



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



DIN : 20201264SW000000CA5A

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(29)9/GNR/2020-21
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-047/20-21**
दिनांक Date : **27-11-2020** जारी करने की तारीख Date of Issue
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **AHM-CEX-003-AC-023-2018** दिनांक: **12.01.2018**,
issued by Assisnat Commissioner, CGST and Central Excise, Division-Kalol, Gandhinagar
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respendent**

M/s Biotech Ophthalmics Pvt Ltd,
555-6-7, Opp Subham Tex-O-Pack,
Khatraj, Tal-Kalol, District-Gandhinagar

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 :

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

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

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।

(c) 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-बी/35-इ के अंतर्गत:-

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 यथार्थिथि 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 यथार्थिथि 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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

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."



ORDER-IN-APPEAL

This order arises out of remand proceedings in pursuance of Order No. A/11417/2019 dated 26.07.2019 of the Hon'ble CESTAT, Ahmedabad in appeal preferred by M/s. Biotech Ophthalmics Pvt. Ltd., 555-557, Opposite New Arvind Mills, Near Subham Tex-O-Pack, Khatraj, Tal - Kalol, District - Gandhinagar (in short 'appellant') against Order -in - Appeal No. AHM-EXCUS-003-APP-0279-17-18 dated 10.05.2018 passed by the Commissioner (Appeals), Ahmedabad in the matter of appeal filed by the appellant against Order-In-Original No. AHM-CEX-003-AC-023-2018 dated 12.01.2018 (in short 'impugned order') passed by the Assistant Commissioner, CGST, Kalol Division, Gandhinagar (in short 'the adjudicating authority').

2. Facts of the case, in brief, are that audit of the records of the appellant was conducted by the departmental officers for the Financial Year 2012-13 to 2105-16. It was observed by the audit officers that the appellant was engaged in manufacture and clearance of both exempted and dutiable finished goods. They were also taking CENVAT credit on common inputs and input services used in the manufacture of both exempted and dutiable finished goods and were not maintaining separate records as stipulated under Rule 6(2) of the CENVAT Credit Rules, 2004. It was found that they were paying an amount equal to 6% of the value of exempted goods cleared for home consumption in terms of Rule 6(3) of the CENVAT Credit Rules, 2004 but not paying an amount equal to 6% of the value of exempted goods in case of export of such exempted goods. It was further observed by the departmental audit that Notification No. 42/2001 CE (NT), which dealt with export under bond, was amended vide Notification No. 24/2010 CE (NT) dated 26.05.2010, wherein, the following clause was inserted:

"(iv) that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred per cent export oriented undertaking, shall not be allowed under this notification."

With the above amendment, the exempted goods were not allowed to be exported under bond and therefore the shelter of Rule 6(6) would not be available to exempted goods w.e.f. 26.05.2010. As per ER-1 returns for the period April-2015 to March -2016, they had cleared exempted goods valued at Rs. 7,87,19,084/- for export on which they were required to pay an amount of Rs. 47,23,144/- @ 6% of the value of exempted goods in terms of Rule 6(3) of the CENVAT Credit Rules, 2004.



2.1. It was further observed that the appellant had taken CENVAT credit on courier services in cases where courier was used for dispatch of finished excisable goods for export. The audit sought to deny CENVAT credit availed by the appellant by contending that as per Rule 2(1) of the CENVAT Credit Rules, 2004, services in relation to outward transportation qualifies as an input service only in the case where the outward transportation is up to the place of removal. In the instant case, the goods had been cleared for export and the courier had charged amount for delivery of the goods at the destination of the overseas buyer. It has been clarified by the Board vide Circular No. 999/6/2015-CX dated 28.02.2015 that in case of exports, the place of removal would be Port/ICD/CFS. Hence, the appellant would be eligible for CENVAT Credit in case of export for outward transportation only up to the place of removal. The amount of such wrongly availed CENVAT credit was ascertained at Rs. 54,934/-. The appellant though partially agreed to the audit observations and willingly paid an amount of Rs. 884/-, interest of Rs. 237/- and penalty Rs. 133/- through Challan no. 00190, dated 03.03.2017, the balance credit amounting to Rs, 54,050/- remained to be recovered.

