



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in

**By Regd. Post**

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(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/770/2021-APPEAL / 3852-76
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-050/2022-23 and 29.09.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	12.10.2022
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-MT-005-006-21-22 dated 06.10.2021 passed by the Joint Commissioner, CGST, HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Serve Pharmaceuticals (Central Excise Registration No.-AAFFM2633LXM001) Address:- Plot No. 819-A, Rakanpur, Taluka-Kalol, District-Gandhinagar, Gujarat

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:-

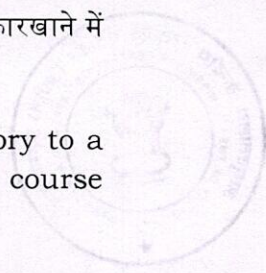
**Revision application to Government of India:**

(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 :-

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 :-

(क) 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।

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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।

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

(घ) 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।

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.

(2) 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 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये 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.

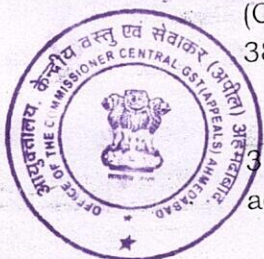
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद में बताया 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।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA- as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of



Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 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) एके प्रति अपील 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)

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(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।

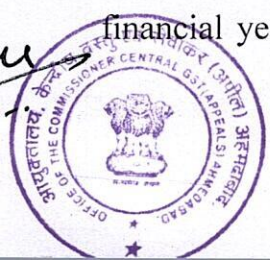
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER-IN-APPEAL**

The present appeal has been filed by M/s. Serve Pharmaceuticals, Plot No. 819-A, Rakanpur, Taluka: Kalol, District : Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-JC-MT-005-006-21-22 dated 06.10.2021 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate: Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AAAFFM2633LXM001 and were engaged in manufacture of Medicaments / P.P. Medicines falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant was availing value based SSI exemption up to clearance value of Rs. 150 Lakh / Rs. 100 Lakh (as per prevalent SSI Exemption limit) under Notification No. 08/2003 dated 01/03/2003 (as amended) (hereinafter also referred as "SSI Notification") for clearance of its own goods, whereas the goods manufactured for loan licensees under various brand names not belonging to the appellant, was cleared on payment of Central Excise duty @ 16% from the first clearance in a financial year. The appellant was availing CENVAT credit of duty paid on inputs used in the branded goods manufactured on behalf of loan licensees and cleared on payment of duty from first clearance in a financial year, whereas in respect of its own manufactured goods, CENVAT credit was availed after crossing the SSI exemption limit of Rs. 150 Lakh / Rs. 100 Lakh aggregate clearance value in a financial year. The factory of the appellant was falling within 'rural area' as defined in paragraph 4 of the SSI Notification. The exemption contained in the SSI notification did not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person, except in cases where such branded specified goods were manufactured in a factory located in a 'rural area'. It appeared that the appellant was liable to take into account also the value of branded goods for the purpose of determining the exemption limit of aggregate of first clearance value not exceeding Rs. 150 Lakhs / Rs. 100 Lakhs made on or after 1<sup>st</sup> April in a financial year and also for the purpose of determining the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, not exceeding 400 Lakh Rupees in the preceding financial year. As the appellant had failed to add the value of branded goods for the purpose of determining the said aggregate values of clearances in a financial year as well as the preceding financial year, two show cause notices were



issued by the then Additional Commissioner, erstwhile Central Excise, Ahmedabad-III, as per details given in the table below:

Sl. No.	SCN No. & Date	Period covered	Duty demanded .	Other allegations
1.	V.30/15-101/Dem/OA/2006-07 dated 23.03.2007	April-06 to Dec-06	Rs.11,22,286/-	Interest u/s 11AB of CEA, 1944 and Penalty proposed u/r 25 of CER, 2002 r/w s 11 AC of CEA, 1944.
2	V.30/15-131/Dem/OA/2008-09 dated 29.04.2008	April-07 to March -08	Rs.20,58,717/-	Interest u/s 11AB of CEA, 1944 and Penalty proposed u/r 25 of erstwhile CER, 2002 r/w s 11 AC of CEA, 1944.

2.1 Both the abovementioned SCN's were adjudicated by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-III by issuing two (02) Orders-in-Original as detailed below:

Sl. No.	O.I.O. No. & Date	Duty confirmed	Interest	Penalty imposed
1.	8/Addl.Commr/2007, dtd. 26.11.2007	Rs.11,22,286/-	Interest confirmed at applicable rates.	Rs.11,22,286/-
2	43/Addl.Commr/2008, dtd.10.11.2008	Rs.20,58,717/-	Interest confirmed at applicable rates.	Rs.20,58,717/-

3. Being aggrieved, the appellant filed appeals against the abovementioned two OIO's. The appeal filed by the appellant against OIO mentioned at Sl. No. 1 of table above was decided by the Commissioner (Appeals) vide OIA dated 04.06.2008, by dismissing the appeal due to non-compliance of Stay Order dated 17.03.2008 passed by the appellate authority. Thereafter, the said matter was remanded by the Hon'ble Tribunal, Ahmedabad vide order dated 12.11.2008 for considering the matter on merit without insisting on any pre-deposit.

