



- (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 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 हों।

- (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- णबी/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 दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

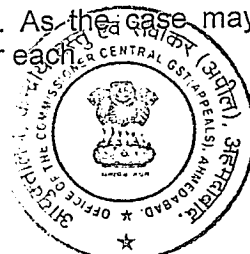
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(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 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 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 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 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 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 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 होंगे।

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:

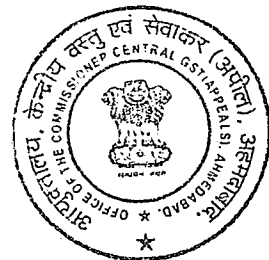
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

This appeal has been filed by M/s. Bayer Crop Science Ltd., 66/1 to 75/2, GIDC Estate, Motipura, Himmatnagar, Sabarkantha, Gujarat [for short 'appellant'] against OIO No. 8/AC/HMT/NRM/2018-19 dated 31.12.2018 by the Assistant Commissioner, CGST Division Himmatnagar, Gandhinagar Commissionerate [for short - 'adjudicating authority'].

2. Briefly, the facts are that two show cause notices were issued to the appellant both dated 28.11.2017, based on Audit Report No. 1374/16-17, *inter alia* alleging that
- the appellant had wrongly availed CENVAT credit in respect of service tax paid to Saurashtra Enviro Projects Ltd, Surat, towards INC disposal, since the expenditure on disposal service was incurred after completion of the manufacturing process and beyond the factory gate;
  - wrongly availed CENVAT credit on pipe seamless, flex, hose pipe, ERW rolling shutter perforated cable tray as capital goods though they were falling under chapter 73,83 and 40 of CETA '85;
  - wrongly availed CENVAT credit in respect of input services such as family entertainments arranged for the staff and on labour charges for furniture repairing though it does not satisfy the definition of input service given under Rule 2(l) of the CENVAT Credit Rules, 2004.
3. Vide the impugned OIO dated 31.12.2018 the adjudicating authority confirmed the recovery of CENVAT Credit to the tune of Rs. 3,23,297/- + Rs. 6,00,491/- along with interest and further proposed penalty of equivalent amount under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CCR, 2004. The amount of Rs. 6,00,412/- already paid was appropriated against the demand.
4. Feeling aggrieved, the appellant has filed this appeal raising the following averments:
- the appellant is a manufacturer of agro products falling under chapter 38 of the CETA '85;
  - that they had already paid the amount in respect of CENVAT Credit availed of Rs. 2,86,682/- [towards liability of para 2(b) supra] and Rs. 3,13,809/- [towards liability of para 2(c) supra] on 28.7.2017 along with interest which was paid on 16.2.2018; that the notice in respect of this objection was issued on 28.11.2017;
  - that the findings of the impugned OIO are not correct;
  - that in respect of CENVAT credit availed on disposal of manufacturing waste to the tune of Rs. 3,23,297/-, [para 2(a), supra] was in respect of waste generated in manufacturing of pesticides, insecticides and weedicides; that since these are hazardous, the appellant needs license from central authorities; that they also need permission from local state pollution board to carry out manufacturing activities; that as per the condition 5 of the consent and authorization issued by GPCB disposal of wastage by M/s. Saurashtra Enviro Projects is a mandatory condition; that the activity of disposal of manufacturing waste is a business activity qualifying for availing CENVAT under the definition of input services;
  - that the disposal activity carried out by the appellant is nothing but adherence to the environment consent issued by the jurisdictional pollution control board which mandates to treat the hazardous waste generated during the process of manufacturer; that the activity has direct nexus between manufacturing and disposal of hazardous waste as per the norms prescribed by GPCB and can be seen in consent letter issued by GPCB in case of appellant;
  - it is not relevant whether such disposal of hazardous goods are within the place of removal or beyond the place of removal;
  - that they would like to rely on the case of Parry India Ltd [2005(186) ELT 417];
  - that in terms of judicial pronouncements credit on services of waste disposal is eligible;
  - that they wish to rely on the case of India Pesticides Ltd, Anar Chemicals Ltd [2011(24) STR 32 (Tri)], Kanoria Chemicals & Industries Ltd [2015 TIOL 1934 CESTAT AHM];
  - that though the appellant had paid tax liability on 28.7.2017 and interest till the date of payment on discrepancies and it was not taken into cognizance by the adjudicating authority;



