
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	 GST Building-7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015
टेलीफोन : 079-26305065		टेलीफैक्स : 079-26305136

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क फाइल संख्या : File No : **V2/46/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-102-18-19**

दिनांक Date : **13-09-2018** जारी करने की तारीख Date of Issue: 1-11-2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

C. file

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

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-003-ADC-AJS-022-17-18** दिनांक : **07-03-2018** से सृजित

Arising out of Order-in-Original: **AHM-003-ADC-AJS-022-17-18**, Date: **07-03-2018**
 Issued by: Additional Commissioner, CGST, Div:RRA, HQ, Gandhinagar
 Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Vishakha Irrigation Pvt 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 पूर्वोक्त 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।

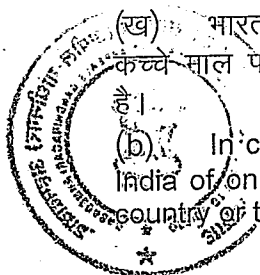
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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 उपरोक्त शुल्क केवले माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में

(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.

घ अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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 उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ए0बी/35-इ के अंतर्गत:-

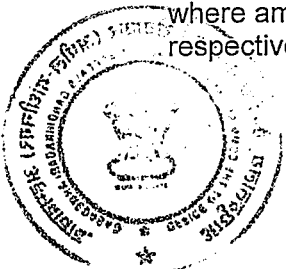
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मेटल 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 न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित 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. Registrar 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 आदेश 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 है।

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 notwithstanding the fact that the one appeal to the Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 bear a court fee stamp of Rs.6.50 paise 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 is 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, 1984 की धारा 34 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 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 अर्जी एवं अपील को लागू नहीं होगा।

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."

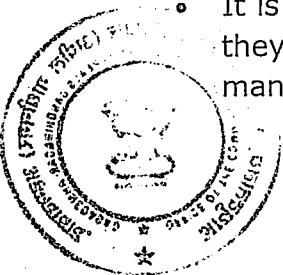


This appeal has been filed by M/s Vishakha Irrigation Pvt Ltd, Block No.792, Near Monik Industries, Sabaspur Road, Moti Bhojan, Ta-Kalol, Dist-Gandhinagar, Gujarat [for short-appellant] against Order-in-Original No.AHM-CEX-003-ADC-AJS-022-17-18 dated 07.03.2018 [for short-impugned order] passed by the Additional Commissioner of CGS & Central Excise, Gandhinagar [for short-adjudicating authority].

2. Briefly stated, the facts of the case is that the appellant is engaged in the manufacture of PVC Pipes, HDPE pipes, MDPE Pipes, PE Pipes falling under chapter CTH No.39 and Drip Irrigation Appliances falling under chapter 84. Internal Audit of the records of appellant for the period of 2011-12 to 2014-15 revealed that the appellant engaged in the manufacturing of excisable as well as exempted goods; that PVC pipes, HDPE Pipes, MDPE Pipes ad PE Pipes and Drip Irrigation appliances cleared on payment of duty, whereas when PVC Pipes and PE Pipes cleared for the use in Irrigation appliances, the same were cleared at nil rate of duty under exemption notification No.12/2012-CE dated 17.03.2012. The appellant has maintained records inputs like PVC Resin, Calcium Carbonate etc in RG 23 Pt 1 which was combined for dutiable and exempted services. During the course of audit, the appellant have provided list of inputs which they have not availed CENVT credit. It was ascertained that the appellant have accounted for quantity of the materials in RG23 A Part -1 and have not availed CENVAT credit in RG 23 A Part-II. As per information submitted by the appellant, it was observed by the department that for manufacture of 100 Kg PVC Pipes, 88% to 92% PVC resin is required. ON verification, it was found that the quantity of PVC resin on which credit availed are not sufficient for manufacture of PVC Pipes cleared under exemption. The details prepared in this regard reveals that the appellant had consumed 357233 Kgs PVC resin for exempted PVC Pipes out of the quantity of PVC resin (quantity recorded in RG 23 A Pt -1) on which CENVAT credit availed; that though the appellant have not availed an amount of CENVAT credit on various inputs used in the manufacture of exempted pipes, the verification show that the inputs are used out of quantity which was meant for dutiable pipes. As it appeared that the appellant had failed to discharge their obligation under Rule 6(1) and 6(2) of CENVT credit Rules, 2004 and required to pay duty @5%/6% of the clearance value of exempted goods i.e PVC Pipes, as prescribed under Rule 6(3)(i) of CCR, a show cause notice dated 09.05.2016 was issued to them for recovery of amount of Rs.1,13,45,260/- for the relevant period with interest and imposition of penalty equal to the duty demanded. Vide impugned order, the adjudicating authority has confirmed all allegations by confirming duty with interest and imposing penalty.