3.1. The appeal filed by the appellant against OIO mentioned at Sl. No. 2 of above table was decided by the then appellate authority vide OIA No. AHM-EXCUS-003-APP-010 to 011-17-18 dated 07.06.2017. The OIA was issued following the ratio of judgement as per Order No. A/11505-11506/2015 dated 02/09/2015 in the matter of M/s Kosha Laboratories Vs Commissioner of Central Excise, Ahmedabad-III, passed by the CESTAT, Ahmedabad and the issue was remanded back to the adjudicating



authority with directions to examine all the issues in line with the ratio given by Hon'ble Tribunal in the case of M/s. Kosha Laboratories *supra* and pass a reasoned order after giving the appellant fair opportunity to represent their side of the case in accordance with the principles of natural justice.

4. In the remand proceedings, the case was adjudicated vide the impugned order wherein :

I. Proceedings initiated vide SCN V. 30/15-101/Dem/OA/2006-07 dated 23.03.2007 issued by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-III was vacated.

II. Against the proceedings initiated vide SCN V.30/15-131/Dem/OA/2008-09 dated 29.04.2008 issued by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-III demand of central excise duty amounting to Rs. 4,11,844/- was confirmed alongwith interest and the balance demand was dropped. Penalty of Rs. 1,00,000/- was also imposed u/r 25 of the CER, 2002 r/w Section 11AC of CEA,1944.

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

- i. All the demand notices/show cause notices were issued on the basis of identically same facts that their unit was located in the Rural area and hence, eligible for exemption on branded goods. However, the adjudicating authority has dropped the demand for the period 2006-07 on the basis of Pharmanza India and Kosha Laboratory but has partially confirmed the demand for the period 2007-08.
- ii. The OIA in the first round of litigations was issued on 25.05.2017 whereas the impugned order in the remand proceedings was issued on 06.10.2021. This delay in adjudication during remand proceedings remained unexplained.
- iii. The duty demanded is identical to the duty paid on loan licensee which was actually not payable by the appellants. Although, facts of duty payment by the appellants in the instant case was identical to the case of M/s Pharmanza India, the adjudicating authority has failed to appreciate the fact that the demand amount is neutralized by duty payment made on loan licensee clearances.



- iv. On the basis of the judgement of the Apex Court in case of M/s Nebulae Health Care Ltd.– 2015(325) ELT-431 (SC), it appears that once the duty is paid on branded goods/loan licencee clearances, the same cannot be added in aggregate value of clearance. Hence, the order partially confirming duty is incorrect.
- v. The SSI exemption benefit to units in Rural areas were extended with an intention to boost industrialization in rural sectors. Considering the views of the department as per the SCN, any unit in rural area stands in a disadvantageous situation as compared to that in the Urban area because even the duty paid clearances are being considered for calculation of the Value threshold of Rs.1.5 Cr as well as Rs.4.00 Cr. This viewpoint of the department defeats the essence of exemption extended to the Rural area units.
- vi. They emphasized on the Hon'ble Supreme Court Judgement in the case of UOI Vs Chatha Rice Mills - (2021) 2 SCC 209 for interpretation of the legislature.
- vii. The OIO is incorrect to the extent that it has disallowed the benefit of CENVAT on the duty paid clearances.
- viii. The impugned order also does not allow cum-duty benefit to the appellant.

6. Personal hearing in the case was held on 09.09.2022 in virtual mode. It was attended by Shri Nirav Shah, Advocate,. He re-iterated the submissions made in appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made by the Advocate at the time of personal hearing and evidences available on records. The issue which requires to be decided in the case is whether the impugned order, in the facts and circumstances of the case, confirming the demand for central excise duty amounting to Rs. 4,11,844/- alongwith interest and imposition of penalty is correct and legal or otherwise. The demand pertains to period F.Y 2007-08 and relates to SCN issued at Sl. No. 2 of Table at Para 2.

8. It is observed that the impugned order has been passed in the remand proceedings ordered by the Commissioner (Appeals-I), Central Excise, Ahmedabad vide OIA No. AHM-EXCUS-003-APP-010 to 011-17-18 dated 07.06.2017. The relevant portion of the OIA passed by the Commissioner (Appeals-I) is as under:

“ 7....following the ratio of Order No. A/11505-11506/2015 dated 02/09/2015 in the matter of M/s Kosha Laboratories vs Commissioner of Central Excise, Ahmedabad-III, passed by CESTAT, Ahmedabad is correct and proper in the instant cases. Accordingly, I remand the matter to the adjudicating authority to examine all the issues in line with the ratio given by Hon'ble Tribunal in the case



of M/s Kosha Laboratories *supra* and pass a reasoned order after giving the appellant fair opportunity to represent their side of the case in accordance with the principles of natural justice.”

