



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



सत्यमेव जयते

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी.द्वारा:-

DIN-20220364SX0000313513

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/36 /GDM /2021	30/JC/2020-21	17-03-2021

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

KCH-EXCUS-000-APP-277-2021-22

आदेश का दिनांक / Date of Order:	25.03.2022	जारी करने की तारीख / Date of issue:	28.03.2022
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम।
द्वारा उपरलिखित जारी मूल आदेश से 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.Rudraksh Detergent & Chemicals Pvt. Ltd, Survery No. 157 Village- Padana Tal- Gandhidham -kutch

इस आदेश (अपील) से व्यक्ति 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 असावा अहमदाबाद- 380016 को की जानी चाहिए। /

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक 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 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक 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. 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 Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित 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 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 कोपनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

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

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

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

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

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के 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 की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-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 और भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

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



:: ORDER-IN-APPEAL ::

M/s Rudraksh Detergent & Chemicals Pvt. Ltd, Padana, District - Kutch (hereinafter referred to as "Appellant") has filed Appeal No. 36/GDM/2021 against Order-in-Original No. 30/JC/2020-21 dated 17.3.2021 (hereinafter referred to as "impugned order") passed by the Joint Commissioner, CGST Gandhidham (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of excisable goods falling under Chapter Nos. 28 and 34 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AACR08390XM001. 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 opted for availing the facility of re-credit for the F.Y. 2010-11, in terms of Para 2C(a) of the said notification.

2.1 During the course of audit of the records of the Appellant by the Departmental officers, it was observed that the Appellant had availed 100% of re-credit of duty paid from PLA during the months of October, 2010 to December, 2010 instead of at the rate of value addition prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008. It appeared that the Appellant had excess availed re-credit of Rs. 1,01,60,003/- during the said period. It was further observed by the Audit team that the Appellant had availed re-credit of Education Cess and Secondary and Higher Education Cess during the months of August, 2010 to December, 2010. It appeared 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/ re-credit of Education Cess and S.H.E.



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Cess.

2.2 Based on audit observations, Show Cause Notice No. V/GND/AR-III/Commr/91/2015 dated 7.9.2015 was issued to the Appellant calling them to show cause as to why excess availed re-credit of Basic Excise duty of Rs. 1,01,60,003/- should not be demanded and recovered from them under Notification No. 39/2001-CE dated 31.7.2001 read with Section 11A of the Central Excise Act, 1944; excess availed re-credit of Education Cess and Secondary and Higher Education Cess of Rs. 15,12,868/- should not be demanded and recovered from them under Notification No. 39/2001-CE dated 31.7.2001 read with Section 11A of the Act along with interest under Notification No. 39/2001-CE dated 31.7.2001 read with Section 11AB/11AA *ibid* and proposed imposition of penalty under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 1944.

2.3 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed demand of re-credit of Basic Excise Duty of Rs. 1,01,60,003/- and Education Cess and Secondary and Higher Education Cess of Rs. 15,12,868/- under Notification No. 39/2001-CE dated 31.7.2001 read with Section 11A of the Act, along with interest under Section 11AA of the Act.

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

(i) The Adjudicating Authority failed to appreciate that the re-credit/refund so claimed of the Education Cess and SHE Cess as per the prevailing Circulars and decisions cannot be considered as incorrect avilment of refund with any ulterior motive of evading tax only because the subsequent Supreme Court decision has reviewed and changed the decision of previous Supreme Court order. The said facts do not give any reason nor grounds for invoking larger period under Section 11A of CEA,1944 and the impugned order deserves to be set aside not only on merits but also on the ground that the proceedings are fully barred by limitation.

(ii) That the issue under reference is claiming of exemption by way of re-credit of the duties paid from PLA under exemption Notification No. 39 /2001-C.E. as amended by Notification No. 16/2008-C.E., and the said Notification has in-built procedure for verification and determination of incorrect re-credit claimed by the assessee and in the



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present case there is no dispute nor any determination of incorrect re-credit availed and accordingly there are no ground for initiating the recovery provisions under Section 11A of Central Excise Act, 1944. In the present facts of the case, there is no discrepancy nor any determination of excess re-credit by the appellants as require under clause(e) to Para 2C of the Notification. It is clear from the facts that the JAC on verification of the re-credit and the documents filed by the appellants had found the re-credit to be correct as per the prevailing legal positions and decisions and there is no quantification nor determination of any excess re-credit availed by the appellants under clause (e) to Para 2C of Notification and in absence of any such excess re-credit being determined there can be no recovery proceedings under clause (g) to Para 2C for invoking Sec. 11A of Central Excise Act, 1944.

(iii) There is no excess avilment of re-credit determined by the AC/DC on verification of the documents and records as per clause (e) and in absence of any determined / quantified excess re-credit as per the prescribed procedure under the said Notification there can be no recovery provision under Section 11A of the Act. Accordingly the present proceeding so initiated invoking the larger period under Sec. 11A is incorrect, beyond the statutory provisions and ultra vires as there is no determination of any excess credit and there are no grounds to substantiate the contravention.

