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

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
**Central GST, Appeal Commissionerate, Ahmedabad**
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhawan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलेफैक्स07926305136




DIN : **20220864SW0000919086**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/CEXP/52/2022 /3100 -3104

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-44/2022-23**
दिनाँक Date : **18-08-2022** जारी करने की तारीख Date of Issue 22.08.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **AHM-CEX-003-ADC-PBM-002-21-22** दिनाँक: **29.10.2021** passed by Additional Commissioner, CGST& Central Excise, HQ, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

1. **M/s Gujarat Chemicals**
**Plot No. 248 to 250, 279 to 281,**
**GIDC, Ranasan, Nr. Vijapur-Mahudi Cross Road,**
**Vijapur, Mehsana, Gujarat**

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 पूवोक्त 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 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 मे 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 मामलें 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 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।

(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 दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.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 रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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 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,BahumaliBhawan,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. 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 होत 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.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(65) 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:

(clxxviii) amount determined under Section 11 D;
(clxxix) amount of erroneous Cenvat Credit taken;
(clxxx) 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. Gujarat Chemicals, Plot No. 248 to 250, 279 to 281, GIDC, Ranasan, Near Vijapur-Manudi Cross Road, Taluka : Vijapur, Mehsana (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-PBM-002-21-22 dated 29.10.2021 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant is engaged in the manufacture of Surface Active Agent and Preparations falling under Chapter 34 of the First Schedule to the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No.AACFG6278JXM001. The appellant were clearing goods in domestic market as well as exporting them under LUT and under claim of Rebate. It appeared that the appellant were holding Advance Intermediate Licence (AIL) issued in terms of Export Import Policy and were procuring raw material i.e. Ethylene Oxide without payment of duty in terms of Notification No.44/2001-CE (NT) dated 26.06.2001. As per Condition No.(ii) of the said Notification, the provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for manufacture of Excisable Goods) Rules, 2001 shall be followed. It further appeared that as per Condition No. (viii) of the said Notification, the goods shall be exported following the procedure specified in Notification No.42/2001-CE (NT) dated 26.06.2001 i.e. export, without payment of duty, under Bond/LUT. It, therefore, appeared that a manufacturer availing the benefit of Notification No. 44/2001-CE (NT) dated 26.06.2001 for procurement of raw materials, was required to export the resultant manufactured product under Bond/LUT and the goods could not be exported under claim of Rebate under Rule 18 of the Central Excise Rules, 2002.

2.1 The appellant had filed 6 claims for Rebate during March and April, 2014. On verification of the Rebate Claims, it was found that the raw material was procured under Notification No. 44/2001-CE (NT) dated 26.06.2001 and the goods were exported under claim of rebate instead of Bond/LUT. Therefore, the said rebate claims were rejected vide OIO No. 73 to 78/Reb/C.Ex./2014

dated 03-04.02.2015 issued by the Deputy Commissioner, erstwhile Central Excise, Division – Gandhinagar, Ahmedabad -III.

2.2 An inquiry was also initiated against the appellant for the further period during which it was revealed that the appellant had, during the period from F.Y. 2010-11 to F.Y. 2015-16 (upto July, 2016), exported finished goods manufactured using raw material procured under Notification No. 44/2001-CE (NT) dated 26.06.2001 under claim of Rebate instead of under Bond/LUT. The central excise duty involved in the raw material used in the export of finished goods under claim of Rebate amounted to Rs.18,85,559/-. It, therefore, appeared that the appellant had wrongly taken the benefit of Notification No. 44/2001-CE (NT) dated 26.06.2001 inasmuch as the resultant manufactured goods were exported under claim of Rebate in violation of the conditions of the said Notification.

3. The appellant was, therefore, issued a SCN bearing No. V.34/15-72/DEM/OA/2015-16 dated 21.10.2015 proposing to recover the central excise duty amounting to Rs.18,85,559/- under Section 11A of the Central Excise Act, 1944 read with Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of duty for Manufacture of Excisable Goods) Rules, 2001 along with interest under Section 11AA of the Central Excise Act, 1944. Imposition of penalty under Section 11AC of the Central Excise Act, 1944 was also proposed.