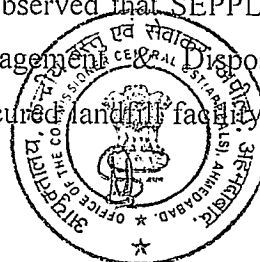
- that where the tax liability is paid along with interest before issuance of show cause notice no penalty can be imposed;
- that they wish to rely on the case of Rashtriya Ispat Nigam Ltd [2004(163) ELT A 53], Gaurav Mercantiles Ltd [2005(190) ELT 11], Johnson Lifts P Ltd [2006(201) ELT 337], Vanasthali Textiles Industries [2006(4) STR 277], Greenply Industries Ltd [2006(4) STR 241], Machino Montell I Ltd [2004(168) ELT 466];
- that the entire demand is time barred; that the notice for the period April 2015 to March 2016 has been issued on 28.11.2017;

5. Personal hearing in the matter was held on 28.3.2019, wherein Shri D A Jani, Warehouse Manager, appeared on behalf of the appellant and reiterated the grounds of appeal. He submitted that duty and interest was paid before the show cause notice.

6. I have gone through the facts of the case, the grounds of appeal and the oral submission made during the course of personal hearing. The question to be decided is whether the CENVAT credit was wrongly availed in respect of the allegation listed out in para 2 *supra*.

7. As I have already pointed out, three issues need to be decided. I will take up the issue one after the other. Going to the first issue, the allegation was that the appellant had wrongly availed CENVAT credit in respect of service tax paid for INC disposal service i.e. unloading charges per drum to M/s. Saurashtra Enviro Projects P Ltd, which is not admissible in terms of the CENVAT Credit Rules owing to the fact that [a] the expense has been incurred after completion of the manufacturing process and [b] the said credit is inadmissible since it is beyond the factory gate. The appellant's contention to the allegation which stands confirmed by the adjudicating authority is that the said credit availed on disposal of manufacturing waste is in respect of waste generated in manufacturing of pesticides, insecticides and weedicides and that since these are hazardous, the appellant needs license from central authorities; that they also need permission from local state pollution board to carry out manufacturing activities; that as per condition 5 of the *consent and authorization* issued by Gujarat Pollution Control Board, disposal of wastage by M/s. Saurashtra Enviro Projects, is a mandatory condition; that the activity of disposal of manufacturing waste is a business activity qualifying for availing CENVAT under the definition of input services; that the activity has direct nexus between manufacturing and disposal of hazardous waste as per the norms prescribed by GPCB and can be seen in consent letter issued by GPCB in case of appellant. The appellant, has also relied upon various case laws.