(iv) The Show Cause Notice has invoked extended period ground that the appellants has not informed the department regarding the utilization of wrong avilment of re-credit, which is incorrect as they had filed monthly statements and documents supporting the quantification and avilment of re-credit with detailed breakup of the re-credit taken for basic excise duty, Ed. Cess and SHE Cess as required under clause (a) to (d) to Para 2C to Notification No. 39/2001-C.E. amended by Notification No. 16/2008-C.E. and Notification No. 33/2008-C.E.

(v) They have produce copies of all the applications for re-credit for the period August, 2010 to December, 2010 in the appeal memorandum and there is no dispute on the fact that the appellants have duly filed all the statements and documents as per clause (d) to Para 2C. In fact all the said documents have been duly verified and they complied with all the prevailing provisions so clarified by the Circulars and by the decisions and there was no objection nor any quantification of excess re-



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credit by the jurisdictional AC/DC. Accordingly, there are no grounds to allege that appellants have not informed the department regarding wrong availment or wrong utilization of the re-credit amount in excess as alleged in Para 7 of S.C.N. and the whole basis for invoking larger period is incorrect and deserves to be set aside.

4. Personal hearing in the matter was scheduled on 3.3.2022 in virtual mode through video conferencing. Shri Vinay Sejpal, Advocate, and Shri Rajesh Devpura, Authorised Representative, appeared on behalf of the Appellant. They reiterated submissions made in appeal memorandum as well as synopsis submitted as part of hearing.

5. I have carefully gone through the facts of the case, impugned order and submissions made by the appellant in grounds of appeal. The issue to be decided in the present case is whether the impugned order confirming demand of Basic Excise Duty of Rs. 1,01,60,003/- and Education Cess and Secondary and Higher Education Cess of Rs. 15,12,868/- under Notification No. 39/2001-CE dated 31.7.2001 read with Section 11A of the Act, along with interest under Section 11AA of the Act, is correct, legal and proper or not.

6. 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 under said notification, which was subsequently modified 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. I find that the Appellant had opted for availing the facility of re-credit, in terms of para 2C(a) of the said notification.

6.1 The adjudicating authority vide the impugned order held that the Appellant had wrongly availed 100% of re-credit of duty paid from PLA during the months of October, 2010 to December, 2010 instead of at the rate of value addition prescribed vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 33/2008-CE dated 10.06.2008. The adjudicating authority further held that the Appellant was not eligible for re-credit of Education Cess and Secondary and Higher Education Cess for the months of August, 2010 to December, 2010.



6.2 The Appellant has contended that there is no excess avilment of re-credit determined by the AC/DC on verification of the documents and records as per clause (e) of Para 2C of said Notification and in absence of any determined / quantified excess re-credit as per the prescribed procedure under the said Notification there can be no recovery provision under Section 11A of the Act. Accordingly the present proceeding so initiated invoking the larger period under Section 11A of the Act is incorrect and beyond the statutory provisions as there is no determination of any excess credit and there are no grounds to substantiate the contravention.

7. I find that the Appellant had opted for availing the facility of re-credit as envisaged in para 2C(a) of the said notification. I find it is pertinent to examine the provisions relating to re-credit contained in Notification No. 39/2001-CE dated 31.7.2001, which are reproduced as under:

"2C Notwithstanding anything contained in sub-paragraph 2B above,-

(a) the manufacturer at his own option, may take credit of the amount calculated in the manner specified in paragraph 2 in his account current, maintained in terms of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs. Such amount credited in the account current may be utilized by the manufacturer for payment of duty, in the manner specified under rule 8 of the Central Excise Rules, 2004, in subsequent months, and such payment shall be deemed to be payment in cash;

(b) the credit of the refund amount may be taken by the manufacturer in his account current, by the 7th of the month following the month under consideration;

(c) a manufacturer who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year;

(d) the manufacturer shall submit a statement of the total duty payable as well as the duty paid by utilization of CENVAT credit or otherwise and the credit taken as per clause (a), on each category of goods manufactured and cleared under the notification and specified in the said Table, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 15th of the month in which the credit has been so taken;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the amount correctly refundable to the manufacturer and intimate to the manufacturer by the 15th day of the next month to the month in which the statement under clause (d) has been submitted. In case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the



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receipt of the intimation, reverse the said excess credit from the account current maintained by him. In case, the credit taken by the manufacturer is less than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount;

(f) in case the manufacturer fails to comply with the provisions of clauses (a) to (e), he shall forfeit the option, to take credit of the amount calculated in the manner specified in sub-paragraph 2 in his account current on his own, as provided for in clauses (a) to (c);

(g) the amount of the credit availed irregularly or availed of in excess of the amount determined correctly refundable under clause (e) and not reversed by the manufacturer within the period specified therein, shall be recoverable as if it is a recovery of duty of excise erroneously refunded. In case such irregular or excess credit is utilised for payment of excise duty on clearances of excisable goods, the said goods shall be considered to have been cleared without payment of duty to the extent of utilisation of such irregular or excess credit.”