3 Feeling aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- It is on records that even though they cleared dutiable and exempted goods, they have not taken CENVT credit in respect of the inputs used in the manufacture of exempted goods, though all the common inputs entered in



RG23A Pat 1 register but taking CENVT credit only in respect of inputs which are used in the manufacture of dutiable credits.

- The audit officer has asked for the details of clearance of PVC pipes under exemption only and no details of inputs were called; that details submitted to the audit officer is not correct in as much as the appellant have provided the details of sales only and have not provided any details of PVC resin to audit; that the audit has prepared the details of PVC resins on the basis of details of sales of PVC Pipes, the quantity shown in the invoices and the ratio of the PVC resin contained in the PVC pipes. Without considering the inputs i.e PVC resin as such in balance and contained in the finished goods i.e PVC Pipes, the exact quantity of PVC resin contained in the PVC Pipes cannot be ascertained.
- The adjudicating authority has not considered that they have not availed CENVAT credit of Rs.1,49,02,206/- on PVC resin used in the manufacture of PVC pipes removed as irrigation appliances under exemption; that as per budgetary instruction issued by Ministry's DO letter No.334/8/2016-TRU dated 29.02.2016 the amount of CENVT credit to be reversed under Rule 6(3) of CCR should not exceed the CENVT credit taken.
- NO suppression of facts involved and accordingly no penalty imposable.

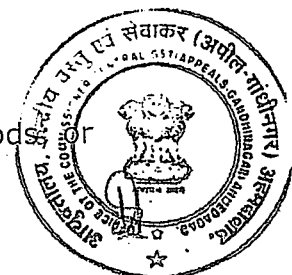
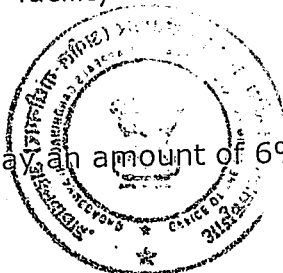
4. Personal hearing in the matter was held on 25.07.2018. Shri N.R.Parmar, Consultant appeared for the same and reiterated the grounds of appeal.

5. At the outset, I observe that the dispute as is evident revolves around Rule 6 of the CCR. The adjudicating authority while confirming the demand has held that the appellant is involved in manufacture of excisable goods as well as exempted goods and has not followed the conditions and limitation laid down in the provisions of Rule 6(3) and 6(3A) of CCR which came to the knowledge of the department during the course of audit conducted by the department. Therefore, duty demand demanded @5%/6% of the value of exempted goods with interest and imposed penalty equal to the duty confirmed, as discussed supra.

6. I observe that the said issue as discussed above has been decided by me vide various OIA and it has been held that as per Ministry's DO letter No.334/8/2016-TRU dated 29.02.2016 the amount of CENVAT credit to be reversed under Rule 6(3) of CCR should not exceed the CENVAT credit taken.

