आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000493234

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/250/2023-APPEAL / 300 -304
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-164/2023-24 and 21.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-SP-024-22-23 dated 30.03.2023 passed by the Joint Commissioner, CGST & CEx, Commissionerate: Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Murugappa Morgan Thermal Ceramics Ltd, Plot No. 681, Moti Bhoyan Village, Sanand-Kalol State Highway, Taluka : 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 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 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 :-

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 : -

(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 मे हो माल की प्रकिया 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 मामलें 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 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।

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 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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, 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-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public

sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner 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 संषोधित 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

अपीलिय आदेश / ORDER-IN-APPEAL

M/s. Murugappa Morgan Thermal Ceramics Ltd, Plot No. 681, Moti Bhoyan Village, Kalol Khatraj Road, Kalol, Gandhinagar (hereinafter referred to as the appellant) have filed the present appeal against Order in Original No. AHM-CEX-003-JC-SP-024-22-23 dated 30.03.2023 [hereinafter referred to as "the impugned order"] passed by the Joint Commissioner, CGST & C.Ex, Commissionerate Gandhinagar [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were holding Central Excise Registration No. AAACM4385MXM002 were engaged in manufacture of Ceramic Fibre Blankets falling under Chapter 69 of the CETA, 1985. They were availing Cenvat Credit facility under the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). During the course of Central Excise Audit, conducted for the period from April, 2012 to February, 2014, it was observed that apart from manufacturing activities, the appellant were also engaged in trading activities. Since trading activity has been included under the definition of exempted services, the appellant had to follow the procedure laid down under Rule 6 (3) of the CCR, 2004 while availing cenvat credit on input services. However, the appellant had neither paid the amount as determined under Rule 6(3A) nor had they maintained separate accounts. Hence, the appellant were required to pay an amount equal to six per cent of the value of exempted services. It appeared that the appellant were liable to pay an amount of Rs.10,98,701/- for the period from 01.04.2011 to June, 2014.

2.1 It was also observed that the appellant had also taken credit on various input services viz. Manpower Supply service, Banking and Financial Services, Works Contract Services, Professional Services, Transportation Services, Consultancy Services, Maintenance & Repair Services, Testing, Inspection and Certification Services, Security Services etc. which cannot be segregated in terms of their use between manufacturing and trading activities, being common services. Trading Activity was covered under the definition of service with effect from 01.04.2011. It appeared that prior to 01.04.2011, trading activity did not fall under the definition of service. Therefore, the various services used by them for carrying out the trading activity cannot be considered as input service under Rule 2 (l) of the CCR, 2004. Accordingly, the appellant was not eligible to take cenvat credit on ineligible services for provision of trading activity which was not covered under the category of service prior to 01.04.2011. Thus, the appellant was required to reverse the cenvat credit amounting to Rs.36,138/- wrongly taken in respect of the service tax paid on various services used in trading activity during the period from October, 2009 to March, 2011. The amount was worked out on the basis of the ratio of trading sales and the total turnover. The appellant provided the details of the trading activities carried out by them during the period from October, 2009 to June, 2014.

2.2 The appellant was issued a SCN V.69/15-118/DEM/OA/14 dated 16.10.2014 proposing demand and recovery of the cenvat credit amounting to Rs.36,138/- taken in respect of service tax paid on various services used in trading activity during the period from October, 2009 to March, 2011 and Rs.10,98,701/- for the period from April, 2011 to June, 2014, under Rule 14 of the CCR, 2004 read with Section 11(A) (4) of the Central

Excise Act, 1944 alongwith Interest under Rule 14 of the CCR, 2004 read with Section 11AA (erstwhile Section 11AB for the relevant period) of the Central Excise Act, 1944. Imposition of penalty under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944 was also proposed.

