



**आयुक्त(अपील )का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
**Central GST, Appeal Commissionerate, Ahmedabad**  
 जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.  
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
 ☎ 07926305065- टेलीफैक्स 07926305136



**DIN : 20211264SW00004404BB**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/CEXP/453/2021 / 4167 70 4171

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-68/2021-22**  
 दिनांक Date : **07-12-2021** जारी करने की तारीख Date of Issue 09.12.2021  
 आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **Kalol/DC/D.Khatik/31/CEX/2020-21** दिनांक: **11.02.2021**  
 issued by Deputy Commissioner, CGST & Central Excise, Division Kalol, Gandhinagar  
 Commissionerate

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
 M/s Murugappa Morgan Thermal Ceramics Ltd  
 Plot No. 681, Moti Bhoyan Village,  
 Sanand-Kalol State Highway, Kalol,  
 Gandhinagar - 382721

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 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, 4<sup>th</sup> 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 हानिकार खाने 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.

(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 ईए-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 ई.का मुख्य शीर्ष 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 होतो 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.

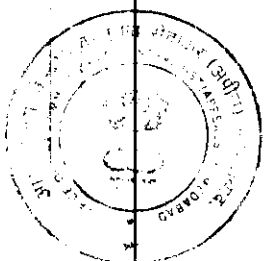
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup>माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 पढ़ी 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- (46) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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.

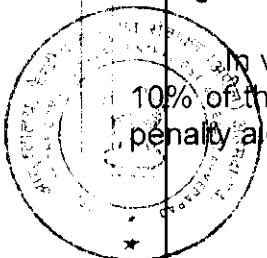
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (cxxi) amount determined under Section 11 D;
- (cxxii) amount of erroneous Cenvat Credit taken;
- (cxxiii) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

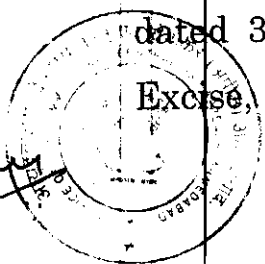
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Murugappa Morgan Thermal Ceramics Ltd, 682, Moti Bhoyan Village, Sanand-Kalol State Highway, Taluka : Kalol, District : Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. Kalol/DC/D.KHATIK/31/CEX/2020-21 dated 11.02.2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST, Division- Kalol, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is holding Central Excise Registration No. AAACM4385MXM002 and engaged in manufacturing of Ceramic Fiber Blankets falling under Chapter 69 of the Central Excise Tariff Act, 1985. They are availing Cenvat Credit facility under the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). During the course of Central Excise Audit, it was observed that the appellant had cleared their product valued at Rs.26,60,460/- and Rs.1,45,10,618/- during the period October, 2015 to June, 2016 and July, 2016 to June, 2017 respectively to various power projects availing exemption under Notification No. 12/2012-CE dated 17.03.2012. Since the goods were manufactured out of the inputs on which the appellant had availed cenvat credit and the final products were cleared under exemption, the appellant were required to follow the procedure laid down under Rule 6 (3) of the CCR, 2004. However, the appellant had neither paid the amount as determined under Rule 6 (3A) of the CCR, 2004 nor had they maintained separate accounts as required under clause (iii) of Rule 6 (3) of the CCR, 2004. Therefore, the appellant were required to pay an amount equal to six percent of the value of the exempted goods as per clause (i) of Rule 6 (3) of the CCR, 2004. The appellant was issued a SCN V.69/15-113/DEM/OA/15-16 dated 30.12.2015 by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-III, for the period F.Y. 2010-11 to September, 2015.



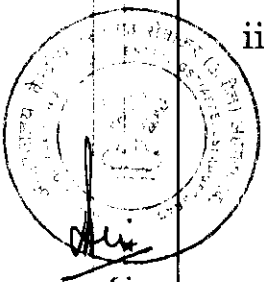
For the subsequent period, information was obtained from the appellant and the amount payable was worked out to be Rs.1,59,628/- and Rs.8,70,637/- for the period from October, 2015 to June, 2016 and July, 2016 to June, 2017 respectively.

