



::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-20220364SX000000DF8E

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/40 /GDM /2021	11/Deputy Commissioner/GRD/2020-21	25-02-2021

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

**KCH-EXCUS-000-APP-275-2021-22**

आदेश का दिनांक /

Date of Order:

11.03.2022

जारी करने की तारीख /

Date of issue:

11.03.2022

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 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.Lamba Timber Works Pvt. Ltd., Survey No. 205/4, Behind Gayatri Petrol Pump, Chudva, Gandhidham, Kutch - 370 201**

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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

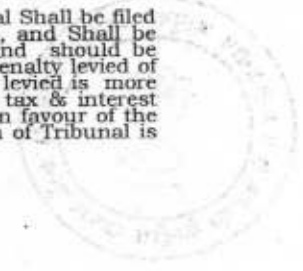
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para-1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 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 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की 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 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 fee of Rs. 1,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty lakhs or less, Rs.5000/- 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीक्षित 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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थीन स्यागन 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 अंतर्गत अवर 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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 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.

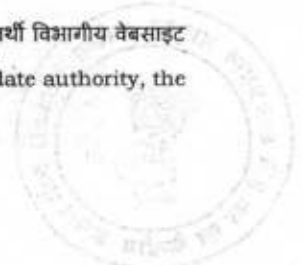
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of 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 आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी को लिखा 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 numbers 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्यागन 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.

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 Lamba Timber Works Pvt. Ltd, Gandhidham (*hereinafter referred to as "Appellant"*) has filed Appeal No. V2/40/GDM/2021 against Order-in-Original No. 11/DC/GRD/2020-21 dated 25.2.2021 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST Rural 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 Face Veneer, Core Veneer, Plywood, Flush Door etc and was holding Central Excise registration No. AAACL6907CEM001. During the course of audit of the records of the Appellant by the Departmental officers, it was observed that the Appellant had availed Cenvat credit to the tune of Rs. 15,65,517/-, comprising of Additional Duty of Customs of Rs. 12,10,801/- and Special Additional Duty of Customs of Rs. 3,54,716/-, on imported capital goods. It was further observed that the said capital goods were imported by them in the year 2007 under EPCG Scheme by claiming exemption under Notification No. 49/2000-Customs dated 27.4.2000, as amended. The Appellant could not produce Export Obligation Discharge Certificate before the competent authority. Accordingly, Show Cause Notice was issued to the Appellant, which was adjudicated by the Dy. Commissioner of Customs, Custom House, Kandla vide Order-in-Original dated 23.1.2017 who, *inter alia*, confirmed duty demand of Rs. 18,20,525/-.

2.1 It appeared to the Audit that since the Customs Duty, which was later on availed as Cenvat credit, was paid by the Appellant only after issuance of Show Cause Notice, intention to evade Customs Duty was involved and hence, the Appellant was not eligible to avail said Cenvat credit in terms of exclusion provided in Rule 9(1)(b) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*).

2.2 Based on audit observations, Show Cause Notice No. VI/(a)8-85/CGST Audit/Cir-VI/Gr. 27/2018-19 dated 11.2.2020 was issued to the Appellant calling them to show cause as to why wrongly availed and utilized Cenvat credit of Rs. 15,65,517/- should not be demanded and recovered from them under Rule 14 of CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944 (*hereinafter referred to as 'Act'*), along with interest under Rule 14 *ibid* and proposing imposition of penalty under Rule 15(2) of CCR, 2004 read with Section 11AC of the Act.



2.3 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed demand for wrongly availed Cenvat credit amounting to Rs. 15,65,517/- under Rule 14 of CCR, 2004 read with Section 11A(4) of the Act, along with interest under Rule 14 and imposed penalty of Rs. 15,65,517/- under Rule 15 ibid read with Section 11AC of the Act.

3. Being aggrieved, the Appellant has preferred appeal, *inter alia*, on the following grounds:-

(i) They had availed Cenvat credit of Rs. 15,65,517/- on imported capital goods in terms of Cenvat Credit Rules, 2004. They had imported capital goods under EPCG Scheme by claiming exemption benefit under Notification No. 49/2000-Customs dated 27.4.2000 but due to unforeseen circumstances, they failed to fulfill statutory provisions prescribed under the Customs Act, 1962 and failed to pay Customs Duty in prescribed time limit, however, there was no any willful mis-statement for evasion of Customs Duty.

