रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंज़िल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद– 380015. :

क फाइल संख्या : File No : **V2(85)71/AHD-III/2016-17/Appeal-I** /4435 to 4439

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-051-17-18**

दिनाँक Date :**24.07.2017** जारी करने की तारीख Date of Issue: 25.07.2017

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-DSN-007-16-17** Date: **28.07.2016**
Issued by: Additional Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Sahajanand Laser Technology Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal

(1) केन्द्रीय उर्त्पादन शुल्क अधिनियम, 1944 की धारा 35– ण0बो/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER CENTRAL EXCISE (APPEALS-I) AHMEDABAD

ORDER-IN-APPEAL

M/s Sahajanand Laser Technology Ltd., A-8, G.I.D.C. Electronics Estate, Sector-15, Gandhinagar (hereinafter referred to as 'the appellant') is holding Central Excise Registration No. AAGCS1983BXM002 and is engaged in the manufacture of Laser System for metal processing unit and spare parts falling under CHT-85159000 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as CETA, 1985), Balloon Mounted Stent and PCTA Catheter falling under CHT-90183990 of CETA, 1985 and Aluminium Extruded profile falling under CHT-76020010 CETA, 1985 and is availing CENVAT credit under Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR, 2004'). During the course of Central Excise audit of the records of the appellant for the period February-2010 to October-2013, it was observed that the product Coronary Stent System manufactured by the appellant was fully exempt under Notification No.12/2012-C.E. dated 01/03/2012 (Sr.No.313). The appellant was following the provisions of Rule 6(3) of CCR, 2004 as common inputs were used in excisable as well as exempt goods. It was also noticed that the appellant had cleared the exempt product Coronary Stent System and the dutiable product PCTA-Catheter to M/s Lancer Medical Technology Ltd., 41, New York Tower, S.G. Highway, Ahmedabad, a fully owned subsidiary company of the appellant after discharging the amount @ 5% or 6% on exempted goods and paying duty @ 10% or 12% on dutiable goods. The said goods were being further sold by the 100% holding company of the appellant to various prospective customers at much higher value in comparison to the price at the factory gate. It appeared that the appellant and M/s Lancer Medical Technology Ltd. were related in terms of Section 4(3)(b)(ii) & (iv) of the Central Excise Act, 1944 (CEA, 1944), attracting Central Excise valuation under Rule 10 read with Rule 9 of Central Excise Valuation Rules, 2000 , whereby the value of goods shall be the normal transaction value at which goods were sold by the related person at the time of removal to buyers who were not related persons. On the basis of information furnished by the appellant the differential duty was worked out to be **Rs.32,51,634/-** for the period **December-2010 to March-2014**. Therefore, a Show Cause Notice F.No.VI/1(c)/Audit-I/41/Shajanand/2015-16 dated 23/12/2015 (hereinafter referred to as 'the SCN') was issued to the appellant demanding Central Excise duty amounting to Rs.32,51,634/- under Section 11A of CEA, 1944, along with interest under Section 11AA of CEA 1944 and proposing to impose penalty on the appellant under Section 11AC(1)(c) of CEA, 1944. The SCN was adjudicated vide O.I.O No.AHM-CEX-003-ADC-DSN-007-16-17 dated 28/07/2016 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Central Excise, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority') who has confirmed the demand and interest as proposed in the SCN and imposed a penalty of Rs.16,25,817/- on the appellant.

2. Being aggrieved by the impugned order, the appellant has preferred the instant appeal, mainly on the following grounds:

1) The impugned order confirming the factually incorrect SCN deserves to be quashed and set aside. It was not the case that the appellant had cleared exempted goods only to their wholly-owned subsidiary M/s Lancer Medical Technology Limited or that it had arranged the excisable goods were no sold by them except to or through the related person as in addition to selling the exempt goods to its wholly-owned subsidiary, the appellant had also sold the said goods to various third parties during the disputed period. The first requirement of Rule 9 and Rule 10 of the Valuation Rules is that the assessee must not sell goods to any other person except to or through the related person. The appellant had also sold the said goods to various third parties apart from selling the same to its wholly owned subsidiary, during the disputed period. Therefore, on this ground alone, Rule 9 and Rule 10 of the Valuation Rules would not be applicable in this case. This argument find force from subsequent amendment brought into Rule 9 and Rule 10 ibid vide Notification No. 14/2013-CE (N.T.) dated 22/11/2013 stipulating that in cases where part of the goods are sold to a related buyer / holding company, then the said rules are applicable only to that particular part of the sales. This would mean that prior to the date of the said Notification, the original Rule 9 and Rule 10 would apply only where the entire clearances (100% sales) was made to or through a related person.

