to September, 2008 in addition to a further reduction for clearances made in October, 2008 and November, 2008 has been denied by the adjudicating authority in the impugned order by applying the special rate for Ferro Alloys only from 3.10.2008. These are glaring errors in the impugned order which need to be corrected.

(v) The Deputy Commissioner has denied the claim for the amounts representing Education Cess and Secondary as well as Higher Education Cess on the ground that they were not covered under the Notification though it is now judicially settled by virtue of a number of decisions of the Appellate Tribunal also that Education Cess being a piggy back levy riding on the back of the Central Excise levy, refund of Education Cess was also allowed under the scheme of area based notifications. Even otherwise, Education Cess is a levy of Excise collected on goods manufactured in India and hence, the same is covered under the scheme of the Notification. The Deputy Commissioner therefore, had no jurisdiction to deny refund/re-credit of the amounts representing Education Cess and Secondary as well Higher Education Cess in the present case.

(vi) While reducing the total claim by Rs. 14,14,99,268/-, the Deputy Commissioner has proceeded on the basis that the total claim for the entire period was for Rs. 59,84,75,404/- though the claims were actually aggregating to Rs. 57,24,44,589/-; and thus, these error means that recovery/reduction of Rs. 2,60,30,815/- is ordered by the Deputy Commissioner though there was no such claim for this amount. The amount of Rs. 14,14,99,268/- demanded while passing the re-credit order on the appellant's claims is thus, inflated and the above excess amount of Rs. 2,60,30,815/- stands included therein; and thus, there is a glaring error on part of the Deputy Commissioner while passing this order.

5. The Appeal was 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 appeal was 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 27.8.2021, 22.9.2021, 30.9.2021 and 20.10.2021 and communicated to the Appellant by Speed Post at the address mentioned in Appeal Memorandum. Shri Amal Dave and Shri Sudhanshu Bissa, both Advocates, appeared on behalf of the Appellant on 20.10.2021 and reiterated the submission made in additional written submission dated 20.10.2021.

6.1 In additional written submission dated 20.10.2021, it has been, *inter alia*, contended that the present appeals were kept in callbook by the Commissioner(Appeals) and after lapse of 11 years, the appeal was taken out for disposal. This long delay has resulted in grave prejudice to the them and therefore these proceedings are in violation of principles of natural justice and accordingly, no proceedings can be revived after the expiry of 11 years as held by the Hon'ble Gujarat High Court in the case of Siddhi Vinayak Syntex Pvt Ltd - 2017 (352) ELT 455 (Guj.). It is further contended that they have been saddled with the liability of payment of amount equivalent to the credit availed in excess and also interest for the entire period and hence, their appeals may be allowed in light of the present facts and impugned order of re-credit of reduced amount may be set aside.

7. I have carefully gone through the facts of the case, impugned order and

submissions made by the Appellant in appeal memorandum and additional written submission dated 20.10.2021. The issues to be decided in the present appeals are whether,

- (i) the Appellant is eligible for refund of Central Excise duty at full rate of duty or at the rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 ?

- (ii) the finished goods- MS Angle, ingots/billets and Ferro Alloys manufactured by the Appellant are eligible for refund @75% under Sl. No. 15 and 15B of Table at Para 2 of Notification No. 39/2001-CE dated 31.7.2001, as amended or not ?

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

8. On perusal of the records, I find that the Appellant was availing the benefit of area based Exemption Notification No. 39/2001-CE dated 31.7.2001, as amended. As per scheme of the said Notification, exemption was granted by way of refund of Central Excise duty paid in cash through PLA as per rates prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 prevalent at the relevant time. The Appellant had filed re-credit applications for the period from July, 2007 to May, 2009 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 partially rejected the re-credit amount on various counts mentioned in the impugned order.

9. The Appellant has contended that the issue in the present case revolves around Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which prescribed specified rates for refund/re-credit as against the claim of the Trade for refund of entire duty paid on goods through PLA and if the writ petition filed before the Hon'ble High court is allowed and said amending notifications are held to be unconstitutional, then they would be entitled for refund of entire duty paid on their final products. The refund sanctioning authority should have waited for outcome of petition pending before the Hon'ble High Court instead of passing the impugned order.