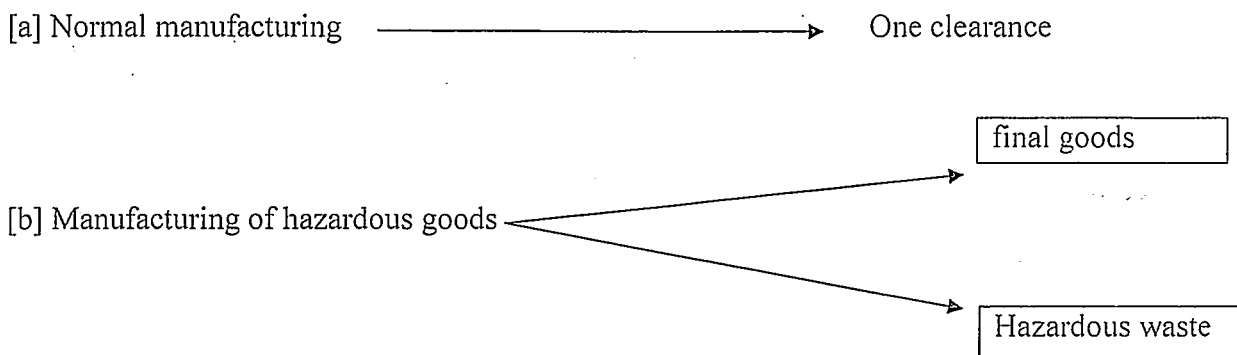
7.1 I have gone through the Consolidated Consent and Authorization of the GPCB dated 16.12.2014, wherein under clause 5, it is clearly mentioned that the appellant is granted authorization to operate facility and that waste/residue which contains pesticides, is to be sent to SEPPL Kutch. The allegation in the show cause notice is that the CENVAT credit has been allowed in respect of the services provided by M/s. Saurashtra Enviro Projects P Ltd, Surat. On going through the website of SEPPL [Saurashtra Enviro Projects Private Limited (SEPPL). <http://detoxgroup.in/company.php?i=10>], it is observed that SEPPL is a pioneer in developing Integrated Common Hazardous Waste Management & Disposal Facilities in Gujarat. Presently SEPPL, is successfully operating a secured landfill facility with Incineration at Kutch & and a Common Incineration Facility at Dahej.



However, one needs to understand that the CENVAT credit availed is towards INC disposal service i.e. unloading charges per drum, paid to M/s. SEPPL. CENVAT Credit on input services, can be availed only if it falls within the ambit of *Input service* as defined under Rule 2(l) of the CENVAT Credit Rules, 2004. Now, Rule 2(l) of the CENVAT Credit Rules, 2004, states as follows: [relevant extracts]

- (l) "*input service*" means any service, -  
 (i) used by a provider of [output service] for providing an output service; or  
 (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

Accordingly, I find that the grounds taken for denying CENVAT Credit Rules on the grounds that [a] the expense has been incurred after completion of the manufacturing process and [b] the said credit is inadmissible since it is beyond the factory gate, **is relevant** so far as the definition is concerned. Let me examine it with the help of the below mentioned diagram:

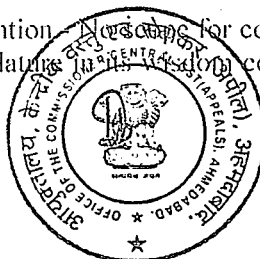


The argument that without disposal of waste, no manufacturing is possible, is akin to arguing that without sale of goods, no manufacturing is possible/viable. Yet the legislature in its wisdom has not allowed CENVAT Credit on services for outward transportation. I find that the adjudicating authority, was correct in denying the said credit on the grounds mentioned in his impugned OIO.

7.2 The appellant has also relied upon certain case laws to substantiate his claim that they were eligible for the CENVAT Credit. The case laws relied upon have been listed supra. I however find that the case laws stands distinguished because [a] the CENVAT Credit Rules, vide Rule 2(a) grants credit on pollution control equipment. Even otherwise, the case laws are not covering the specific situation of the appellant and therefore stands distinguished. Further, my findings are also based on the below mentioned three case laws, viz.

[a] PARMESHWARAN SUBRAMANI 2009 (242) E.L.T. 162 (S.C.)

Interpretation of statutes - Legislative intention. It is not for court to undertake exercise to read something into provisions which the legislature has consciously omitted - Intention of



legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and unambiguous - Courts to decide what the law is and not what it should be - Courts to adopt construction which will carry out obvious intention of legislature. [paras 14, 15]

**[b]FAVOURITE INDUSTRIES [2012 (278) E.L.T. 145 (S.C.)]**

Interpretation of statutes - Exemption notification - It is concession/exception in fiscal statute, and is required to be construed strictly - There cannot be any addition or subtraction to words employed in it - Its wordings have to be given their natural meaning, when they are simple, clear and unambiguous. [paras 14, 25]

