केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

वस्तु एवं सेवा कर भवन,
सातवीं मंजिल,पॉलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

GST Building ,7th Floor,,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलेफैक्स : 079 - 26305136

क फाइल संख्या :File No : **V2/5/RA/GNR/2019-20** / 12461 TO 12465

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-26-19-20**

दिनाँक Date :**9/9/2019** जारी करने की तारीख Date of Issue: 27/09/2019

G. file

आयुक्त (अपील) द्वारा पारित

Passed by Commissioner (Appeals) Ahmedabad

ग **अपर** आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **28/AC/EX/MEH/17-18** दिनाँक : **29.12.2017** से सृजित

Arising out of Order-in-Original: **28/AC/EX/MEH/17-18,** Date: **29.12.2017** Issued by: Assistant Commissioner,CGST, Div:Mehsana, Gandhinagar Commissionerate, Ahmedabad.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Apollo Earthmovers 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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 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 अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्बी/35–इ के अंतर्गतः–

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 2nd 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 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.

आयुक्त, केन्द्रीय कर (अपील), अहमदाबाद
COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD. ★ OFFICE OF THE

(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."

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.

आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवाकर, अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD

ORDER-IN-APPEAL

1. This order arises out of an appeal filed by The Assistant Commissioner, Central GST & Central Excise, Division- Mehsana, Commissionerate – Gandhinagar (hereinafter referred to as 'the appellant') against Order in Original No.28/AC/EX/MEH/17-18 dated 29/12/2017 [hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, CGST & Central Excise, Division -Mehsana, Gandhinagar (hereinafter referred to as '*the adjudicating authority'*) pertaining to M/s Apollo Earth Movers Limited, (now known as AEML Investment Limited*) 221/A, GIDC Phase-I, Mehsana (Hereinafter referred as 'respondent').*

2. Brief facts of the case, are that during the course of Audit, it was observed that the respondent had supplied exciseable goods to M/s Shri City Pvt Ltd., a SEZ developer under ARE-1 for authorized operations valued at Rs. 66,25,000/-; the said clearance to developer of SEZ was not a specified clearance till 31.12.2008 to qualify for the benefit as specified under Rule 6(6) of Cenvat Credit Rules, 2004 (CCR). Therefore vide show cause notice No. V.84/15-221/Off/OA/09 dated 23.06.2010 demand of Rs. 6,62,500/- under Rule 14 of the CCR read with Section 11A(1) of Central Excise Act, 1944 (CEA) along with interest under Section 11AB of the CEA was raised.

3. The adjudicating authority vide the impugned order (Order in Original No.28/AC/EX/MEH/17-18 dated 29/12/2017*) dropped the entire demand by observing that the supply made from respondent, DTA unit to SEZ Developer would be treated as export and no duty is required to be paid/reversed for the supply.*

4. The impugned order was reviewed by the Commissioner of CGST and Central Excise, Gandhinagar for filling appeal under the provisions of Section 35E of CEA. The appellant alleged that the impugned order passed by the adjudicating authority is not proper and legal.

That the respondent was required to reverse the Cenvat credit under Rule 6(3) of the CCR prior to amendment made vide notification No. 50/2008-CE(NT) dated 31.12.2008; the adjudicating authority erred in not giving any findings on the issue in the impugned order;

The adjudicating authority has also committed a gross error on relying on the decision of Hon'ble High Court of Chhattisgarh in the case of UOI vs. SAIL reported at 2013(297)ELT166 as the same order has not been accepted by department and appeal against

the same is pending before Hon'ble Superme Court of India as reported at 2016(335)ELT162.; as the case has not attained finality; the adjudicating authority has also erred on relying on the decision of Hon'ble CESTAT , Chandigarh in the case of CCE Vs. Fortune Metals Ltd, 2016(340)ELT 575.

5. Hearing was fixed on dated 21-08-2019. wherein Shri Gopal Krishna Laddha, Charted Accountant, on behalf of the respondent appeared and tabled before me the submissions in addition to their earlier representation and reiterated their stand of not doing any offence and requested to drop the proceedings initiated against the unit. He submitted that goods cleared to SEZ developer is to be considered as export as defined in Section 2(m) of the Special Economic Zones Act 2015 (SEZ Act) ; the Rule 6(6) of CCR provides that reversal of Cenvat credit is not applicable, when goods are exported in terms of Central Excise Rules, 2002; Amendment made in Rule 6(6) vide Notification 50/2018-CE(NT) dated 31.12.2008 wherein word SEZ developer has been added along with SEZ unit is retrospective in nature. ; SEZ act has an overriding effect as per provisions of Section 51 of the SEZ Act, 2005. The respondent mainly placed reliance on the following case laws.