3. The said SCN was adjudicated vide OIO No. AHM-CEX-003-ADC-MSC-050-15-16 dated 26.02.2016 wherein the demands were confirmed along with interest. Penalty of Rs.5,85,488/- was imposed under Rule 15(2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

4. Being aggrieved, the appellant filed appeal and the Commissioner (Appeals), Ahmedabad, who vide OIA No. AHM-EXCUS-003-APP-038-17-18 dated 05.07.2017 remanded the case back to the adjudicating authority. In denovo proceedings, the case was adjudicated vide Order No. AHM-CEX-003-ADC-MSC-010-21-22 dated 24.05.2021, wherein the demand of (Rs.36,138/- and Rs.10,98,701/-) were confirmed along with interest. Penalty of Rs.5,85,488/- was imposed under Rule 15(2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

5. Being aggrieved with Order No. AHM-CEX-003-ADC-MSC-010-21-22 dated 24.05.2021, the appellant filed appeal and the appellate authority set aside the impugned order and allowed the appeal by way of remand vide OIA No. AHM-EXCUS-003-APP-015/22-23 dated 06.05.2022 in terms of the directions contained below:

> *"7.4 As regards the demand amounting to Rs.10,98,701/- pertaining to the period from April, 2011 to June, 2014, I find that it was held in the OIA supra that the cenvat credit demanded cannot be more than the credit availed. It was further observed that the cenvat credit availed in exempted services is required to be determined. The appellant had in the said proceedings contended that they had reversed the credit involved. It was in this context that the issue was remanded back to the adjudicating authority for determining the cenvat credit availed by the appellant in respect of the exempted services. I find that there is no material on record to indicate that the department had challenged the said order of the Commissioner (Appeals) and that the same was overturned by a higher appellate authority. Therefore, the OIA supra was binding on the adjudicating authority. However, I find that the adjudicating authority has rather than complying with the directions of the Commissioner (Appeals) and deciding the matter limited to determining the cenvat credit involved in the exempted service, proceeded to again adjudicate the case by interpreting the provisions of Rule 6 (3) and (3A) of the CCR, 2004. In doing so, the adjudicating authority has acted in total defiance of the order of the Commissioner (Appeals) which amounts to judicial indiscipline.*
>
> ***7.5 In view of the above facts, the matter is remanded back to the adjudicating authority for the only and limited purpose of determining the amount of cenvat credit availed by the appellant in respect of exempted services. Therefore, the impugned order insofar as it pertains to the demand amounting to Rs.10,98,701/- for the period from April, 2011 to June, 2014, is set aside and remanded back to the adjudicating authority for fresh decision.***

8. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand, in terms of Para 7.5 above."

6. In the remand proceedings, the matter was adjudicated vide impugned order confirmed the demand of Rs.10,98,701/- along with interest. Penalty of Rs.5,49,351/- was also imposed under Rule 15 (2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

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

- The Commissioner (Appeals) in OIA dated 06.05.2022 had remanded the case with the directions that the demand of cenvat credit for the entire period has to be calculated on the proportionate basis as per Rule 6 (3A) and the reversal of Rs. 1,75.192/- made by the appellant for the entire period from October, 2009 to June, 2014 is to be verified by the Adjudicating Authority. The Commissioner (Appeals) had never disallowed proportionate reversal of cenvat credit for the entire period from October, 2009 to June, 2014 and therefore, the Adjudicating Authority should have examined the issue of proportionate reversal of cenvat credit for the entire period from October, 2009 to June, 2014.

- The Commissioner (Appeals) while passing the OIA dated 06.05.2022 held that the issue as regards to the demand of Rs. 36,138/- for the period of Oct. 2009 to March, 2011 was decided by the Commissioner (Appeals) in the OIA dated 05.07.2017 and therefore, the Adjudicating Authority again could not have confirmed the demand. The Commissioner (Appeals) therefore, held that the demand of cenvat credit for the entire period of October, 2009 to June, 2014 is sustainable, but the appellant was eligible to proportionately reverse the cenvat credit attributable to the exempted service. However, the Adjudicating Authority has not examined the issue as regards to the demand of cenvat credit for the period from Oct. 2009 to March, 2011, and also confirmed the demand of cenvat credit of Rs. 10,98,701/- without considering the documentary evidence submitted by the appellant. The appellant had submitted the documentary evidence thereby proving that for the period from October 2009-10 to June, 2014, the proportionate cenvat credit attributable to the exempted service (trading) was Rs. 1,75,192/- which was duly reversed by the appellant through challan dated 31.01.2015. Therefore, the impugned order passed by the Adjudicating Authority is devoid of merits and deserves to be set aside in the interest of justice.