Interpretation of statutes - Exemption notification - Liberal construction is to be given to beneficial notification. [para 21]

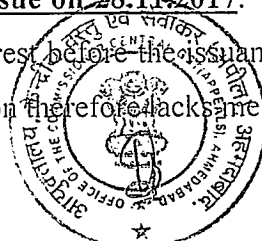
**[c]INTAS PHARMA LTD. [(332) E.L.T. 680 (Guj.)]**

Interpretation of statutes - Taxing statute - There is no scope of any intendment - It has to be construed in terms of language employed in statute - Regard must be had to clear meaning of words - Matter should be governed wholly by language of rules and notification. [para 8]

*8. It is by now well settled that in a taxing statute there is no scope of any intendment and the same has to be construed in terms of the language employed in the statute and that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the rules and the notification. As noticed earlier, the procedure laid in the notification dated 6-9-2004 provides for sealing of the goods and examination at the place of the despatch. Undisputedly, in the case of the present petitioner, no such procedure has been followed. Moreover, the notification defines duty for the purpose of the notification to mean the excise duty collected under the enactments stated therein. Undisputedly, the duties paid by the petitioner in relation to the goods in question do not fall within the enactments stipulated in the notification. Clearly therefore, the petitioner has failed to satisfy the basic requirements for availing of the benefits under the notification*

It has been held by the Courts that while interpreting statutes, no words can be added. When it is clearly held that CENVAT credit beyond place of removal is not admissible, the question of availing CENVAT Credit towards INC disposal service i.e. unloading charges per drum, would be in contravention of the CENVAT Credit Rules. In view of the foregoing, the finding of the adjudicating authority that the CENVAT credit was wrongly availed is upheld.

8. Moving on to the second and third issue wherein the adjudicating authority has held that the CENVAT credit availed by the appellant on certain items as capital goods amounting to Rs. 2,86,682/- and CENVAT credit availed on services to the tune of Rs. 3,13,809/- is wrongly availed, I find that the appellant has not contested the demand on merits. His only contention is that since they had paid the CENVAT credit wrongly availed along with interest before the issuance of show cause notice, no penalty was imposable. Let me check the facts. The appellant in para 4 of his statement of facts, states that they had reversed the CENVAT credit wrongly availed on 28.7.2017. The interest was paid on 16.2.2018. The show cause notice as I have already mentioned was issue on 28-11-2017. The appellant's contention that since they had paid the duty along with interest before the issuance of notice no penalty is to be imposed is factually incorrect. The contention therefore lacks merit and is rejected.



9. Lastly the appellant has stated that the notice is time barred. I find that while agreeing with the objection the appellant reversed the CENVAT Credit. Thus one thing is clear that the objection was correct and there was suppression on the part of the appellant. Had the audit not pointed it out, this would never have seen the light of day. Therefore, the contention of the appellant that the objection was time barred is without merit and I find that the adjudicating authority has correctly confirmed the demand along with interest and imposed penalty by invoking the extended period, since in this case there are elements for invoking of extended period.

10. In view of the foregoing, the appeal is rejected, as mentioned in paras supra.

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

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

*उमा शंकर*

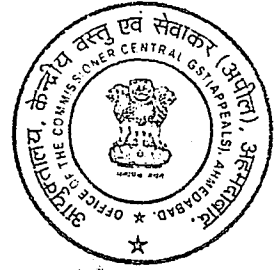
(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 28 .3.2019

Attested

*Vinod Lukose*  
(Vinod Lukose)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.



By RPAD.

To,  
M/s. Bayer Crop Science Ltd.,  
66/1 to 75/2,  
GIDC Estate,  
Motipura,  
Himmatnagar,  
Sabarkantha,  
Gujarat

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Central Tax, Gandhinagar Commissionerate.
3. The Assistant Commissioner, Central Tax, Himmatnagar Division, Gandhinagar Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate.
- ✓ 5. Guard File.
6. P.A.