2) The situation prevalent in the period prior to the amendment under Notification No. 14/2013-C.E. (N.T.) dated 22/11/2013 was a disputed matter before various Courts and Tribunals. It was time and again held that in cases where the goods were also sold to third parties, the provisions of Rule 9 and Rule 10 would not apply at all. Such view was held in Jagajothi Spinning Mills-2015 (329) ELT 374 (Tri.-Chennai); Aquamal Water Solution Limited -2005 (182) ELT 196 (Tri.-Bang.) that was remanded back by Hon'ble Supreme Court as reported in 2006 (193) ELT A 197 (SC) and Birdi Steels- 2005 (179) ELT 82. Thus Rule 8, Rule 9 and Rule 10 of the Valuation Rules would not get attracted and if Valuation Rules were to be applied then Rule 4 thereof would get attracted, which provides that the value of excisable goods shall be based on the value of identical goods sold by an assessee for delivery at any other time nearest to the time of removal of the goods under assessment. On perusal of the invoices under which the exempted goods were sold to the appellant's wholly owned subsidiary, it is seen that the value at which the goods were sold to various third parties was the same. The appellant had par / reversed 6% of the value not only in cases of clearances made to the appellant's wholly-owned subsidiary but also to clearances made to various third parties. Therefore, there was no liability for differential duty in the present case.

3) The appellant has submitted that without prejudice to the aforesaid submissions, this is a case where common inputs were used in regard to the dutiable final products and exempted final products. As provided in rule 6(3) of CCR, 2004, the

appellant had paid an amount equal to 6% of the value of exempted goods. This is not a case where assessment of excisable goods, either cleared free of cost or sold to the related buyer is required to be considered. The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 were introduced under the powers conferred by Section 27 of CEA, 1944 only for the purpose of determining value of excisable goods which are either given free of cost or are sold to related buyers. These rules are not applicable for considering 6% of the value of exempted goods if common inputs are used towards dutiable final products, exempted final products when credit of the common inputs are availed.

4) The appellant has further submitted that the period in dispute is from February-2010 to October-2013 whereas the SCN is dated 23/12/2015. The appellant had regularly filed the statutory periodical returns wherein all the data that the appellant was required to furnish were properly incorporated, without leaving any relevant / applicable column of ER-1 blank. It is settled law, that in such a situation it cannot be held that there was suppression of facts and much less that there was intention to evade payment of duty. CCE Indore vs Medicaps Limited – 2011 (24) STR 572 (Tri. Delhi) and Parekh Plast (I) Pvt. Ltd. vs CCE, Vapi – 2012 (25) STR 46 (Tri. Ahd.) refers. In the case of Continental Foundation Jt. Venture vs CCE, Chandigarh-I – 2007 (216) ELT 177 (SC), it has been held that if the appellant have not particularly written a letter and informed about some aspect, which they were statutorily not required to inform, it cannot be said that they had suppressed the facts from the department. Thus the longer period of limitation for the purpose of issuing SCN was not invokable. Even otherwise, this is a case of interpretation of the relevant provisions of the statute and it is settled law that if the assessee had made a mistake in interpreting the same or that he had interpreted the same in a manner which could benefit him, it cannot be said that there was ill-intention, fraud, *mala fide*, suppression of facts with intent to evade payment of duty as held in Chansma Taluka Sarvoday Majdoor Kamdar Sang Limited vs CCE, Ahmedabad – 2012 (25) STR 444 (Tri.-Ahd.) and Lanxess ABS Limited vs CCE, Vadodara – 2011 (22) STR 587 (Tri.-Ahd.). The matter in the instant case emanated from audit observation and the SCN beyond one year subsequent to Audit is barred by limitation as held in CCE vs ROHIT Industries Ltd. vs CCE – 2009 (242) ELT 240 (Tri.-Mum.); Hindustan Coca Cola Beverages P. Ltd. vs CCE – 2009 (242) ELT 45 (Tri.-Mum.); Studioline Interior Systems Pvt. Ltd. vs CCE – 2006 (201) ELT 250 (Tri.-Bang.). The provisions of Section 11AC of CEA, 1944 also would not get attracted on the same grounds. It is needless to mention that when no demand is sustainable, the question of payment of interest under Section 11AA of CEA, 1944 would not arise.