4. The said SCN was adjudicated vide OIO No. AHM-CEX-003-ADC-MLM-071-15-16 dated 31.05.2016 wherein demand for central excise duty was confirmed along with interest. Penalty equal to the central excise duty was also imposed.

5. Being aggrieved, the appellant filed an appeal before then Commissioner (Appeal), Ahmedabad, who vide OIA No. AHM-EXCUS-003-APP-283-16-17 dated 27.03.2017 remanded the matter back to the adjudicating authority for deciding afresh and passing a speaking order on the allegations made in the SCN.

6. In the remand proceedings, the case was adjudicated vide the impugned order which confirmed the demand for central excise duty along with interest and imposed penalty equal to the central excise duty.

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

i. The adjudicating authority has neither analyzed the facts of the case not considered their submissions in full, including revenue neutrality and invocation of extended period.

ii. The matter is already appealed and the benefit of rebate granted to them by the Commissioner (Appeals) vide OIA No. AHM-EXCUS-003-APP-061-15-16 dated. 21.12.2015. After more than one year from the date of rejection of the rebate claim, they were issued another SCN demanding the duty on the inputs which were procured without payment of duty under Advance Licence. When the issue of whether benefit of Notification No. 44/2001-CE (NT) should be allowed to them, whether rebate claim should be allowed or not had already been decided, the proceedings under the present SCN is not sustainable.

iii. Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of duty for Manufacture of Excisable Goods) Rules, 2001 has been invoked for recovery of central excise duty from them. It is submitted that the said Rule is for recovery where the goods are not used for the purpose for which the exemption was allowed. In their case, the goods were procured for further export and such condition of use gets completely satisfied.

iv. The said Rules also applies to a manufacturer who intends to avail benefit of notification issued under sub-section (1) of Section 5A of the Central Excise Act, 1944. Whereas Notification No.44/2001-CE (NT) is a procedural notification. There is no exemption notification under Section 5A wholly exempting the goods manufactured and supplied against Invalidation Letter issued consequent to invalidation of Advance Licence.

v. Notification No.44/2001-CE (NT) is issued under Rule 19(2) of the Central Excise Rules, 2002 and not under Section 5A of the Central

Excise Act, 1944. The said Notification enables procurement of raw material without payment of duty by invalidating the Advance Licence.

vi. The whole policy of the Government is to not recovery any duty on the export of goods and when such duty is paid, the same is refunded as rebate. Once the goods have been exported, the rebate of such duty paid has also been granted, tax on the raw material procured cannot be demanded. So long as the fact of export and payment of duty is not disputed, it is immaterial that the goods should have been exported under bond instead of under claim of rebate.

vii. Even if they are liable for excise duty on account of non-fulfillment of the condition to Notification No.44/2001-CE (NT), the rebate of excise duty discharged on the input is eligible to them.

viii. They rely upon the judgment of the Hon'ble Supreme Court in the case of Commissioner Vs. Spentex Industries Ltd. – 2016 (336) ELT A136 (SC) and the judgment of the Hon'ble Tribunal in the case of Larsen & Toubro Ltd. Vs. Commissioner of C.Ex., Pondicherry – 2008 (227) ELT 65 (Tri.-Chennai).

ix. Even if excise duty had been discharged by them on account of non-fulfillment of the condition to Notification No.44/2001-CE (NT), cenvat credit of such excise duty is allowable to them. They rely upon the decision in the case of Reliance Industries Ltd. Vs. Commissioner of C.Ex., & Cus., Rajkot – 2009 (244) ELT 254 (Tri.-Ahmd).

x. The adjudicating authority has recorded in the impugned order that the issue does not pertain to availability of rebate. However, he has neither considered the point of revenue neutrality not considered the eligibility of credit or rebate if excise duty was required to be paid by them.