2.3. Based on the audit observations, the appellant were issued a Show Cause Notice under F. No.VI/1(b)22/AP-1/Cir-1/ADT-I/Ahm/16-17 dated 25.04.2017 by the Deputy Commissioner, Central Excise, Circle-1, Audit-I, Ahmedabad demanding the above amount along with interest and also proposing imposition of penalty. The Assistant Commissioner, CGST, Kalol Division, Gandhinagar (hereinafter referred as the adjudicating authority) vide the impugned order confirmed the demand along with interest and also imposed penalty of Rs. 4,72,314/- and Rs. 5,934/- under Rule 15(1) of CCR.

3. Being aggrieved with the impugned order dated 12.01.2018, the appellant, had filed appeal before the Commissioner (Appeals), Ahmedabad on the following grounds:

- This is a revenue neutral transaction whereby, instead of claiming refund, they claimed CENVAT credit; that the Government is at no loss since appellant would have claimed a refund instead of claiming CENVAT credit. They relied on various case laws in this regard;
- They placed reliance on the judgement in the case of M/s Arvind Ltd [2016 (334) ELT 146] wherein it has been held that provisions of Rule 6(1) of CCR would not be attracted when the finished products attracting NIL rate of duty are exported and CENVAT credit would be available; that the adjudicating authority has misunderstood that M/s Arvind Ltd was a 100% EOU and thus distinguished the ruling;



- The Board has issued Circular No.928/18/2010-CX dated 28.06.2012, wherein it has been held that the policy of Govt. is not to tax the exports; that accordingly the demand made on the exports is illegal and against the intention of the Govt. They relied on various case laws in this regard;
- Reversal amount cannot exceed the CENVAT credit availed amount. The intention of Rule 6 of CCR is to see to it that the assessee does not avail CENVAT credit which is attributable to exempted goods manufactured. By literally interpreting the Rule i.e. pay an amount equal to 6% value of exempted goods, is deriving and absurd result whereby, the appellant is required to pay more than what has been availed which is absurd and is not the intention of CCR;
- Penalty is not imposable; and
- As regards courier services, the appellant stated that the said service have been availed for three purpose, one for exporting manufactured goods for a consideration, secondly for exporting free samples and thirdly for exporting business documents. They placed reliance of case laws in their favour.

4. After hearing the appellant on 26.03.2018, the Commissioner (Appeals), Central Tax, Ahmedabad has vide Order -in - Appeal No. AHM-EXCUS-003-APP-0279-17-18 dated 10.05.2018 remanded the matter related to reversal of CENVAT in terms of Rule 6 of the Cenvat Credit Rules, 2004 for quantification of CENVAT credit availed. The adjudicating authority was further directed to look in to final outcome of the appeal filed by the department against M/s Arvind Limited case. The Commissioner (Appeals) dropped the demand pertaining to avilment of CENVAT on courier service.

5. The appellant preferred appeal against the order of the Commissioner (Appeals) before the Hon'ble CESTAT, Ahmedabad on the issue of payment in terms of Rule 6 of Cenvat Credit Rules 2004 in case of exempted goods exported. No appeal has been preferred against the other issue. The Hon'ble Tribunal has vide orders dated 26.07.2019 remanded the matter to the Commissioner (Appeals). The relevant Para 4 of the judgement of the Hon'ble Tribunal is reproduced below:

"4. ... I find that the Ld. Commissioner (Appeals) in the impugned order has not decided the issue on merit whereas he remanded the matter to the adjudicating authority to decide the issue only on the basis of the outcome of the Hon'ble High Court judgement in the case of Arvind Ltd. (supra). Now the Hon'ble High Court has delivered the judgement the case of Arvind Ltd. Accordingly, I set aside the impugned order and remand the matter to Commissioner (Appeals) to pass a fresh order on the basis of the merit as well as considering the judgement of Hon'ble High Court of Gujarat in Arvind Ltd.



(supra). Appeal is allowed by way of remand to the Commissioner (Appeals)."