- The Commissioner (Appeals) had specifically directed the Adjudicating Authority to calculate the proportionate cenvat credit by following the provisions of the Rule 6(3A) of the Cenvat Credit Rules, 2004. Moreover, the Adjudicating Authority should have granted the option to the appellant to proportionately reverse the cenvat credit in terms of Rule 6(3A) of the Cenvat Credit Rules, 2004.

- The Adjudicating Authority has relied upon the verification report sent by the Range Superintendent dated 21.03.2023 which was based on some wrong

assumptions and presumptions. This report of the Range Superintendent was obtained behind the back of the appellant after the conclusion of the personal hearing held on 20.12.2022. The appellant was never shown the contents of the report and therefore, the impugned order has been passed in gross violation of principles of natural justice. The Adjudicating Authority has solely relied upon the verification report dated 21.03.2023 submitted by the Range Superintendent which was never supplied to the appellant and the Adjudicating Authority has also not called upon the appellant to furnish the explanation regarding the contents of the report. They placed reliance on case laws- (i) Ramchandra Carpet Palace -2006 (195) E.L.T. 238 (Tri. Mumbai); UNISEF Electronics (India) Pvt. Ltd. - 1998 (101) E.L.T. 514 (Tribunal).

- In the subsequent round of litigation, the Commissioner (Appeals) vide OIA dated 06.05.2022 agreed with the submissions of the appellant that of the proportionate amount of cenvat credit is reversed by the appellant, it would amount to non-availment of such cenvat credit and therefore, the matter was again remanded by the Commissioner (Appeals) for the purpose of calculating the proportionate cenvat credit to be reversed by the appellant. Thus, the Commissioner (Appeals) has remanded the case to the Adjudicating Authority only for the purpose of verifying the fact whether the amount of Rs. 1,75,192/- reversed by the appellant in terms of Rule 6(3) of the Cenvat credit Rules, 2004 by challan dated 31.01.2015 was correct.

- The appellant vide calculation submitted on 22.12.2022 provided the details of the trading service by providing the difference between the sale value of the goods traded and cost of the goods traded. Therefore, the said difference in the figures of sale value of traded goods and value of trading service was obvious and the calculations made by the appellant were genuine. However, the Adjudicating Authority has wrongly relied upon the report of the range superintendent which has compared to different value and wrongly suggested that there was a difference in the figures submitted by the appellant as compared to the figures mentioned in the show cause notice. The Adjudicating Authority has not considered the calculation provided by the appellant in relation to the proportionate cenvat credit attributable to the exempted service, otherwise, it could have been easily identified that the appellant has derived the value of trading service by calculating the difference between sale price of the traded goods and cost of the traded goods. The appellant was never informed about this difference and no clarification was ever sought by the Adjudicating Authority.

- The appellant submits that the calculation of proportionate cenvat credit reversed by the appellant was prepared on the basis of the documentary evidence such as the records maintained by the appellant like ledgers, ER-1 returns and other records available in electronic form. The appellant along with the calculation sheet had also provided the details such as sale of the exempted goods for the period from October, 2009 to June, 2014, total value of the dutiable goods manufactured total common cenvat credit availed on input services. The appellant has provided the sale value of the traded goods for each year and also the cost of the traded

goods and the difference of sale value and cost price was taken as the value of trading service as per explanation -1 (c) of Rule 6 (3D) of the cenvat credit rules. Wherever, the difference between the sale price and cost price of the traded goods was less than 10%, the 10% of the cost of the traded goods was taken as the value of the trading service. Therefore, the calculations of proportionate credit was made by the appellant in accordance with the provisions of Rule 6 (3A) and therefore, the Adjudicating Authority had no jurisdiction to discard the calculation submitted by the appellant without examining the same. The Adjudicating Authority has chosen to rely solely on the verification report which was irrelevant for the purpose of calculation of proportionate cenvat credit. Moreover, the appellant was never asked to provide any explanation or any further documentary evidence to support the calculations made by the appellant. Therefore, the impugned order is clearly against the remand directions given by the Commissioner (Appeals) and deserves to be set aside in the interest of justice.