1. UOI Vs. SAIL [2013(297)ELT 166] (Chattisgarh) High Court
2. Sujana Metal Products ltd Vs. Commissioner of C.Ex., Hyd [2011(273)ELT 112] (Tri- Bang)
3. Ultra Tech Cementltd. Vs. Commissioner of C.Ex., Tirupati [2014(310)ELT 170] (Tri- Bang)
4. Wabco TVS (India) Ltd Vs. CCE, Chennai [2016(344)ELT 1034] (Tri- Chennai)

He further submitted the copy of Boards Circular No. 29/2006-Cus dated 27.12.2006 clarifying that supply from DTA to SEZ is to be treated as export and also relied on the following judgments in support of the clarification.

1. Collector of Central Excise, Vadodara vs. Dhiren Chemical Industries 2002[143 ELT 19 (SC)]
2. Biyani Alloy Private Ltd. (before GOI, Min. of Finance) [2012 (286) ELT 445 (GOI)

6. I have carefully gone through case records, Show Cause Notice, the impugned order, the appeal made by appellant and written submissions of the respondent and find that the issue to be decided in this appeal is whether the benefit provided by the substituted sub-rule 6(6)(i) in the CCR, 2004 vide notification 50/2008-C.E(NT)dated 31.12.2008 can be availed prior to 31.12.2008 for the supply made by DTA unit to SEZ developer under ARE-1 or supplies made to SEZ developer without payment of duty can be treated as "exempted goods" as defined in Rule 2(d) Cenvat credit Rules 2004 or otherwise.

7. I find that the respondent has supplied the excisable goods to SEZ developer under ARE-1 for authorized operation and Section 2(m) of the SEZ Act, 2005 classifies the supply from DTA to SEZ developer as export. Section 2(m) of the SEZ act read as under:

(m) "export" means –

(i) taking goods, or providing services out of India, from a SEZ, by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) supplying goods or providing services from the **DTA to a Unit or Developer;** or

(iii) supplying goods or providing services from one unit to another unit or developer in the same or different SEZ.

8. Further, the Rule 6(6) of CENVAT Credit Rules, 2004 stipulates that the provisions of Sub-rule (1), (2), (3) & (4) shall not be applicable in case the excisable goods are removed without payment of duty are either:

(i) Cleared to a unit in a SEZ or

(ii) ..... or

(iii) ..... or

(iv) ..... or

(v) Cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(vi) ..... or

(vii) All goods which are exempt from the duties of customs leviable under the first schedule to the CTA, 1975 (51 pf 1975) and the additional duty leviable under section 3 of the said customs tariff act when imported into India and supplied against international competitive bidding in terms of notification no. 6 / 2002- CE dated 1.3.2002 or notification no. 6/2006-CE dated 1.3.2002 as the case may be.

Further, notification No. 50 / 2008- CE dated 31.12.2008 has amended the CENVAT Credit Rules, 2004 by substituting the words "*to a developer of Special Economic Zone*" in sub rule (6) of Rule 6 for clause (i). The text of notification is read as under:

"2. In the CENVAT credit rules, 2004, in rule 6, in sub rule (6), for clause (i), the following clause shall be substituted namely:

"Cleared to a unit in a SEZ or to a developer or a SEZ zone for their authorized operation; or"

9. I find that, that the appellant in the grounds of appeal has

claimed that the adjudicating authority has not given finding on the issue of Rule 6(3) of the Cenvat Credit Rules, and merely discussed different provisions and case laws which are not relevant to the subject issue. The Rule 6 of the CER, 2004 imposes different obligations on the manufacturer of exempted and dutiable goods, Under rule 6(3), the manufacturer is required to pay certain amount of total price of the exempted goods, whereas Rule6(6) stipulates that Sub-rule (1), (2), (3) & (4) shall not be applicable in case the excisable goods are removed without payment of duty as per the conditions laid thereon.