9.1. I find that Notification No. 39/2001-CE dated 31.7.2001 was amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008, which altered the method of calculation of refund by taking into consideration the duty payable on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity. Thus, a manufacturer was eligible for refund of Central Excise duty only at the rates prescribed in the said notifications. I find that the Hon'ble Gujarat High Court in the case of SAL Steel Ltd & Others- 2010 (260) E.L.T. 185 (Guj.), held the said amending notifications as hit by promissory estoppel. However, it is further observed that the said decision of the Hon'ble Gujarat High Court has been reversed by the Hon'ble Supreme Court of India in the case of Union of India Vs. VVF Ltd & Others as reported in 2020 (372) E.L.T. 495 (S.C.). The Hon'ble Apex Court in the case has held as under:

> "14.3 As observed hereinabove, the subsequent notifications/industrial policies do not take away any vested right conferred under the earlier notifications/industrial policies. Under the subsequent notifications/industrial policies, the persons who establish the new undertakings shall be continue to get the refund of the excise duty. However, it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities. Therefore, it cannot be said that subsequent notifications/industrial policies are hit by the doctrine of promissory estoppel. The respective High Courts have committed grave error in holding that the subsequent notifications/industrial policies impugned before the respective High Courts were hit by the doctrine of promissory estoppel. As observed and held hereinabove, the subsequent notifications/industrial policies which were impugned before the respective High Court can be said to be clarificatory in nature and the same have been issued in the larger public interest and in the interest of the Revenue, the same can be made applicable retrospectively, otherwise the object and purpose and the intention of the Government to provide excise duty exemption only in respect of genuine manufacturing activities carried out in the concerned areas shall be frustrated. As the subsequent notifications/industrial policies are "to explain" the earlier notifications/industrial policies, it would be without object unless construed retrospectively. The subsequent notifications impugned before the respective High Courts as such provide the manner and method of calculating the amount of refund of excise duty paid on actual manufacturing of goods. The notifications impugned before the respective High Courts can be said to be

providing mode on determination of the refund of excise duty to achieve the object and purpose of providing incentive/exemption. As observed hereinabove, they do not take away any vested right conferred under the earlier notifications. The subsequent notifications therefore are clarificatory in nature, since it declares the refund of excise duty paid genuinely and paid on actual manufacturing of goods and not on the duty paid on the goods manufactured only on paper and without undertaking any manufacturing activities of such goods.

15. In view of the above and for the reasons stated above and once it is held that the subsequent notifications/industrial policies which were impugned before the respective High Courts are clarificatory in nature and are issued in public interest and in the interest of the Revenue and they seek to achieve the original object and purpose of giving incentive/exemption while inviting the persons to make investment on establishing the new undertakings and they do not take away any vested rights conferred under the earlier notifications/industrial policies and therefore cannot be said to be hit by the doctrine of promissory estoppel, the same is to be applied retrospectively and they cannot be said to be irrational and/or arbitrary.

16. Under the circumstances, the respective High Courts have committed a grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not retroactive. Consequently, all these appeals are *ALLOWED*. The impugned Judgments and Orders passed by the respective High Courts, which are impugned in the present appeals, quashing and setting aside the subsequent notifications/industrial policies impugned in the respective writ petitions before the respective High Courts, are hereby quashed and set aside."

9.2 By respectfully following the above judgement passed by the Hon'ble Supreme Court in the case of Union of India Vs VVF Ltd & others, I hold that the Appellant is eligible for refund of duty only at the rates prescribed under Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008 and following the terms prescribed therein. I, therefore, uphold the impugned order to that extent.

10. As regards the second issue, the Appellant has contended that the impugned order has denied special rate for various clearances of sponge iron as well as Ferro Alloys and re-credit claimed by them was rejected for the reason

that they had used other inputs in addition to iron ore and chrome ore or manganese ore though the Notification does not create any bar on use of inputs other than iron ore, chrome ore or manganese ore. The goods like sponge iron and Ferro Alloys cannot be manufactured by using inputs in the nature of iron ore and chrome or manganese ore alone because various other inputs including binding materials are required for manufacturing the same, and hence, they had no alternative but to use such other inputs including binding materials also. For this reason, special rate could not have been denied by the refund sanctioning authority and accordingly, reduction of their claim is wholly illegal and liable to be set aside.