3. The appellant was issued SCNs under Section 11A (7A) of the Central Excise Act, 1944 bearing No.AR-II/KLL/SCN/Audit/R.P 6&7/Murugappa/14-15 dated 24.10.2016 and 18.01.2018 wherein it was proposed to recover a total amount of Rs.10,30,265/- under Section 11A of the Central Excise Act, 1944 read with Rule 14 of the CCR, 2004 along with interest under Section 11AB/11AA of the Central Excise Act, 1944 read with Rule 14 of the CCR, 2004. Penalty was also proposed to be imposed under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of the CCR, 2004.

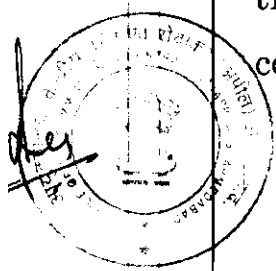
4. The said SCN was adjudicated vide the impugned order and the demand for an amount of Rs.10,30,265/- was confirmed along with interest. Penalty was also imposed under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

5. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds:

- i) The impugned order has been passed without jurisdiction and in violation of the settled legal position in terms of the decision of the Hon'ble Tribunal in the case of Bharat Heavy Electricals Ltd reported in 2015 (329) ELT 893. Though it has been recorded in the impugned order that they are relying upon the said decision, nothing has been recorded as regards its applicability or otherwise.
- ii) It is a settled legal position that the orders of the higher appellate authorities are binding upon the lower authorities.



- iii) The Hon'ble Tribunal in the Bharat Heavy Electricals Ltd case has categorically held that when domestically manufactured goods are cleared under Notification No. 6/2006-CE (now 12/2012-CE) on tariff based competitive bidding, then such case would be beyond the purview of Rule 6 (1), 6 (2), 6 (3) and 6 (4) by virtue of Rule 6 (6) (vii) of the CCR, 2004. The contention of the department was that clause (vii) of Rule 6 (6) of the CCR, 2004 would be applicable only to imported goods. The Hon'ble Tribunal while discarding such interpretation held that as long as the goods cleared under such notification were having a parallel customs exemption from payment of BCD and CVD, then Rule 6 (6) (vii) would be applicable to such cases.
- iv) Similar findings have also been rendered in :- Bharat Aluminum Co Ltd - 2014 (303) ELT 580; Thermo Cables Ltd - 2013 (295) ELT 231; BHEL - 2012 (280) ELT 460 and 2014 (299) ELT 371.
- v) It is undisputed that they had supplied goods under tariff based competitive bidding while taking benefit of Notification No. 12/2012-CE dated 17.03.2012, so Rule 6(3) of the CCR, 2004 is not applicable and the case is squarely covered by Rule 6 (6) (vii) of the CCR, 2004.
- vi) The Commissioner (Appeals), Ahmedabad had vide OIA No. AHM-EXCUS-003-APP-36-18-19 dated 24.07.2018 in their own case considered the decisions of the Hon'ble Tribunal and had set aside the order of the adjudicating authority, thereby holding that Rule 6 (6) (vii) of the CCR, 2004 would be applicable. The adjudicating authority functioning under the jurisdiction of the Commissioner (Appeals), Ahmedabad was bound by the decision of the Commissioner (Appeals).
- vii) The present case was not a case where 100% penalty was imposable. The adjudicating authority failed to consider that the demand itself was not sustainable and therefore, no penalty could be imposed. Even if the demand was sustainable, 100%



penalty could not have been imposed as it was a case of interpretation of law.

- viii) The imposition of penalty is also bad in law inasmuch as there is no violation of any nature committed by them.
- ix) The adjudicating authority has also erred in confirming interest under the CCR, 2004 read with Section 11AB of the Central Excise Act, 1944. As there is no short levy or short payment of non levy or non payment of any excise duty, ordering recovery of interest under Section 11AB is also bad and liable to be set aside.

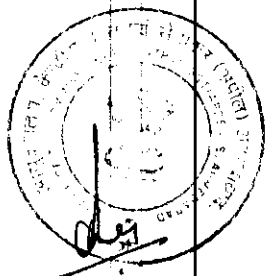
6. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri Amal Dave and Shri Sudhanshu Bissa, Advocates, appeared on behalf of the appellant for the hearing. They reiterated the submissions made in appeal memorandum. They stated that the demand for earlier period has been decided in their favour by Commissioner (Appeals).

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. I find that the issue for decision is whether supply of goods, under tariff based competitive bidding, by availing benefit of exemption under Notification No. 12/2012-CE dated 17.03.2012 is covered by Rule 6 (6) (vii) of the CCR, 2004 or whether the appellant are required to an amount equal to 6% of the value of the exempted goods in terms of Rule 6(3) of the CCR, 2004.