10. Further, Circular No. 29/2006-Cus dated 27-12-2006 is reproduced here below,.

3. *The important provisions of the Act & the Rules having a bearing on procurement of goods from DTA by SEZ units and SEZ developers for their authorized operations are listed below: -*

(a) Under section 2 (m) of the Act, supplying goods or providing services, from DTA to a SEZ unit or a SEZ developer, has been defined to constitute "export".

(b) Section 51 of the Act provides that the said Act shall have effect in case of any inconsistency with the provisions contained in any other law for the time being in force, etc.;

(c) Sub section (1) of section 52 of the Act provides that w.e.f 14.03.2006, the provisions contained in chapter X A of the Customs Act, 1962, the SEZ Rules, 2003 and the SEZ (Customs Procedure) Regulations, 2003 made there under, shall not apply to Special Economic Zones; and

(d) Section 53 of the Act provides that w.e.f 10.02.2006, a Special Economic Zone shall be deemed to be territory outside the customs territory of India for the purposes of undertaking the authorized operations.

4. *In the light of the aforesaid provisions, with effect from 14.03.2006, Chapter X A of the Customs Act, 1962, the SEZ Rules, 2003, the SEZ (Customs Procedure) Regulations, 2003, and the exemption notification no. 58/2003-CE dated 22.7.2003 regarding the supply of goods to SEZ units & SEZ developers have become redundant. Consequently the supplies from DTA to a SEZ unit, or to SEZ developers for their authorized operations inside a SEZ notified under sub-section (1) of section 4 of the Act, may be treated as in the nature of exports.*

5. *The existing SEZs, i.e., the ones notified under section 76A of Chapter X A of the Customs Act, 1962 shall be deemed to have been notified under Section 4 of the Act. Supplies from DTA to SEZ shall be exempt from payment of any Central Excise duty under Rule 19 of Central Excise Rules, 2002. Similarly, such supplies shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to the fulfillment of conditions laid there under. The provisions relating to exports under Central Excise Act, 1944 and rules made there under may be applied, mutatis-mutandis, in case of procurement by SEZ units & SEZ developer from DTA for their authorized operations.*

6. *The provisions of Regulation 10 of the Special Economic Zone (Custom Procedure) Regulation, 2003 for requirement of issuance of Domestic Procurement Certificate (DPC) have been dispensed with in*

the SEZ Rules, 2006. Now the procedure for procurements of goods from Domestic Tariff Area to a SEZ Developer or a unit would be governed by the provisions of Rule 30 of the SEZ Rules, 2006, and the movement of goods from the place of manufacture to the SEZ shall be (i) on the basis of ARE1 (in cases where export entitlements are not availed); (ii) on the basis of ARE 1 and Bill of Export (in cases where export entitlements are availed) and against a general Bond or Letter of Undertaking, specified in Annexure-I and Annexure-II, under notification no. 42/2001-C.E.(N.T.) dated 26.06.2001 as amended, and furnished by the DTA supplier to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise. In the event of non-receipt of proof of export in form of endorsement, regarding admittance of goods in full into the Special Economic Zone, by the Authorized Officer of Customs posted in the SEZ, on ARE-1 and /or Bill of Export, as the case may be, within a period of 45 days, the duty should be demanded from the DTA supplier by the jurisdictional Central Excise Officer as is done in the case of non-availability of proof of export for normal export of goods, without payment of Central Excise duty, under Rule 19 of Central Excise Rules, 2002.

7. *Clearance of goods at the place of dispatch, i. e., at the factory or warehouse may be, at the option of the exporter (DTA Supplier), either 'under examination and sealing of goods by the Central Excise officer', or, 'under self- sealing and self examination', as is applicable in the case of export of goods under Rule 18 or 19 of Central Excise Rules, 2002. The manner of disposal of copies of ARE1, monitoring of proof of exports, demand of duty in case of non - submission of proof of exports, etc. shall be the same as is applicable in case of exports made under Rule 18 or Rule 19 of the Central Excise Rules, 2002. The DTA supplier shall ensure the bonafides of the SEZ unit or SEZ developer to whom duty free goods are being supplied. In the event of non receipt of proof of export due to loss of goods in transit due to theft, illegal diversion or any other reason, or in the event of proof of export being found to be fraudulent, the liability of payment of duty, fine, penalty and interest relating thereto, would lie with the supplier in DTA, in addition to any other liability under any law in force.*