xi. The SCN has been issued demanding duty for the period from April, 2010 to July, 2015. However, the demand is beyond the period of limitation of one year and is time barred. Section 11A empowers the officer to issue SCN for extended period where the default in payment of duty or reversal of cenvat credit is by reason of fraud, collusion, wilful mis-statement or suppression of facts or

contravention of the provisions of the Act or Rules with intent to evade payment of duty.

xii. The first SCN was already issued to them after filing rebate claim in the year 2014 and the facts that exports were under claim of rebate were already known to the department before issuing second SCN or recording of statement of their Partner. The second SCN has been issued to them stating that they had suppressed the facts and accordingly, invoked extended period of limitation. Once the Department is aware of the facts which were considered as base for issuing the first SCN, second SCN cannot be issued for the same period on the same grounds invoking extended period of limitation.

xiii. They rely upon the judgment in the case of Nizam Sugar Factory Vs. Collector of Central Excise – 2006 (197) ELT 465 (SC); P & B Pharmaceuticals (P) Ltd. Vs. Collector of Central Excise – 2003 (153) ELT 14 (SC); Hyderabad Polymers (P) Ltd. Vs. Commissioner of Central Excise, Hyderabad – 2004 (166) ELT 151 (SC); Rivaa Textiles Inds. Ltd – 2015 (322) ELT 90 (Guj.); Shreeji Colourchem Industries – 2013 (294) ELT 615 (Tri.-Ahmd).

xiv. They are regularly filing ER-1 returns wherein detail of exports (including export under Bond or Rebate) are mentioned. There is no provision in law requiring them to make additional submission or intimation under Notification No.44/2001-CE (NT) dated 26.06.2001.

xv. The impugned order seeks to recover interest under Section 11AA of the Central Excise Act, 1944 read with Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of duty for Manufacture of Excisable Goods) Rules, 2001. Charging of interest under the said provisions is not proper since the demand itself is not sustainable.

xvi. Levy of penalty is not proper and legal since the demand of excise duty itself is not sustainable. Further, penalty should not be levied as there is no contravention of any of the provisions of law.

xvii. In a number of cases, the Supreme Court and the Tribunals have ruled that for imposition of penalty, intention to evade payment of duty must be shown and in absence of same, there is no justification to invoke penal provisions. They rely upon the decision in the case of Rivaa Textiles Inds. Ltd – 2015 (322) ELT 90 (Guj.)

8. Personal Hearing in the case was held on 08.08.2022 through virtual mode. Ms. Amrin Sahil Alwani, Chartered Accountant, appeared on behalf of the appellant. She reiterated the submissions made in the appeal memorandum.

9. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made by them at the time of personal hearing and evidences available on records. The issue which requires to be decided in the case is whether the appellant are liable to pay central excise duty on the raw material procured by them duty free, under Advance Licence and in terms of Notification No.44/2001-CE (NT) dated 26.06.2001, as the goods manufactured out of such raw material were exported under claim of rebate instead of export under Bond/LUT. The demand pertains to the period from F.Y.2010-11 to F.Y. 2015-16 (upto July, 2015).

10. I find that Rule 19 of the Central Excise Rules, 2002 provides for export of good without payment of duty. Sub-rule (2) of Rule 19 provides for duty free procurement of goods for manufacture and subsequent export. Rule 19 is reproduced below :

> "(1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.
>
> (2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in manufacture or processing of goods which are exported, as may be approved by the Commissioner.
>
> (3) The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be notified by the Board."

10.1 I further find that Notification No.44/2001-CE (NT) dated 26.06.2001 was issued in exercises of the powers conferred by sub-rule (3) read with sub-rule (2) of Rule 19 of the Central Excise (No.2) Rules, 2001 and notified the conditions, safeguards and procedures for removal of excisable goods without payment of duty by a manufacturer holding a Duty Exemption Entitlement Certificate and an Advance Licence under the Duty Exemption Scheme. In terms of the said Notification, nine conditions were prescribed for procuring goods without payment of duty. It is the allegation of the department that the

appellant had violated Condition No. (viii). The said Condition No.(viii) is reproduced below :

> "the goods shall be exported following the procedures specified in the Ministry of Finance (Department of Revenue) Notification No. 42/2001-Central Excise (N.T.), dated 26th June, 2001"

It is further observed that Notification No.42/2001-CE (NT) dated 26.06.2001 provided for export of goods, under bond, without payment of duty.