10.1 I find that the Appellant had claimed refund @75% in respect of final products manufactured by them in terms of Sl. No. 15 and 15B of Table appearing at Para 2 of said notification, which is reproduced as under:

> "2. The duty payable on value addition shall be equivalent to the amount calculated as a percentage of the total duty payable on the said excisable goods of the description specified in column (3) of the Table below (hereinafter referred to as the said Table) and falling within the Chapter of the said First Schedule as are given in the corresponding entry in column (2) of the said Table, when manufactured starting from inputs specified in the corresponding entry in column (5) of the said Table in the same factory, at the rates specified in the corresponding entry in column (4) of the said Table :

TABLE

S. No.	Chapter of the First Schedule	Description of goods	Rate	Description of inputs for manufacture of goods in column (3)
(1)	(2)	(3)	(4)	(5)
1.	29	All goods	29	Any goods
2.	30	All goods	56	Any goods
3.	33	All goods	56	Any goods
4.	34	All goods	38	Any goods
5.	38	All goods	34	Any goods
6.	39	All goods	26	Any goods
7.	40	Tyres, tubes and flaps	41	Any goods
8.	72 or 73	All goods	39	Any goods, other than iron ore
9.	74	All goods	15	Any goods
10.	76	All goods	36	Any goods
11.	85	Electric motors and generators, electric generating sets and parts thereof	31	Any goods
12.	25	Cement or cement clinker	75	Limestone and gypsum
13.	17 or 35	Modified starch/glucose	75	Maize
14.	18	Cocoa butter or powder	75	Cocoa beans
15.	72 or 73	Iron and steel products	75	Iron ore
15A	29 or 38	Fatty acids or Glycerine	75	Crude palm kernel, coconut, mustard or rapeseed oil

S. No.	Chapter of the First Schedule	Description of goods	Rate	Description of inputs for manufacture of goods in column (3)
(1)	(2)	(3)	(4)	(5)
15B	72	Ferro alloys, namely, ferro chrome, ferro manganese or silico manganese	75	Chrome ore or manganese ore
16.	Any chapter	Goods other than those mentioned above in Sl. Nos. 1 to 15	36	Any goods

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

"The Superintendent of Central Excise Range - Gandhidham vide above cited verification report has submitted the duty payment details for the goods falling under Chapter 72 manufactured / cleared by the claimant, under the exemption Notification No. 39/2001-CE dated 31.7.2001 as amended, from July 2007 to May 2009 [both months inclusive] and computation of re-credit amount in accordance with the Notification No. 39/2001-CE dated 31.7.2001 as amended. As per the CBEC Circular/letter F No 101/18/2008CX-3 dated 15.10.2008 and further letter F. No IV/16-06/MP/ 2006 dated 11.11.2008 for clarification issued by Joint Commissioner, Central Excise, HQ. Rajkot, higher rate of value addition of 75% for the goods, when goods are manufactured starting from specified inputs in the same factory. The claimant manufactures Sponge Iron and use the same for further manufacture of Ingots/ Billets along with bought out Scrap. As per the circular benefit of 75% is admissible on the Sponge Iron captively consumed subject to the condition that separate records showing the quantity produced starting from specified inputs and from other bought out inputs furnished by the claimant. The claimant has produced the separate records of production and clearance of the goods produced out of own produced Sponge Iron and bought out Scrap along with certificate of the Chartered Engineer for the respective months under consideration, but it seems that all the goods have not been manufactured exclusively starting from Iron Ore only within the same factory. Hence the claim is restricted to 75% on goods manufactured out of specified Input and 39% on goods produced/cleared out of Non-specified input. Further, the assessee has claimed that M.S. Angle manufactured/ cleared during the months under consideration have been manufactured from specified input. However, the assessee have taken in use M.S. Old & Cut Plate as a major input and availed Cenvat credit on them and hence the re-credit claim is computed @39% being the goods produced from the non-

specified inputs.

Further, the Notification No. 39/2001-CE dated 31.07.01 has been amended vide Notification No. 51/2008-CE dated 03.10.08 allowing higher rate i.e. 75% for Ferro alloys, namely, Ferro chrome, Ferro manganese and Silico manganese. The assessee has used cenvatable inputs such as Molasses, F.O. & Carbon Pest in manufacturing of Ferro Alloys i.e. Ferro Chromo, Silico Manganese & Ferro Manganese. As the said cenvatable inputs i.e. Molasses, F.O. & Carbon Pest are used in the manufacture of said Ferro alloys, the re-credit is computed @39% being the goods produced from the non-specified inputs."