3. Personal hearing in the appeal was held on 20/06/2017 when Shri D.K. Trivedi, Advocate appeared on behalf of the appellant. The learned Advocate reiterated the grounds of appeal. He pointed out pricing of Independent Buyers and related buyers, where there was no difference after adding 10%. He pointed out that the calculation sheet of Audit report and relied upon in SCN had not been supplied. He requested that the case be remanded and adjudicating authority should mention invoice number in his further order.

4. I have carefully gone through the show cause notice, the impugned order as well as the grounds of appeal. The appellant had cleared exempted goods on payment of 5% / 6% of the value under the provisions of Rule 6(3) of CCR, 2004 where CENVAT credit on common inputs used in exempted as well as dutiable goods was availed without maintaining separate records for the inputs. In respect of the clearances of exempted goods to M/s Lancer Medical Technology Ltd., a wholly owned subsidiary of the appellant ('the subsidiary unit'), it was noticed that the subsidiary unit had sold the exempted goods at a higher value than the value on which the appellant had paid 5% / 6% under the provisions of Rule 6(3) of CCR, 2004. The demand has been confirmed invoking Rule 9 and Rule 10 of the Valuation Rules, 2000 in the impugned order with regards to the differential value. In the grounds of appeal, the appellant has argued that valuation rules cannot be made applicable while calculating 5% / 6% for the purpose of Rule 6 of CCR, 2004 and contested the application of the provisions of Rule 9 and Rule 10 on the ground that the primary requirement of these Rules that the goods must not be sold to any other person except to or through the related buyer / holding company is not fulfilled in the instant case. The appellant has also challenged the impugned order on limitation. In the additional submissions made during personal hearing, the appellant has also claimed that it was not provided with the relied upon documents in the SCN and details of invoices based on which the differential duty was worked out as confirmed in the impugned order.

5. As regards the applicability of the provisions of Valuation Rules, 2000 to the payment under Rule 6(3) of CCR, 2004, on perusal of '*Explanation I*' to Rule 6 of CCR, 2004, it is seen that the stipulation therein clearly states that value for the purpose of sub-rules (3) and (3A) shall have the same meaning assigned to it under Section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder. The Valuation Rules, 2000 made under Section 37 of Central Excise Act, 1944 provide for determining the nearest ascertainable price under Section 4 of CEA, 1944, equivalent to normal price. This fact has also been emphasized by the adjudicating authority in paragraph 25 of the impugned order. Thus the argument put forth by the appellant to the effect that the provisions of Valuation Rules, 2000 cannot be applied to payment under Rule 6(3) of CCR, 2004, is devoid of merit. As regards the specific application of Rule 9 and Rule 10 of the Valuation Rules, 2000, the adjudicating authority has held in paragraph 26 of the impugned order that the invoices produced by the appellant in claim of the fact that the prices at which goods were sold to the subsidiary unit was the same as the price at

which these goods were sold to non-related customers were not convincing and the invoices pertained to different products. On the other hand the appellant has pointed out that the calculation sheet of Audit Report and relied upon documents as per the SCN were never supplied on service of the SCN and hence it was not possible to produce comparative invoices for similar products without knowing the invoices that had been taken up for calculation of the differential duty amount. On this ground the appellant has requested for opportunity to demonstrate similar invoices to show that the prices at which the goods were cleared to non-related customers was the same as the price at which the goods were cleared to the subsidiary unit. In order to decide the applicability of Rule 9 and Rule 10 of the Valuation Rules, 2000, it is necessary that the details of the relevant invoices on the basis of which the demand for differential duty has been confirmed in the impugned order be supplied to the appellant along with the relied upon documents and grant the appellant the opportunity to produce comparative pricing and further defence submissions. Therefore, the case is remanded back to the adjudicating authority to decide the issue after according proper opportunity to the appellant to present their case in accordance with the principles of natural justice.

6. अपीलकर्ता द्वारा दर्ज अपील का निपटारा उपरोक्त तरीके से किया जाता हैं.

The appeal filed by the appellant stands disposed of in the above terms.

(उमा शंकर)
आयुक्त
केन्द्रीय कर (अपील्स)

Date:24/07/2017

Attested

(K. P. Jacob)
Superintendent
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

To
M/s Shajanand Laser Technology Ltd.,
A-8, G.I.D.C. Electronics Estate,
Sector 15,
Gandhinagar.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad.
2. The Commissioner of Central Tax, Gandhinagar.
3. The Additional Commissioner, Central Tax (System), Gandhinagar.
4. The A.C. / D.C., Central Tax Division, Gandhinagar.
5. Guard File
6. P.A.