9. It is observed that by following the orders dated 02.09.2015 of the Hon'ble Tribunal, Ahmedabad in Kosha Laboratories, the adjudicating authority has, for the period F.Y. 2007-08, dropped the demand of Rs.16,46,873/- out of total demand of Rs. 20,58,717/-, on grounds that the duty paid by the appellant on clearances on behalf of loan licensees gets adjusted against this amount of demand. He has confirmed the balance demand of Central Excise duty amounting to Rs. 4,11,844/- on grounds that the same was in excess of the duty deposited by the appellant.

9.1. The adjudicating authority has further denied the benefit of CENVAT credit on the duty paid as well as cum-duty benefit to the appellants by relying on the decision of the Hon'ble Apex Court in the case of Amit Agro Industries Ltd. Vs Commissioner of C. Ex., Ghaziabad reported as 2007(210) E.L.T 183 (S.C).

10. It is further observed that the appellant has contended that the duty demanded in the case is identical to the duty paid in respect of clearances of loan licensee, which was actually not payable by them and hence the demand does not sustain. In this regard, I find from Para 35.2 of the impugned order that the clearance value for F.Y. 2007-08 in respect of the appellants' own clearances was Rs. 1,31,46,668/- and in respect of loan licensee, it was Rs. 1,09,30,567/-. The demand has been confirmed for this differential value, which is more than the clearances in respect of loan licensee. These are facts on record and has not been disputed by the appellant. It is further observed that the adjudicating authority has confirmed the demand as per the direction given by the Commissioner (Appeals) vide OIA No. AHM-EXCUS-003-APP-010 to 011-17-18 dated 07.06.2017. Hence, the contention of the appellant in this regard is bereft of any merit and is liable for rejection.

11. As regards the contention of the appellant regarding delay in adjudication which vitiates the proceedings, I find that the Hon'ble High Court of Gujarat had, in appellant's own case in respect of the first SCN dated 14.08.2006, covering the period F.Y. 2001-02 to F.Y. 2005-06, quashed the SCN vide order dated 18.12.2018 in SCA No. 12542 of 2018 on grounds of inordinate delay of more than 11 years by the department in adjudicating the case. However, the contention of the appellant as regards delay in adjudication is not borne out by the facts on record. I find that the





SCNs issued in the case on 23.03.2007 and 29.04.2008 were adjudicated on 26.11.2007 and 10.11.2008 respectively. It is evident from the dates that there was no inordinate delay in adjudication as contended by the appellant. It is further observed that the adjudicating authority has adjudicated the order in accordance with the directions of the Commissioner (Appeals) in remand proceedings.

12. The appellant have contended that benefit of cenvat credit on the raw materials cannot be denied to them. The appellant had also submitted a list of the cenvatable invoices as well as copies of the invoices. In this regard, I find that the adjudicating authority has not given any finding on the claim of the appellant and has at Para 37 of the impugned order, summarily rejected the claim of the appellant. It is a settled law that if the duty is held to be payable, the assessee is entitled to the benefit of cenvat credit, if admissible. Therefore, the denial of cenvat credit to the appellant, particularly without assigning any cogent reasons, by the adjudicating authority is bad in law.

13. It is further observed that the appellant have also claimed the benefit of cum-duty price, which has been denied by the adjudicating authority on the ground that the appellant have failed to produce any evidence that the consideration received were inclusive of duty. For denying the benefit of cum-duty price, the adjudicating authority has relied upon the decision of the Hon'ble Supreme Court in the case of Amrit Agro Industries Ltd. Vs. Commissioner of Central Excise, Ghaziabad – 2007 (210) ELT 183 (SC). I find that the Hon'ble Supreme Court had in the said case held that :

“15. In our view, in the facts and circumstances of the case the judgment of this Court in the case of *Bata India Ltd.* (supra) on principle would apply. Therefore, in the present case, the assessee will have to show as to how he has determined the value. What the appellant has really done in the instant case has to be examined. Whether the price charged by him to his customers contains profit element or duty element will have to be examined. As stated above, this examination is warranted because, in the present case, one cannot go by general implication that the wholesale price would always mean cum-duty price, particularly when the assessee had cleared the goods during the relevant years on the basis of the above exemption notification dated 1-3-1997.”

13.1 It is observed that the appellant have in their appeal memorandum not submitted any evidence that the price charged by them from their customers was inclusive of the duty element. Therefore, I do not find any infirmity in the finding of the adjudicating authority which calls for any interference.



14. In view of the facts discussed hereinabove, I uphold the demand of central excise duty and the impugned order is upheld to this extent. The matter is, however, remanded back to the adjudicating authority to consider the claim of the appellant for benefit of cenvat credit of the duty paid on the raw material. The appeal filed by the appellant is allowed to this extent.

15. 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.

*Akhilesh Kumar*  
(Akhilesh Kumar) 29<sup>th</sup> September, 2022..  
Commissioner (Appeals)

Date: 29.09.2022.

साक्ष्यांकित / Attested:

(Somnath Chaudhary)  
Superintendent (Appeals),  
CGST, Ahmedabad.



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Taluka: Kalol, District: Gandhinagar

Appellant

**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Joint Commissioner, CGST & CE, Gandhinagar
4. The Assistant Commissioner (HQ System), CGST, Gandhinagar.  
(for uploading the OIA)

- ✓ 5. Guard File.
6. P.A. File.