10.3 Considering the above findings as well as table showing detailed calculation in the impugned order, I find that the sanctioning authority determined re-credit amount by considering value addition @39% in respect of finished goods, which were manufactured out of non-specified inputs. The Appellant had used Sponge Iron and bought out Scrap for manufacture of ingots/billets. Further, the Appellant had used cenvatable inputs i.e. Molasses, F.O. and Carbon Pest in the manufacture of Ferro Alloys. The Appellant had also used Cenvatable input M.S. Old & Cut Plate as major input for manufacture of MS Angle. These facts are not disputed by the Appellant. Apparently, Scrap, Molasses, F.O., Carbon Pest and M.S. Old & Cut Plate are not listed as specified inputs under Notification No. 33/2008-CE dated 10.6.2008. Hence, the Appellant is not eligible for refund @75% in respect of finished goods - MS Angle, ingots/billets and Ferro Alloys which were manufactured out of non-specified inputs. In this regard, I also take note of the clarification issued by the Board vide letter F.No. 101/18/2008-CX.3 dated 15.10.2008, which is reproduced as under:

"Issue : Rate of refund in cases where higher rate is prescribed but final product is not manufactured solely from prescribed raw material or where at intermediate stage other material is also used.

Clarification: Notification prescribes a higher rate of value addition of 75% for specified goods when the goods are manufactured starting from the specified inputs in the same factory. The intention of the amendment is to prescribe a higher rate of value addition for the units using non cenvatable raw materials like mineral ores and agriculture product. Therefore, if a unit is not manufacturing the final product starting from the specified raw material in the same

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

11. As regards the third issue, I find that the refund sanctioning authority had sanctioned refund of Central Excise duty under Notification No. 39/2001-CE dated 31.7.2001, as amended, but had not sanctioned refund of Education Cess and Secondary & Higher Education Cess on the ground that exemption under the said notification was available only to Central Excise Duty and the said notification did not cover Education Cess and Secondary & Higher Education Cess and hence, the appellant was not entitled for refund of Education Cess and S.H.E Cess. On the other hand, the Appellant has pleaded that as per Section 93(3) of the Finance Act, 2004 and Section 138 of the Finance Act, 2007, all provisions of Central Excise Act, including those relating to refund, exemption will also apply to Education Cess and SHE Cess. Since Education Cess & SHE Cess were duties of excise which were paid on the aggregate of duties of excise leviable under the Act, Education Cess & SHE Cess being in the nature of excise duty was also required to be refunded along with Central Excise duty.

11.1 I find that issue regarding refund of Education Cess and Secondary and Higher Education Cess is no longer *res integra* and stand decided by the Hon'ble Supreme Court in the case of Unicorn Industries reported at 2019 (370) ELT 3 (SC), wherein it has been held that,

"40. Notification dated 9-9-2003 issued in the present case makes it clear that exemption was granted under Section 5A of the Act of 1944, concerning additional duties under the Act of 1957 and additional duties of excise under

the Act of 1978. It was questioned on the ground that it provided for limited exemption only under the Acts referred to therein. There is no reference to the Finance Act, 2001 by which NCCD was imposed, and the Finance Acts of 2004 and 2007 were not in vogue. The notification was questioned on the ground that it should have included other duties also. The notification could not have contemplated the inclusion of education cess and secondary and higher education cess imposed by the Finance Acts of 2004 and 2007 in the nature of the duty of excise. The duty on NCCD, education cess and secondary and higher education cess are in the nature of additional excise duty and it would not mean that exemption notification dated 9-9-2003 covers them particularly when there is no reference to the notification issued under the Finance Act, 2001. There was no question of granting exemption related to cess was not in vogue at the relevant time imposed later on vide Section 91 of the Act of 2004 and Section 126 of the Act of 2007. The provisions of Act of 1944 and the Rules made thereunder shall be applicable to refund, and the exemption is only a reference to the source of power to exempt the NCCD, education cess, secondary and higher education cess. A notification has to be issued for providing exemption under the said source of power. In the absence of a notification containing an exemption to such additional duties in the nature of education cess and secondary and higher education cess, they cannot be said to have been exempted. The High Court was right in relying upon the decision of three-Judge Bench of this Court in Modi Rubber Limited (supra), which has been followed by another three-Judge Bench of this Court in Rita Textiles Private Limited (supra). "

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

12. The Appellant has further contended that the Notification No. 39/2001-CE dated 31.7.2001 was amended by Notification No. 33/2008-CE dated 10.6.2008 prescribing rate of value addition of 75% in respect of goods of Chapter 72 when inputs were iron ore, but by virtue of amending Notification No. 34/2008-CE dated 10.6.2008, it has been clarified that this special rate was to be made available to the eligible manufacturers from the beginning of financial year of 2008, and accordingly, the appellant was entitled to the special rate of 75% from 1.4.2008. However, special rate was given only from 10.6.2008. Similarly, by another amending Notification No. 52/2008-CE dated 3.10.2008, special rate of 75% for Ferro Alloys from 1.4.2008 were admissible

by virtue of para 5 of the above Notification. However, special rate for Ferro Alloys were applied only from 3.10.2008. These glaring errors in the impugned order are required to be rectified. I find that both the relied upon Notification No. 34/2008-CE dated 10.6.2008 and Notification No. 52/2008-CE dated 3-10-2008 were related to area based exemption granted to the units located in the state of Jammu and Kashmir and hence, the said notifications are not applicable to the facts of the present case. The reliance placed on the said notifications is discarded being devoid of merit.