(ii) That the impugned order invoking extended period of limitation is unsustainable and deserves to be set aside. The Show Cause Notice was issued by invoking extended period of limitation on the grounds of suppression of facts. However, they had shown the Cenvat Credit of the imported capital good separately in the Cenvat Credit Table prescribed in ER-1 returns. Therefore the Department had the full knowledge that they had availed the Cenvat Credit in respect of imported goods. Therefore the allegation that they never informed the department about the availment of said credit is wrong and without any basis. Since, the Department failed to prove the mala-fide intention of the Appellant to evade the duty payment, the extended period cannot be invoked in the present case. Therefore the whole demand issued for the period from November-14 to June-2017 is hit by limitation.

(iii) It is submitted that for the grounds mentioned hereinbefore for non-invocation of extended period of limitation under Section 11A (4) of the Central Excise Act, 1944, penalty is also not imposable under Section 11AC of the Act and relied upon the case law of Tamil Nadu Housing Board reported at 1994 (74) E.L.T. 9.

5. Personal Hearing was scheduled on 3.3.2022 in virtual mode through video conferencing. Shri Sudhir Maheshwari, Authorised Representative, appeared on behalf of the Appellant. He reiterated the submissions of appeal memo and



*[Handwritten signature]*

stated that he would submit certain documents relevant for the case as part of additional written submission.

6. I have carefully gone through the facts of the case, the impugned order, grounds of appeal memorandum and oral submission made at the time of Personal Hearing. The issue to be decided in the present appeal is whether the Cenvat credit of Additional Duty of Customs and Special Additional Duty of Customs totally amounting to Rs. 15,65,517/- availed by the Appellant was barred by exclusion provided under Rule 9(1)(b) of CCR, 2004 or otherwise.

7. On going through the records, I find that the Appellant had imported certain capital goods under EPCG scheme by claiming exemption under Notification No. 49/2000-Customs dated 27.4.2000, as amended. The Appellant could not produce Export Obligation Discharge Certificate within stipulated time. Hence, proceedings were initiated against the Appellant by the Customs authorities by way of issuance of Show Cause Notice on 1.3.2016. The Appellant paid applicable Customs duties on 30.3.2016. The said Show Cause Notice was adjudicated by the Dy. Commissioner of Customs, Custom House, Kandla vide Order-in-Original dated 23.1.2017, who, *inter alia*, confirmed duty demand of Rs. 18,20,525/-. The Appellant subsequently availed Cenvat credit of Additional Duty of Customs of Rs. 12,10,801/- and Special Additional Duty of Customs of Rs. 3,54,716/- paid by them. The adjudicating authority held that the Appellant was not eligible to avail said Cenvat credit in terms of exclusion provided in Rule 9(1)(b) of CCR,2004, as the Appellant had paid the Customs duty only after issuance of Show Cause Notice by the Customs Authorities, which indicated that there was intention to evade Customs Duty.

7.1 The Appellant has contended that they had imported capital goods under EPCG Scheme by claiming exemption under Notification No. 49/2000-Customs dated 27.4.2000, as amended, but due to unforeseen circumstances, they failed to fulfill statutory provisions prescribed under the Customs Act, 1962 and failed to pay Customs Duty in prescribed time limit, but, there was no any willful mis-statement for evasion of Customs Duty.

8. I find it is pertinent to examine the provisions of Rule 9(1)(bb) of CCR,2004, which are reproduced as under:

“(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from



where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

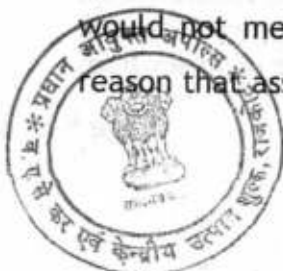
Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act;”

(Emphasis supplied)