6. The appellant has vide letter dated 10.09.2020 made written submissions in the remand proceedings. It has been contended that in the case of Arvind Ltd. the Hon'ble Tribunal has held that the provision of Rule 6 of the CCR would not be attracted when the finished products attracting nil rate of duty are exported and CENVAT credit would be available to the assessee. The appeal preferred by the revenue against the said ruling vide Tax Appeal No. 4 of 2015 was rejected by the Hon'ble High Court of Gujarat. Thus, the ruling of the Hon'ble Tribunal has attained finality. The ratio laid down by the Ahmedabad CESTAT in the case of Arvind Ltd. (supra) is squarely applicable to their case. They have also relied on various other judicial pronouncements which are listed below:

- a) M/s Velayuthaswamy Spinning Mills Pvt. Ltd (Unit II) Vs. Commissioner of GST Madurai 2019 - TIOL - 2812 - CESTAT - Mad
- b) Well Known Polyesters Ltd. Vs. CCE, Vapi 2012 (25) STR 411 (Tri.Ahmd.)
- c) Lavino Kapur Cottons Pvt. Ltd Vs CCE Thane - II 2013 - TIOL - 2207 - CESTAT - Mum
- d) CCE, Ahmedabad III Vs Gujarat Ambuja Exports Ltd. 2014 (311) ELT 718 (Tri. - Ahmd)
- e) Jolly Board Ltd. Vs CCE, Aurangabad 2015 (321) ELT 502 (Tri. - Mum)
- f) CCE Vs. Drish Shoes Ltd. 2010 (254) ELT 417 (HP). The same was affirmed by the Hon'ble Supreme Court in the case of CCE, Chandigarh Vs. Drish Shoes Ltd. [2018] 90 taxmann.com 393 (SC)

6.1. They further contended that the reversal amount cannot exceed the CENVAT credit availed amount and relied on the judgement of Mercedes Benz India (P) Ltd. case 2015- TIOL - 1550 - CESTAT - Mum. They also re-iterated submissions earlier made before the Commissioner (Appeals).

7. Personal hearing was held in the case on 27.10.2020. S/Shri Vaibhav Jajoo, CA and Chintan Vasa, CA appeared for the hearing. They re-iterated the submissions made in appeal memorandum. They submitted that the case was covered by judgements of Hon'ble High Court and Hon'ble Tribunal in identical sets of facts.

8. I have gone through the facts of the case, the directions of the Hon'ble Tribunal as well as submissions made by the appellant. It is observed that the issue to be decided in the case is whether the appellants had correctly excluded the value of exempted goods cleared for export while making reversal under Rule



6 (3) of the Cenvat Credit Rules, 2004 and that whether the demand confirmed in the impugned order in terms of Rule 6 of the Cenvat Credit Rules along with interest and penalty is legally sustainable. Further, as per the directions of the Hon'ble Tribunal, Ahmedabad, the matter has to be decided on merits as well as considering the judgement in M/s Arvind Ltd.

9. It is observed that the adjudicating authority has confirmed the demand on the following grounds:

- a) With amendment in the Notification No. 42/2001 CE (NT) dated 26.06.2001, dealing with export under bond, by Notification No. 24/2010 - CE (NT) dated 26.05.2010, the exempted goods as well as excisable goods chargeable to NIL rate of duty, other than goods cleared by hundred percent export oriented undertaking, were not to be allowed under this notification. Hence, shelter of Rule 6 (6) of the CENVAT Credit Rules, 2004 was not available to exempted goods cleared for export by the appellant.
- b) Judgement relied upon by the appellant were based on the analogy of *Repro India Ltd. Vs. UOI* 2009 (235) ELT 614 (Bom) and *M/s. Drish Shoes Ltd. 2010 (254) ELT 417 (HP)*. All these cases pertained to issue prior to the amendment in Notification No. 42/2001 CE (NT).
- c) *M/s Arvind Ltd.* was 100% EOU which are included in exception clause of the amendment dated 26.05.2010.

10. It is observed that Rule 6 (6) (v) of the Cenvat Credit Rules, 2004 provides that the provisions of sub rules (1), (2), (3) and (4) of Rule 6, shall not be applicable in case the excisable goods removed without payment of duty are cleared for export under bond in terms of provisions of the Central Excise Rules, 2002. I find that the applicability of the provisions of the above rule to exempted goods cleared under export has been dealt in detail by the Hon'ble High Court of Himachal Pradesh in the case of *Commissioner of Central Excise Vs. Drish Shoes Ltd. 2010 (254) ELT 417 (HP)*. In this case, the Hon'ble High Court has framed following question of law:

"Whether an assessee exclusively manufacturing wholly exempted goods (chargeable to NIL tariff rate of duty) is eligible to avail CENVAT credit of duty paid on the said inputs and input services under Rule 6 (1) of the CENVAT Credit Rules, 2002/CENVAT Credit Rules, 2004, used in the manufacture of such exempted goods, even if such goods are exported."