- To put an end to the controversy, the appellant is submitting a certificate of chartered accountant certifying the calculation of proportionate cenvat credit and the appellant is also enclosing the documentary evidence in support of the calculation. The certificate issued by chartered accountant and the supporting documents are submitted by way of separate paper book.

- The appellant submits that the Order dated 06.05.2022 passed by the Commissioner (Appeals) remanding the case back to the Adjudicating Authority was not challenged by the department in the appellate forum. Therefore, the findings given by the Commissioner (Appeals) were accepted by the department in the present case. Thus, the findings of the Commissioner (Appeals) that the proportional cenvat credit can be reversed by the appellant even at later stage have attained finality and therefore, the Adjudicating Authority has no jurisdiction to give contrary findings. The action of the Adjudicating Authority is totally unlawful because the directions given by the Commissioner (Appeals) were completely ignored by the Adjudicating Authority in the present case. Therefore, impugned Order passed by the Additional Commissioner is without application of mind and unsustainable as the same has been passed without considering the directions of the appellate authority.

- The appellant submits that non-compliance of remand directions is an utter disregard to the judicial discipline and such approach deserves to be severely deprecated. The appellant submits that the Hon'ble Courts have on several occasions censured the actions of the Adjudicating Authority and Commissioner (Appeals) in remand proceedings. The Hon'ble Tribunal in case of Prabhakar L. Mehta vs. Commissioner of Customs (P), Ahmedabad - 2006 (202) E.L.T. 524 (Tri. - Mumbai) held that Tribunal directions are not an empty formality. Orders in remand have to be complied by the lower authorities. The Tribunal further held that failure would only result in setting aside the order. There is no purpose served in remanding a matter if the order in remand, is not complied.

- The Adjudicating Authority has committed grave error in passing the impugned order because the recovery of a disproportionate high amount of Rs. 10,98,701/- and Rs. 36,136/- for a relatively small sum of Rs. 1,75,192/- being Cenvat credit of input services attributable to trading activities is wholly illegal, unjustified. The Adjudicating Authority has not considered the fact that the Credit attributable to the Exempted services had been reversed and thus the impugned Order passed without consideration of facts is unjustifiable and liable to be dropped. The appellant submits that when an assessee reverses/ pays back appropriate amount of cenvat credit, it is a situation as if the assessee had not taken any cenvat credit. Even if such reversal was made by the assessee subsequently i.e, at a stage and time after such cenvat credit was taken, the situation is still as if the assessee had not taken the cenvat credit when appropriate amount of cenvat credit stood reversed. In this regard, the following case law may be considered because the scheme and purpose of Rule 6 of the Cenvat Credit Rules is explained by the Courts of Law and the Appellate Tribunal in following cases :

    - Hello Minerals Water (P) Ltd. V/s UOI reported in 2004 (174) ELT 422 (All):
    - Hi-Line Pens Pvt. Ltd. V/s Commissioner reported in 2003 (158) ELT 168 (Tri. - Del):
    - Bharat Earth Movers Ltd. V/s Collector reported in 2001 (136) ELT 225 (Tri. - Bang.):
    - Mercedes Benz India Ltd. reported in 2015 (40) STR 381
    - Bombay Minerals Ltd. vs. CCE Rajkot - 2019 (29) G.S.T.L. 361 (Tri. - Ahmd.)

- On the basis of the above, the legal position that emerges is that when an assessee reverses or pays back the amount of credit taken on the inputs/input services used in relation to the manufacture of particular final products or rendering services, such reversal or paying back of credit would result in a situation where the assessee was deemed to have not taken the credit at all. The further legal position that emerges from the above referred case law is that such reversal may be at the time of clearance of the goods from the factory, may be at a time subsequent to such removal of final products from the factory, or such reversal may also be after the Revenue initiated investigation and enquiries against the assessee in the matter.