8.1 In backdrop of above provisions, I find that it is on record that the Appellant had paid Additional duty of Customs and Special Additional Duty of Customs on 30.3.2016, after issuance of Show Cause Notice to them by the Customs Department on 1.3.2016. Had it not been pointed out by the Customs authorities, the Appellant would not have discharged Customs Duty. Further, penalty of Rs. 1,00,000/- was imposed upon the Appellant under Section 117 of the Customs Act, 1962 vide Order-in-Original dated 23.1.2017 for contravention of the conditions of exemption Notification No. 49/2000-Customs dated 27.4.2000, as amended. So, the present case is covered under exclusion clause provided in Rule 9(1)(b) of CCR, 2004 and the adjudicating authority has correctly held that the Appellant was not eligible to avail Cenvat credit of said Additional duty of Customs and Special Additional Duty of Customs. I, therefore, uphold confirmation of demand under Rule 14 of CCR, 2004. Since, confirmation of demand is upheld, it is natural consequence that confirmed demand is to be paid along with interest. I, therefore, uphold recovery of interest under Rule 14 ibid.

9. The Appellant has contended that the impugned order invoking extended period of limitation is unsustainable due to fact that they had shown the Cenvat Credit of the imported capital good separately in the Cenvat Credit Table prescribed in ER-1 returns. Therefore, the Department had full knowledge that they had availed the Cenvat Credit in respect of imported goods. That ingredients required for invocation of extended period were non existent in their case.

9.1 I find that merely showing Cenvat credit of capital goods in ER-1 Return would not mean that it was within the knowledge of the Department due to reason that assessing officer would not come to know that the said Cenvat credit



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of CVD and SAD was not on account of regular import but due to non fulfillment of export obligations. I find that such information was in the personal domain of the Appellant and unless and until the Appellant brought these facts to the knowledge of the Department, there is no way the Department could possess knowledge about the same. Thus, merely showing Cenvat credit of capital goods in periodical ER-1 Return would not mean that it was within the knowledge of the Department. The contention of the Appellant is rejected being devoid of merit.

9.2 I further find that proceedings were initiated on the basis of audit of the records of the Appellant. It is on record that during said Audit, it was revealed that the Appellant had failed to produce Export Obligation Discharge Certificate within stipulated time in respect of capital goods imported by them and subsequently paid Additional Duty of Customs and Special Additional Duty of Customs after issuance of Show Cause Notice by the Customs Department. Hence, the Appellant was not eligible to avail Cenvat credit of said Customs Duty in terms of exclusion provided in Rule 9(1)(b) of CCR, 2004, as held by me *supra*. It is apparent that had there been no audit of Appellant's records, wrong availment of Cenvat credit by the Appellant would have gone unnoticed and hence, ingredients for invoking extended period of limitation under Section 11A(4) of the Act existed in the present case. Hence, I hold that the demand is not barred by limitation. I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

"6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.

6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."

(Emphasis supplied)

10. Now, coming to imposition of penalty under Rule 15(2) of CCR,2004 read with Section 11AC of the Act. I have upheld invocation of extended period of limitation on the grounds of suppression of facts as per findings *supra*. Under the circumstances, imposition of penalty under Rule 15(2) of CCR,2004 is mandatory,

Page 7 of 8



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as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.). In the said case, it has been held by the Apex Court that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 15,65,517/- imposed under Rule 15(2) of CCR, 2004.

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

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

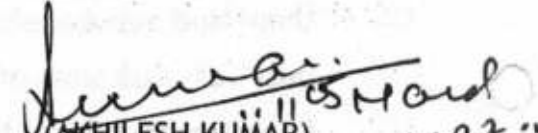
12. The appeal filed by the Appellant is disposed off as above.

सत्यापित,



विपुल शाह

अधीक्षक (अपील)

  
(AKHILESH KUMAR)  
Commissioner (Appeals) 2022..

By R.P.A.D.

To, M/s Lamba Timber Works Pvt. Ltd, Survey No. 205/4, Behind Gayatri Petrol Pump, Chudva, Gandhidham.	सेवा में, मेसर्स लांबा टिम्बर वर्क्स प्राइवेट लिमिटेड, सर्वेक्षण संख्या 205/4, गायत्री पेट्रोल पंप के पीछे, चुडवा, गांधीधाम।
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प्रतिलिपि :-

- 1) प्रधान 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 ग्रामीण मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