13. The Appellant has contended that while reducing the total claim by Rs. 14,14,99,268/-, the refund sanctioning authority has proceeded on the basis that the total claim for the entire period was for Rs. 59,84,75,404/- though the claims were actually aggregating to Rs. 57,24,44,589/- and thus, the refund sanctioning authority has erroneously ordered for recovery/reduction of Rs. 2,60,30,815/- in the impugned order, though there was no such claim for this amount. I find that the refund sanctioning authority has given month wise details of all re-credit applications filed for the period from July, 2007 to March, 2009 in tabulated format at page 1 and 2 of the impugned order, which shows that the Appellant had filed re-credit applications totally amounting to Rs. 59,84,75,404/-. The Appellant has not produced copies of re-credit applications or any working showing that they had filed re-credit applications aggregating to Rs. 57,24,44,589/- as claimed by them and not Rs. 59,84,75,404/- as mentioned in the impugned order. Under the circumstances, it is not possible to decide the veracity of their contention.

14. The Appellant has contended during personal hearing that the present appeal was lying in callbook and same was taken out for disposal after lapse of 11 years. This long delay has resulted in grave prejudice to the them and therefore, these proceedings are in violation of principles of natural justice and accordingly, no proceedings can be revived after the expiry of 11 years and relied upon the decision of the Hon'ble Gujarat High Court rendered in the case of Siddhi Vinayak Syntex Pvt Ltd - 2017 (352) ELT 455 (Guj.).

14.1 I have examined the relied upon case law of Siddhi Vinayak Syntex Pvt Ltd - 2017 (352) ELT 455 (Guj.). In the said case, proceedings were initiated for non-payment of Central Excise duty on Drawn Wound Yarn manufactured by the party and Show Cause Notice was issued. In the meantime, the factory was closed down and Director of the firm moved to another city. The adjudicating authority could not trace that party and passed the impugned order ex-party. Subsequently, the party filed writ petition before the Hon'ble High Court, by

invoking extraordinary jurisdiction under Article 226 of the Constitution of India pleading, *inter alia*, that there was violation of principles of natural justice. The petitioner pleaded before the Hon'ble Court that the show cause notice issued in August, 1998 was kept pending for more than seventeen years and the petitioner was not afforded adequate opportunity of being heard while taking up adjudication of the case and that confusion was prevailing in Textile Trade about the duty liability but the same was not considered while deciding the case. In that factual backdrop, the Hon'ble High Court passed the said decision. However, in the present case, facts are different. The Appellant, herein, was given opportunity of personal hearing, which was scheduled on 27.8.2021, 22.9.2021, 30.9.2021 and 20.10.2021 and Shri Amal Dave and Shri Sudhanshu Bissa, both Advocates, also appeared on behalf of the Appellant on 20.10.2021. So, the principles of natural justice have been duly followed in the present case. It is not the case that their appeal is being decided without hearing the Appellant or without considering the grounds raised in the appeal memorandum. Though, the present appeal was kept in callbook in view of similar issue pending before the Hon'ble Supreme Court in the case of VVF Ltd and others but it has not caused any injustice to the Appellant. It is pertinent to mention that the Appellant had already availed the benefit of exemption Notification No. 39/2001-CE dated 31.7.2001 by availing re-credit in their Personal Ledger Account at material time. Further, the issue pending before the Hon'ble Supreme Court in the case of VVF Ltd and others could have been decided either way i.e. in favour of assessee or in favour of the Department. So, pendency of present appeal in call book, *per se*, has not caused any injustice to the Appellant nor violated the principles of natural justice, as has been made out by the Appellant. Moreover, this contention has been made for the first time during the course of personal hearing. I, therefore, hold that the case law of Siddhi Vinayak Syntex Pvt Ltd is not applicable to the facts of the present case.

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

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

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

29 October 2021

(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To,
M/s S.A.L. Steel Ltd
Survey No. 245,
Kidana-Bharpar road,
Village Bharpar,
Taluka : Gandhidham,
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, गांधीधाम (ग्राम्य) मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।