10.2 I find that the appellant have not controverted the fact that the raw material procured duty free by availing exemption under Notification No.44/2001-CE (NT) dated 26.06.2001 was used in the manufacture of goods which were exported under claim of rebate, which is in contravention of Condition No. (viii) of the said Notification that the goods are to be exported under Bond/LUT. Therefore, the appellant having violated the condition of the Notification, rendered themselves ineligible for exemption under the said Notification.

11. I find that the issue of procurement of duty free raw material, used in the manufacture of export goods, under Notification No. 44/2001-CE (NT) dated 26.06.2001 was the subject matter in the case of Commissioner of C.Ex. & S.T., Vapi Vs. KLJ Plasticizers – 2017 (353) ELT 366 (Tri.-Ahm.). In the said case, the Hon'ble Tribunal had held that :

> **"4.2** It is on record that the respondent had intermediate advance licences and removed the goods against Advance Release Order (A.R.O.) by issuing ARE-3s (Application for removal of excisable goods). When the goods have been cleared without payment of duty, it is an important responsibility of the Assessee-Manufacturer, who is respondent in this case, to strictly follow the condition(s) of the Notification under which they are claiming benefit of exemption from payment of duty. In this case, the respondent failed to fulfil the condition No. (ii) of the Notification No. 44/2001-C.E. (N.T.) (supra), when they had not complied with the provisions of Rule 3(7) and Rule 4(1) of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.
>
> **4.3** The respondent pleads that it was not their responsibility to comply with the provisions of Rule 3(7) and Rule 4(1) of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 and it was receivers/buyers of their goods, who were to comply with those conditions of the Notification No. 44/2001-C.E. (N.T.) (supra). This plea of shifting the responsibility of fulfilment of the conditions of the Notification on the receiver/buyer of the goods is misplaced and not correct as per law. It is the prime responsibility of the manufacturer, who claims the exemption from payment of duty that the conditions of the Rules/Notification under which they are claiming exemption are strictly complied with.
>
> **4.4** .....

**4.5 .....**

**4.6** Further, the Hon'ble Supreme Court in the case of *CCE, Allahabad* v. *Ginni Filaments Ltd.* - 2005 (181) E.L.T. 145 (S.C.) *inter alia* holds that the condition(s) of the notification cannot be ignored. Consequently, the present respondent-assessee is liable to make payment of Central Excise duty when the condition(s) of Notification No. 44/2001-C.E. (N.T.) (supra) have not been followed. Hence, the impugned Order-in-Appeal is set aside and the demand of Central Excise duty of Rs. 21,60,969/- along with interest is hereby confirmed. However, in view of the overall facts and circumstances of the case, the penalty of Rs. 21 lakhs imposed under Rule 25 of Central Excise Rules, 2002 on the respondent-assessee by the OIO passed by the Additional Commissioner of Central Excise is hereby reduced to Rs. 2,16,096/- (Rupees Two lakh, Sixteen Thousands and Ninety Six Only), which is 10% of the Central Excise duty confirmed against the respondent-assessee."

12. The above judgment of the jurisdictional Tribunal at Ahmedabad is squarely applicable to the facts of the present case inasmuch as the appellant had in violation of Condition No. (viii) of Notification No.44/2001-CE (NT) dated 26.06.2001 cleared the manufactured goods for export under claim of rebate instead of export under Bond/LUT. Therefore, applying the ratio of the above judgment, the appellant are not entitled for exemption under the said Notification and are liable to pay the applicable central excise duty.