7. I observe that Rule 6(1) of CCR, clearly states that CENVAT credit shall not be allowed on input service used in manufacture of exempted goods or provision of exempted services except in the circumstances mentioned in sub-rule(2). Rule 6(2), *ibid*, puts an obligation on a manufacturer who avails CENVAT credit in respect of inputs and input services, used in both dutiable and exempted final products, to maintain separate records. Rule 6(3), *ibid*, a non-obstante clause, gives a facility to a manufacturer, opting not to maintain separate accounts to either

[a] pay an amount of 6% of the value of exempted goods



- [b] pay an amount as determined under rule 3A; or
 [c] maintain separate accounts and take CENVAT credit as per conditions therein and thereafter, pay an amount as per sub rule 3A of CCR .

8. I observe that in view of amended provisions of Rule 6 (3) of CCR, the Joint Secretary (TRU) has issued a letter no. 334/8/2016-TRU dated 29.2.2016 which states that:

(h) Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.

(i) sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.

(ii) sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.

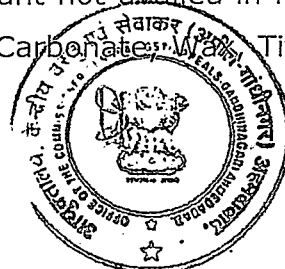
(iii) sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, Page 33 of 38 then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).

(iv) The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

However, this amendment reflects the interpretation and intent of the Government.

In-fact Joint Secretary himself states that the rules are *being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.* Even otherwise to demand an amount under Rule 6 which is more than the CENVAT credit availed would clearly be against the spirit of reversal. Though the above referred amendment has made in a clarification nature and not specified any retrospective effect, the intent of the Government is very clear. Therefore, the appellate authority has taken a view and decided that the amount of CENVT credit to be reversed under Rule 6(3) of CCR should not exceed the CENVT credit taken.

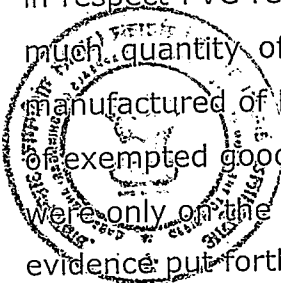
9. However, from the impugned notice as well from the impugned order, I observe that the department has stated that the appellant not availed in RG23A Pt II Register on Common inputs i.e PVC Resin, Calcium Carbonate, W Titaniumm



Oxide etc for the period from 2011-12 to 2014-15 comes to Rs.1,49,02,406/-. In other words, it establishes that that the appellant has maintained register for the details of CENVAT credit availed and not availed in respect of inputs used in the manufacture of exempted final products i.e PVC Pipes. Though they have not availed the CENVAT credit of Rs.1,49,02,406/-, the facts of the issue leading for recovery of 5%/6% of value exempted goods cleared under Rule 6(3) CCR narrated in the impugned order/impugned notice is as under:

8.1 As the assessee did not agree with the objection raised in the said FAR, the detailed scrutiny of the records was carried out to verify whether the assessee have availed the Cenvat credit on various inputs viz. PVC Resin, Calcium Carbonate, Wax, Titanium Oxide, Stearic Acid and Soya Oil used in the manufacture and clearance of PVC pipes which were cleared as components of Irrigation appliances or not. During this process, the assessee have provided a list of invoices of inputs on which they have not availed Cenvat credit [Annexure B]. It was ascertained that the assessee have accounted for quantity of these material in their RG-23A-Part-I register and have not availed Cenvat credit in RG-23A-Part-II register. The said assessee vide their e-mail dated 06.05.2016 informed that for manufacture of 100 kgs of PVC pipes, 88% to 92% PVC resin is required. On verification, it is found that the quantity of PVC resin on which credit is not availed are not sufficient for manufacture of PVC pipes cleared under exemption, details of which are prepared in Annexure B-1. This Annexure contains column 1 to 6. Column 1 indicates month, column 2 indicates opening balance of PVC resin, column 3 indicates quantity of PVC resins recorded in RG 23-A Part-I on which cenvat is not availed in RG23A-part-II, column 4 indicates quantity of PVC pipes sold as irrigation appliances, column 5 indicates percentage of PVC resin contained in the quantity of PVC Pipes cleared as exempted (92% of column 4) and column 6 indicates the closing balance of PVC resin derived by adding column 2 and 3 and subtracting of quantity shown in column 5. The closing balance so derived indicates negative sign which implies that the said assessee has consumed PVC resin for exempted PVC pipes out of the quantity of PVC resins (Quantity recorded in RG-23-A-Part-I) on which cenvat is availed. Thus, the contention of the said assessee that they had not availed cenvat credit on the inputs used in the exempted goods i.e. PVC pipes cleared as irrigation appliance is not tenable as it is very much evident from Annexure B-1 (From April 2011 to March 2015) that total cumulative quantity of 357233 KGS of PVC resin on which cenvat credit was wrongly availed were used in the manufacture of PVC Pipes which were cleared under exemption as irrigation appliance.