7.1 Rule 6 (6) of the CCR, 2004 stipulates that :

“The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either –

- (i) ....
- (ii) ....
- (iii) ....
- (iv) ....
- (v) ....



(vi) ....

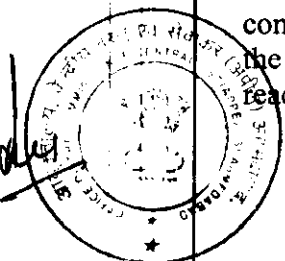
(vii) All goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act when imported into India and are supplied,-

- (a) against International Competitive Bidding; or
- (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
- (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of Notification No. 12/2012-CE, dt.17-3-2012."

7.2 From a plain reading of the above provisions of Rule 6 (6) (vii) of the CCR, 2004, it is evident that the provisions of Rule 6 (1), (2), (3) and (4) of the CCR, 2004 are not applicable to goods which are exempted from payment of Customs duty when imported into India and supplied to the specified projects. It is not disputed that the goods under consideration when imported into India and supplied to the specified power projects are exempt from payment of Customs duties, subject to conditions. Such being the case, the goods cleared by the appellant, claiming exemption, to a project awarded tariff based competitive bidding would be covered by the exclusion in terms of Rule 6 (6) (vii) of the CCR, 2004.

8. The present appeal pertains to the demand raised for the period October, 2015 to June, 2016 and July, 2016 to June, 2017. I find that the appellant had come up in appeal before the Commissioner (Appeals), Ahmedabad against confirmation of demand, on the same issue, for the period December, 2010 to September, 2015. The demand was set aside and appeal of the appellant was allowed vide OIA No. AHM-EXCUS-003-APP-36-18-19 dated 24.07.2018. Therefore, the issue stands decided in favour of the appellant for the earlier period upto September, 2015. In the said OIA it was held that :

"9. I have perused the notification no. 12/2012-CE and the exemption contained therein is subject to certain conditions. One such condition is that the goods, if imported into India are exempt from customs duty. Now on reading the corresponding Customs Notification No. 21/2002-Cus. dtd.





01.03.2002 as amended/superseded by Notification No. 12/2012-Cus. dtd. 17.03.2012, the goods which are to be used in power projects are exempted from the relevant customs duties subject to fulfillment of corresponding conditions.

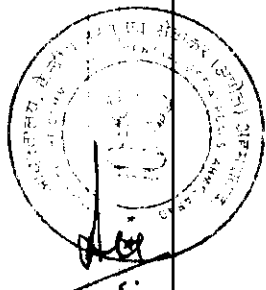
On perusal of Central Excise notification no. 12/2012-CE *ibid*, it is very clear that such exemption is granted to the goods manufactured only when such goods (upon importation into India) are exempted as per Customs Notification No. 12/2012-Cus. *ibid*. The goods mentioned in sub-rule (6) of Rule 6 of CCR, 2004 "the provisions of sub rule (1), (2), (3) and (4) shall not be applicable in case of excisable goods removed without payment of duty...". Here the phrase "in case of excisable goods removed" will logically be referred "goods manufactured in India", as held by Hon'ble Tribunal in the case of Bharat Heavy Electricals Ltd. quoted below. I find that there is no dispute that the appellant has fulfilled the conditions for availment of the exemption contained in the notifications and the goods are being supplied to the power projects. I am therefore of the view that the exemption is available to the appellant as the operation of conditions of Rule 6 (3) has been excluded to such category of supplies i.e. supply of goods to the power projects subject to observation of curtailed conditions.

10. I find support from the case law of Commissioner of C. Ex., Meerut –I vs. Bharat Heavy Electricals Ltd. – 2015 (329) ELT-893 (Tri.-Del.) in which it has been held by the tribunal and I quote;