13. The appellant have also raised the issue of revenue neutrality on the grounds that even if duty was to be paid by them, the same would be available to them as cenvat credit. While it may be true that if the appellant had paid duty on the raw material, they would have been eligible for cenvat credit, the same cannot be a ground for not paying the applicable central excise duty when the conditions governing the exemption are violated by them. Eligibility to cenvat credit and eligibility to exemption are altogether different matters and it is a settled legal position that the person claiming exemption has to establish his claim for exemption and the provisions of the exemption notification are to be construed strictly.

14. The appellant have further contended that Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of duty for Manufacture of Excisable Goods) Rules, 2001 cannot be applied for recovery as the said rule provides for recovery where the goods are not used for the intended purpose. I find merit in the contention of the appellant. Rule 6 of the said Rules, is reproduced below :

" Where the subject goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference

between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along-with interest and the provisions of section 11A and section 11AB of the Central Excise Act, 1944 (1 of 1944) shall apply mutatis mutandis for effecting such recoveries."

14.1 In the instant case it is not disputed that the raw material procured duty free by the appellant were used in manufacture of goods which were subsequently exported, albeit under claim of rebate. Therefore, it cannot be said that the goods were not used for the intended purpose. Consequently, the provisions of the said Rule 6 are not applicable to the facts of the present case. However, I find that the demand for central excise duty has been raised in the SCN by invoking the provisions of Section 11A of the Central Excise Act, 1944 read with Rule 6 of the said Rules. Therefore, though the provisions of Rule 6 of the said Rules are not applicable in the facts and circumstances of the case, the provisions of Section 11A would be applicable for recovery of the duty not paid by the appellant on account of wrong availment of exemption.

15. The appellant have also contested the confirmation of demand on the grounds of limitation. The appellant have contended that a SCN was issued to them after filing of Rebate claim in 2014 and the facts were within the knowledge of the department. Therefore, for the subsequent SCN extended period cannot be invoked.

15.1 I find that the SCN dated 20.10.2015 issued to the appellant records at Para 7 that the appellant had exported the goods, manufactured out of the raw materials procured under Notification No.44/2001-CE (NT) dated 26.06.2001, under claim of rebate which was in violation of the conditions of the said Notification and that the rebate claims filed by the appellant were accordingly rejected vide OIO dated 03-04.02.2015. Therefore, these facts were clearly within the knowledge of the department. Consequently, the department cannot allege suppression of facts and invoke the extended period of limitation in respect of the subsequent SCN issued on 20.10.2015 on the same issue also involving the same period. Accordingly, I am of the view that the demand of central excise duty for the extended period of limitation is not sustainable and is liable to be set aside. However, the demand for the normal period of limitation is upheld.

16. The appellant have also challenged the imposition of penalty under Section 11AC of the Central Excise Act, 1944. I find that the impugned order has imposed penalty equal to the duty confirmed against the appellant in terms of the provisions of Section 11AC (1) (c) of the Central Excise Act, 1944. However, as recorded hereinabove, the allegation that the appellant had indulged in suppression or wilful mis-statement of facts is not sustainable inasmuch as the facts were within the knowledge of the Department. Accordingly, the provisions of Section 11AC (1) (c) are not applicable in the facts and circumstances of the case.

16.1 I find that the appellant are liable to penalty in terms of the provisions of Section 11AC (1) (a) of the Central Excise Act, 1944. The quantum of penalty payable by the appellant, accordingly, ten percent of the central excise duty held payable as at Para 15.1 above or Rupees five thousand, whichever is higher.

17. In view of the facts discussed herein above, I set aside the demand of central excise duty for the extended period and uphold the demand for the normal period of limitation. The appellant are also liable to pay interest under Section 11AA/11AB of the Central Excise Act, 1944. Further, the penalty imposed on appellant is reduced to the extent of ten percent of the central excise duty payable, or rupees five thousand, whichever is higher, in terms of Section 11AC (1) (a) of the Central Excise Act, 1944. Accordingly, the appeal filed by the appellant is partly allowed to the above extent.

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

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

18th August, 2022.

( Akhilesh Kumar )
Commissioner (Appeals)

Attested:

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

Date: .08.2022.

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

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Appellant

The Additional Commissioner,
CGST & Central Excise,
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.
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4) Guard File.
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