10. From the above, I find that the whole demand revolves on the grounds that the quantity of PVC resin on which credit not availed are not sufficient for manufacture PVC pipes cleared under exemption, hence total 357233 Kgs of PVC resins valued at Rs.19,81,01,264/- which CENVAT credit was availed were used in the manufacture of PVC Pipes and cleared as irrigation appliance after availing exemption under notification ibid. However, no exercise was appeared to be done in respect PVC resins under which CENVAT credit was taken, so as to find out how much quantity of credit taken PVC resins were taken out for utilizing exempted manufactured of PVC pipes for irrigation purpose i.e in other words for manufacture of exempted goods. Looking into the facts on records, I find that the above findings were only on the basis of assumption and presumption basis. There was no material evidence put forth either by the Audit officer no by the adjudicating authority at the time of preparing impugned notice of at the time of adjudication. Also, there were no confessional facts discussed in the matter to arrive such conclusion.



11. Further, Rule 6(1) of CCR, clearly states that CENVAT credit shall not be allowed on input service used in manufacture of exempted goods or provision of exempted services except in the circumstances mentioned in sub-rule(2). Rule 6(2), *ibid*, puts an obligation on a manufacturer who avails CENVAT credit in respect of inputs and input services, used in both dutiable and exempted final products, to maintain separate records. Rule 6(3), *ibid*, a non-obstante clause, gives a facility to a manufacturer, opting not to maintain separate accounts to either

- [a] pay an amount of 6% of the value of exempted goods; or
 [b] pay an amount as determined under rule 3A; or
 [c] maintain separate accounts and take CENVAT credit as per conditions therein and thereafter, pay an amount as per sub rule 3A of CCR .

In the instant case, the department has admitted that the appellant has maintained a separate account of raw materials used in the dutiable as well as exempted goods. In the circumstances, where is violation of Rule 6 of CCR? At the most, the CENVAT credit availed on such quantity of PVC resin utilized for the exempted goods is required to be reversed as has been held in para 8 above.

12. In view of above discussion I am of the opinion that the matter needs to be verified and decide afresh again in view of above discussion. In any circumstances, I hold that that the amount of CENVAT credit to be reversed under Rule 6(3) of CCR should not exceed the CENVAT credit taken. In view of above discussion, I remand the issue to the adjudicating authority for considering the matter in view of above discussion.

13. In this backdrop, I set aside the impugned order and remand the case to the adjudicating authority. The appeal filed by the appellant stands disposed of in above terms (अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।).

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: /09/2018

Attested

Mohan V.V
 (Mohan V.V)
 Superintendent (Appeals)
 CGST, Ahmedabad

By R.P.A.D

To
 M/s Vishakha Irrigation Pvt Ltd,
 Block No.792, Near Monik Industries,
 Sabaspur Road, Moti Bhojan,
 Ta-Kalol, Dist-Gandhinagar, Gujarat



Copy to:-

1. The Chief Commissioner,CGST, Ahmedabad Zone .
- ✓ 2. The Commissioner, CGST, Gandhinagar
3. The Additional Commissioner, CGST, Gandhinagar
4. The Deputy/Assistant Commissioner, CGST,Kalol Division
5. Guard File.
- ✓ 6. P.A. File.



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