- In this view of the matter, the only obligation on the appellant had been to reverse/pay back amount equal to Cenvat credit attributable to input services used in respect of trading business. However, the appellant has paid back such proportionate Cenvat credit and therefore, the Revenue has no authority in law to now demand a substantially higher amount from us by suggesting that payment was required to be made by us at the rate of 6% of the exempted goods. The value of exempted goods is also incorrectly and erroneously arrived at by the Revenue, and therefore also there is no justification in the demand of amount equal to 6% of the value of exempted goods. The impugned order passed by the Adjudicating Authority deserves to be set aside in the interest of justice.

- The reversal of input stage credit at a later stage is permissible in law and since the Appellant had reversed the amount of Credit viz. Rs. 1,75,192/- availed on exempted Services, the issue in the present case no longer survives. However this fact has not been considered during the passing of the impugned order despite there being direction of the Commissioner (Appeals). In light of the fact that the proportionate credit was already reversed, the impugned order deserves to be set aside in the interest of justice.

- The Adjudicating Authority has committed a grave error in confirming the demand by invoking Larger period from F.Y. October, 2009 to June, 2014. Proviso to Section 73(1) of the said Finance Act is invoked in the present case, and suppression of facts with an intent to evade payment of service tax is alleged for invoking larger period of 5 years. Existence of essential ingredient for invoking larger period namely concealment of material information is also alleged. However, it is submitted that there has never been any suppression of facts or concealment of information or intent to evade payment of service tax on the part of the Appellant. The action of invoking larger period of limitation is unjustified and without jurisdiction.

- The balance-sheet being a public document, any demand raised on the basis of information appearing in the balance-sheet after invoking extended period of limitation was illegal because the allegation of suppression of facts cannot be made when some information was appearing in a public document like the balance-sheet of the Appellants. The entire basis of invoking extended period of limitation i.e. non-availability of the relevant information is thus, totally incorrect. Where all the facts discussed in the show cause notice issued to us were within the knowledge of the Department right from day one. Under these circumstances, the show cause notice issued to the Appellant was barred by limitation and there was no justification in the action of confirming extended period of limitation against the Appellant. Therefore, the impugned order passed by the Adjudicating Authority deserves to be set aside in the interest of justice.

- The imposition of penalty invoking the provisions of Rule 15 of the Cenvat Rules is not justified in this case. The appellant had not acted dishonestly or contumaciously and therefore, not even a token penalty would be justified. The present one is not a case where the Appellant had committed contravention of any of the Rules with an intent to evade payment of duty. The Appellant has also not committed breach of any Rules with an intent to evade payment of duty. In this view of the matter, no penalty or interest could be justifiably imposed.

- Recovery of interest under the provision of Rule 14 of the Cenvat Credit Rules read with Section 11AA of the Act, is also without any authority in law inasmuch as the said provisions are not at all attracted in the instant case. Though Cenvat credit of service tax paid on the said services were availed by the Appellant: however, as is evident from the Appellant's records, the same were not utilized by us at any stage. Hence, once the fact of its non-utilization is not in dispute, proposal for

recovery of any interest over and above the said amount is clearly arbitrary and without any legal justification.

8. Personal hearing in the case was held on 28.11.2023. Shri Sudhanshu Biassa, Advocate, appeared for personal hearing on behalf of the appellant. He re-iterated the contents of the written submission. He stated that the adjudicating authority never called for the documents to verify the calculation of proportionate Cenvat credit. We are ready to submit the documents. Hence, he requested to remand the matter.

9. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, additional submissions made by the appellant and materials available on records. The issue before me to decide is whether the cenvat credit of Rs.10,98,701/- ordered for recovery alongwith interest and penalty is legal and proper or otherwise? Period involves is April, 2011 to June, 2014.