11. Thus plain reading of the Section 2(m) of the SEZ Act 2005, makes amply clear that the supply of goods or service to SEZ developer is to be considered as export. In the judgment of High Court of Chhattisgarh, in the case of UOI Vs. Steel Authority of India 2013 (297) ELT 166 it is held that SEZ – *Goods supplied from DTA to developer of SEZ – these are to be treated as export in view of Section 2(m) of SEZ Act 2005 in which case all benefits given to export under any other law should be given.* The appeal, SLP (C) No. 36099/2013 preferred by the department before Hon'ble Superme Court of India as reported at 2016(335) ELT A 162 againist the High Court Chhattisgarh order has been dismissed as "not pressed on the ground of low tax effect" by the Hon'ble Superme Court. Therefore the referred Judgment of High Court of Chhattisgarh in the case of UOI vs. SAIL has reached finality. Hence the appellant argument the case has not attained finality does not hold ground at present.

12. I also find that in the case of Sujana Metal Products Ltd. Vs. Commissioner of C. Excise, Hyderabad [2011 (273) ELT 112 (Tri-Bang)] Hon'ble Tribunal has held *that the supply made by DTA to SEZ is export.* Further Hon'ble Tribunal has held that *in view of the*

overriding effect of Section 51 of the SEZ Act, the supplies made by DTA units to SEZ will amount to export for the purpose of all export benefits. The benefit shall include benefits available in respect of exports provided by exception to Rule 6 of CENVAT Credit Rules, 2004 (CCR).

13. As per Rule 26 of SEZ Act, 2005, every Developer and the entrepreneur shall be entitled to exemptions, drawbacks and concessions such as

(a) Exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act,1975 or any other low for time being in force, on goods imported into or service provided in, a unit, to carry on the authorized operations by Developer or entrepreneur;

(b) Exemption from any duty of customs, under the customs act, 1962 or customs tariff act,1975 or any other low for time being in force, on goods exported from service provided from a SEZ or from a unit to any place outside India;

(c) Exemption from any duty of excise, under the central excise act, 1944 (1or 1944) or the central excise tariff act, 1985 (f or 1985) or any other low for the time being in force, on goods brought from Domestic Tariff Area to a SEZ or unit to carry on the authorized operations by the Developer or Entrepreneur

14. I further find that in case of UOI Vs. Steel Authority of India [2013 (297) ELT 166 (Chhattisgarh)] the Hon'ble High Court has held;

- *that in background of general principle as well as framework of Customs Act or Excise Act, there should not be any excise duty on anything which is supplied to unit or developer. Principle that is applicable to unit in SEZ should also apply to developer as well and they should have same liabilities and benefits. This was not so and CENVAT credit rules, 2004 as initially envisaged provided benefit to goods cleared to unit in SEZ only and not to developer which was inadvertent omission. On realizing the mistake, Government substitute Rule 6(6) (i) ibid and thereafter, discrimination between developer and SEZ unit was obliterated – now both stand in same footing, in consonance with Article 14 of Constitution of India.*

- *Thus plain reading of the Section 2(m) itself makes it amply clear that the supply of goods or service to SEZ developer is to be considered as export. They have quoted judgment of High Court in the case of UOI Vs. Steel Authority of India 2013 (297) ELT 166 wherein it is held that SEZ – Goods supplied from DTA to developer of SEZ – these are to be treated as export in view of Section 2(m) of SEZ Act 2005 in which case all benefits given to export under any other law should be given.*

In view of the foregoing discussions, and circular no. 29/2006-Cus dated 27.12.006 I find that the supply to from DTA unit

to SEZ can be treated as Exprort , and therefore I hold that no duty is required to be levied on goods supplied to SEZ developer by DTA unit as the same are required to treated as export in terms of section 2(m) of the SEZ Act, 2005, and applicability of Rule 6(3) of Cenvat Credit rule is not proper for goods treated as export.

15. Accordingly, as per the above discussion, I do not find any reasons to interfere in the impugned order and reject the appeal filed by the department.

16. *The appeal filed by the appellant stand disposed off in above terms.*

9/9/19

(Gopi Nath)
Commissioner (Appeal)

Attested

9/9/19

(Brijesh Sharma)
Superintendent (Appeals)
Central Excise, Ahmedabad

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2 The Commissioner CGST and Central Excise, Gandhinagar.

3. The Deputy /Asstt. Commissioner, Central Excise, Division-Mehasana,.

4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Gandhinagar.

5. Guard file

6. PA File