After analyzing the legal provisions, the Hon'ble Court had held that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT Credit paid on the inputs under the exception clause to Rule 6 (1), as contained in Rule 6 (5) of the CENVAT Credit Rules, 2002 and Rule 6 (6) of the CENVAT Credit Rules, 2004, used in the manufacture of such goods, if the goods are exported. I find that the Hon'ble High Court has in this judgement not made any distinction regarding manner of export i.e. whether export was under bond or without bond. Hence, the judgement of the Court deals with all such situation. I also find that the said judgement has been affirmed by the Hon'ble Supreme Court. Hence, the judgement has a binding precedence.

10.1 As regards the contention of the adjudicating authority regarding change in legal provision after amendment in the Notification No. 42/2001 CE (NT) dated 26.06.2001 by Notification No. 24/2010 - CE (NT) dated 26.05.2010 and consequent exclusion of export of exempted goods as well as excisable goods chargeable to NIL rate of duty, other than goods cleared by hundred percent export oriented undertaking, under bond procedure, I find that the same is only procedural in nature and that the substantive law under Rule 6 (6) of the CENVAT Credit Rules, 2004 has not undergone any change. Hence, the judgement passed in case of Drish Shoes (supra), which is upheld by the Hon'ble Supreme Court, would be applicable on the issue under dispute in the present case also.

10.2 It is further observed that the appellant has drawn attention towards the judgement of Hon'ble Tribunal, Madras in M/s Sri Velayuthaswamy Spinning Mills Pvt. Ltd Vs. Commissioner, Madurai reported at 2019 - TIOL - 2812 - CESTAT - Mad wherein the decision was passed taking in to consideration the changes brought by amendment vide Notification No. 24/2010 - CE (NT) dated 26.05.2010. In this case, relying on the judgement passed in the case of M/s Jolly Board Limited Vs. Commissioner of Central Excise, Aurangabad 2017 (49) STR 620 (Tri. Mum) which was upheld by the Hon'ble High Court of Mumbai 2017 (50) STR 131 (Bom), the Hon'ble Tribunal has held that the credit availed on input services is available in case of export of exempted goods. Hence, I find that the contention of the adjudicating authority that shelter of Rule 6 (6) is not available to the appellant post amendment vide Notification No. 24/2010 - CE (NT) is not legally tenable in terms of the judicial pronouncements on the subject which are having binding precedence. Hence, I hold that the confirmation of demand is not legally sustainable on merits.

10.3 It is further observed that the Hon'ble Tribunal, Ahmedabad has in the case of M/s Arvind Ltd. Vs. Commissioner, Central Excise, Ahmedabad - III 2016 (334) ELT 146 (Tri. - Ahmd) held that the provisions of Rule 6 (1) of Cenvat



Credit Rules are not attracted in the present facts and circumstances when 100% cotton fabrics attracting nil rate of duty are exported and CENVAT Credit was not deniable to the appellants. The departmental appeal in the case before the Hon'ble High Court of Gujarat was withdrawn on monetary limits. Hence, the judgement of Hon'ble Tribunal has become final. The ratio of the above decision of the Hon'ble jurisdictional Tribunal, which also relied on the decision of Hon'ble High Court of Himachal Pradesh in the case of Commissioner of Central Excise v. Drish Shoes Ltd. (supra), is squarely applicable on facts of the present case also.

10.4 In view of the discussions made above, it is held that the provisions of Rule 6 (6) of the Cenvat Credit Rules, 2004 would be applicable in the cases of export of exempted goods and accordingly the appellants had correctly excluded the value of exempted goods cleared for export while making reversal under Rule 6 (3) of the Cenvat Credit Rules, 2004. Therefore, I find that the demand is not sustainable on merits backed by judicial pronouncement of Hon'ble High Court which has binding precedence. Accordingly, I set aside the impugned order in this regard and allow the appeal.

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

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

(Signature)
 (Achillesh Kumar)
 Commissioner (Appeals)
 Date: 27.11.2020.

Attested:

(Signature)
 (Anilkumar P.)
 Superintendent(Appeals),
 CGST, Ahmedabad.

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- The Deputy Commissioner, CGST & C.Excise, Kalol Division, Gandhinagar.
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