(Emphasis supplied)

7.1 As per above provisions, the Appellant was, *inter alia*, required to file re-credit application every month before the JAC as provided in Para 2C(d) *supra*, which was required to be processed by JAC and determine correct amount refundable, in terms of Para 2C(e) *supra*. It is observed that the Appellant had filed re-credit claims for the months of August, 2010 to December, 2010 before the jurisdictional Assistant Commissioner of erstwhile Central Excise Division, Gandhidham (JAC), as apparent from the said re-credit claims reproduced by the Appellant in appeal memorandum. The JAC was required to determine correct amount refundable to the Appellant for the said months, in terms of Para 2C(e) reproduced *supra*, by issuing speaking order.

8. I find that while deciding Appeal No. 30/GDM/2020 of the Appellant in separate appeal proceedings, the JAC was, *inter alia*, directed by this appellate authority to process re-credit claims of the Appellant for the months of August, 2010 and September, 2010 and determine correct re-credit amounts on merits and in terms of Notification No. 39/2001-CE dated 31.7.2001, as amended, vide Order-in-Appeal No. KCH-EXCUS-000-APP-153-2021 dated 12.4.2021. The relevant portion of the said order is reproduced herein under:

“8.1 Thus, issue involved before the Hon’ble Supreme Court was decided in favour of the Appellant pertaining to previous period. However, there is nothing in the said CESTAT/ Supreme Court Order, which will make the present refund/re-credit claims as redundant. These are fresh refund / re-credit claims filed in terms of Notification No. 39/2001-CE dated 31.7.2001, which are required to be disposed of by way of issuing speaking order. It is not under dispute that refund/re-credit claims for the months of February-



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2008, March-2008, August-2010 and September-2010 were not processed and disposed of in the past. The refund sanctioning authority has not brought on records any evidence indicating that the said refund/re-credit claims were already sanctioned in the past. In fact, the refund sanctioning authority has rejected the said refund /re-credit claims vide the impugned order, as per order portion of the impugned order but, the reason given by the refund sanctioning authority for rejection of said refund/re-credit claims are not justifiable and beyond any rationale.

8.2 In view of above discussion, I am of the opinion that the refund sanctioning authority has erred in rejecting the refund /re-credit claims for the months of February-2008, March-2008, August-2010 and September-2010 on unreasonable ground that period of claims was not covered by the Supreme Court's Order. I, therefore, direct the refund sanctioning authority to process the refund claims for the months of February-2008, March-2008 and determine correct re-credit amount for the months of August-2010 and September-2010 on merits and in terms of Notification No. 39/2001-CE dated 31.7.2001, as amended."

(Emphasis supplied)

8.1 Apart from the above, the Appellant has stated in the appeal memorandum that re-credit orders for the months of October, 2010 to December, 2010 have also not been issued by the jurisdictional Assistant Commissioner. If that be the case, it is imperative that the JAC has to also determine re-credit amount in respect of re-credit claims filed by the Appellant for the months of October, 2010 to December, 2010.

9. After examining the facts of the case, I am of the opinion that proceedings initiated on the basis of audit observation are premature inasmuch as re-credit claims for the months of August, 2010 to December, 2010 are yet to be processed and re-credit amounts are yet to be determined by JAC in terms of Para 2C(e) of Notification No. 39/2001-CE dated 31.7.2001, as amended. I, therefore, direct the Assistant Commissioner, CGST Rural Division, Gandhidham to pass speaking orders in respect of re-credit claims filed by the Appellant for the months of August, 2010 to December, 2010, on merits and in terms of Notification No. 39/2001-CE dated 31.7.2001, as amended. The present appeal is remanded to the adjudicating authority with a direction to keep the matter in abeyance till re-credit orders are issued by JAC and then adjudicate the Show Cause Notice.



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10. In view of above discussion and findings, I set aside the impugned order and dispose off the appeal by way of remand.

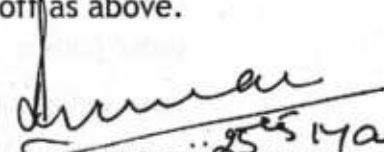
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित,



विपुल शाह
अधीक्षक (अपील्स)


(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To, M/s Rudraksh Detergent & Chemicals Pvt Ltd, Village Padana, Taluka Gandhidham, District - Kutch.	सेवा में, मेसर्स रुद्राक्ष डिटर्जेंट एंड केमिकल्स प्राइवेट लिमिटेड, ग्राम पदाना, तालुका गांधीधाम, जिला - कच्छ।
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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) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम ग्राम्य मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- ✓ 5) गार्ड फ़ाइल।