*"observe from the above that when the goods manufactured into India have been supplied against international competitive bidding the same would be eligible for full duty exemption under Notification No. 6/2006-C.E., if the same satisfy the condition prescribed in the notification that the same goods, if imported into India are fully exempt from customs duty as well as additional customs duty. In terms of Clause (vii) of Rule 6(6), the provisions of sub-rules (1), (2), (3) and (4) are not applicable in respect of such goods. The Department's contention that clause (vii) of sub-rule (6) is not applicable to the goods manufactured in India but is applicable only to the imported goods is absurd, as the clause (vii) cannot be read in isolation but has to be read with the main provision of sub-rule (6). Moreover Rule 6 of the Cenvat Credit Rules is in respect of the goods manufactured in India and this rule, in general, contains provisions regarding denial of Cenvat credit in respect of inputs/input services which have gone into the manufacture of exempted final products or exempted output services. Sub-rule (6) of Rule 6 enumerates the situations in which the Cenvat credit would be available in respect of inputs/input services even if the same have been used in or in relation to manufacture of final product which have been cleared at nil rate of duty or have been cleared without payment of duty like clearances for export under bond, supplies 100% EOU/SEZ units, etc. There is nothing in this sub rule which it can be inferred that clause (vii) is applicable to the goods imported into India"*

11. I also find support from the case law of M/s Thermo Cables Ltd. vs. Commissioner of Customs & C. Ex., Hyderabad – 2013 (292) ELT-412 (Tri.-Bang.) in which it has been held by the tribunal and I quote;

*"After considering the submissions, we have found great force in the submissions made by the learned counsel. It is*

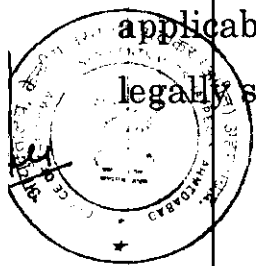


*not in dispute that the final products were cleared without payment of duty under Notification No. 6/2006-C.E. which, at Sl. No. 91 thereof, prescribed 'nil' rate of duty for all goods (falling under any chapter) supplied against international competitive bidding. This exemption was subject to the condition that the goods were exempted from basic customs duty and additional duty of customs when imported into India. It is not in dispute that the final products cleared by the assessee without payment of duty during the relevant period satisfied this condition. Against this backdrop, one has to read the provisions of Rule 6(6)(vii) of the CENVAT Credit Rules, 2004. This sub-rule reads as follows.."*

In view of the above, I find that the impugned order is required to be set aside and I accordingly set aside the impugned order and allow the appeal."

9. I find that the judgments of the Hon'ble Tribunal in the case of Bharat Heavy Electricals Ltd and Thermo Cables Ltd have not been overruled by any higher appellate court and neither has there been any change in the legal position. However, while passing the impugned order under challenge in the present appeal, the adjudicating authority has clearly ignored the decisions of the Hon'ble Tribunal supra and also the OIA No. AHM-EXCUS-003-APP-36-18-19 dated 24.07.2018 passed by the Commissioner (Appeals), Ahmedabad in the case of the same appellant. The SCN in the case were issued under Section 11A (7A) of the Central Excise Act, 1944 with reference to SCN issued for earlier period. The said demand has been decided against the department by the Commissioner (Appeals). The same was binding upon the adjudicating authority. However, the adjudicating authority has not followed the order of the Commissioner (Appeals), Ahmedabad. Thereby, the adjudicating authority has committed judicial indiscipline.

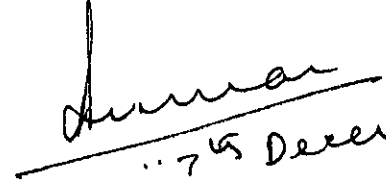
10. In view of the above facts as well as the judicial pronouncements, I hold that supply of goods under tariff based competitive bidding, by availing benefit of exemption under Notification No. 12/2012-CE dated 17.03.2012 is covered by Rule 6 (6) (vii) of the CCR, 2004 and accordingly, the provisions of Rule 6(3) of the CCR, 2004 are not applicable. Hence, the demand confirmed against the appellant is not legally sustainable.



11. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed.


12. 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.

  
 11/12/2021  
 ( Akhilesh Kumar )  
 Commissioner (Appeals)

Attested:

Date: .12.2021.

  
 (N.Suryanarayanan. Iyer)  
 Superintendent(Appeals),  
 CGST, Ahmedabad.



**BY RPAD / SPEED POST**

To

M/s. Murugappa Morgan Thermal Ceramics Ltd, Appellant  
 682, Moti Bhoyan Village,  
 Sanand-Kalol State Highway,  
 Taluka : Kalol,  
 District : Gandhinagar

The Deputy Commissioner,  
 CGST & Central Excise,  
 Division- Kalol  
 Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.  
 (for uploading the OIA)
4. Guard File.
5. P.A. File.