10. In the OIA dated 06.05.2022, it was held that the demand of Rs.36,138/- for the period of Oct, 2009 to March, 2011 was decided by the then Commissioner (Appeals) vide OIA dated 05.07.2017 and the matter was remanded with the limited purpose of determining the amount of cenvat credit availed by the appellant in respect of exempted services during the period from April, 2011 to June, 2014. In the impugned order, the adjudicating authority, based on the calculation of Rs.1,75,192/- (attributed to the exempted services) submitted by the appellant and paid vide challan dated 31.01.2015, sought a report from Range Superintendent to verify the above calculation.

11. The Range Superintendent vide letter dated 21.3.2023, observed that to quantify the demand as per provisions prescribed under Rule 6(3) and Rule (3A) of Cenvat Credit Rules, 2004 as discussed in para no. 7.4 8 7.5 of the OIA No. AHM_EXCUS-003-APP-O15/2022-23 dated 06.05.2022, trading sales value, clearance value of goods and total Input Service Credit are required. He observed that as per the SCN the total reversal amount arrived is for Rs.10,98,701/- whereas as per the calculation submitted by the appellant it is Rs.1,75,192/-. Huge difference was noticed and as the appellant has not provided any data to cross verify the figure given by the appellant. Several attempts were made to contact the appellant but it was not possible to quantify the demand as per Rule 6(3A) as the required data is not available on record and the same has also not been provided by the appellant.

12. The adjudicating authority agreed with the observations of the Range Superintendent and in the absence of supporting documents and conflicting figures, determined the cenvat credit demand for April 2011 to June 2014 @6% of the value of exempted services which amounted to Rs. 10.98,701/-. The appellant in the appeal memorandum have submitted that a certificate issued by a Chartered Accountant and the supporting documents has been submitted by way of separate paper book. However, on going through the appeal documents, I find that no such documents were provided.

13. Further, as regards, their contention that a copy of verification report dated 21.3.2023 was not provided to them hence they could not provide a clarification for the difference observed in the report, I find that the adjudicating authority in the remand proceeding, has totally relied on the verification report of the Range Superintendent, which was not provided to the appellant. The appellant submits that the calculation of proportionate cenvat credit reversed was prepared on the basis of the documentary evidence such as the records maintained by the appellant like ledgers, ER-1 returns and other records available in electronic form. Along with the calculation sheet they claim to have provided the details such as sale of the exempted goods for the period from October, 2009 to June, 2014, total value of the dutiable goods manufactured total common cenvat credit availed on input services. Moreover, they also claim that they were never asked to provide any explanation or any further documentary evidence to support their claim. I find that it was the obligation of the appellant to provide the documents justifying the calculation arrived by them which was not done by them. However, in the interest of natural justice, I find that the appellant shall be provided a copy of the verification report dated 21.3.2023 and an opportunity to justify their calculation alongwith the supporting documents and C.A. certificate issued in this regard.

12. In light of above discussion and findings, I find that the matter needs to be remanded back to the adjudicating authority who shall provide a copy of the verification report dated 21.03.2023 to the appellant and record the findings on the submissions made by the appellant. Further, the appellant is also directed to provide all relevant documents justifying the amount of Rs.1,75,192/- attributed to exempted services.

13. In view of the above discussion, I allow the appeal filed by the appellant by way of remand.

14. 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.

ज्ञानचंद जैन
आयुक्त (अपील्स)

सत्यापित/Attested :
रेखा नायर
अधीक्षक (अपील्स)
सी जी एस टी, अहमदाबाद

Dated: 21st December, 2023

BY RPAD / SPEED POST

To
M/s. Murugappa Morgan Thermal Ceramics Ltd, - **Appellant**
Plot No. 681, Moti Bhoyan Village,
Sanand-Kalol State Highway,

Taluka : Kalol, District : Gandhinagar.

The Joint Commissioner, - **Respondent**
CGST & C.Ex., Commissionerate Gandhinagar

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Superintendent (System), CGST, Appeals, Ahmedabad (for uploading the OIA).
4. Guard File.