



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, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240564SW000000EE98

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/319 & 318/2023-APPEAL / 1929-3
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-005 & 006/2024-25 and 24.04.2024
(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	01.05.2024
(ङ)	Arising out of Order-In-Original No. KLL DIV/EX/YOGENDRA SINGH RAWAT/227/23-24 dated 30.05.2023 passed by the Assistant Commissioner, CGST, Division- Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	1. M/s Arham Petrochem Pvt Ltd, Survey No. 1163/A, Village Motibhoyan, Gata Road, Tal-Kalol, Gandhinagar 2. Shri Ashish Sureshchandra Agrawal, Director of M/s Arham Petrochem Pvt Ltd, Survey No. 1163/A, Village Motibhoyan, Gata Road, Tal-Kalol, 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:-

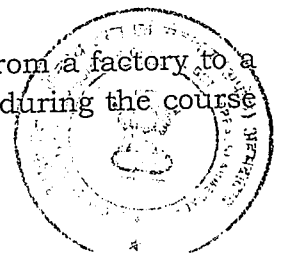
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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, 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 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 मामलों 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 रुपये 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.

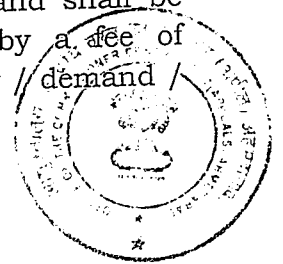
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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. 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 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 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।

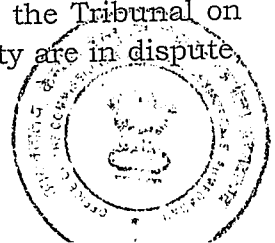
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलिय आदेश/ ORDER-IN-APPEAL

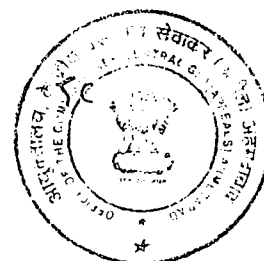
On similar issue, following appeals have been filed by the appellants against the Order in Original No. KLL DIV/EX/YOGENDRA SINGH RAWAT/227/23-24 dated 30.05.2023 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

Table-A

Sr. No.	Appeal No.	Name of Appellant	Amount Involved
01	GAPPL/COM/CEXP/319/2023	M/s Arham Petrochem Pvt Ltd, Survey No. 1163/A Village Motibhoyan, Gata Road, Tal Kalol, Gandhinagar (hereinafter referred to as 'Appellant-1')	Duty Rs.48,08,43 5/-Plus Interest Penalty Rs.48,08,43 5/-
02	GAPPL/COM/CEXP/318/2023	Shri Ashish S. Agarwal Director of M/s Arham Petrochem Pvt Ltd (hereinafter referred to as 'Appellant-2')	Penalty Rs.48,08,43 5/-

2. The Appellant-1 are engaged in the manufacture of Processed Oil etc. falling under Chapter-27101990 of the First Schedule to the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No. AACCA0001CXM001 (now GSTN-24AACCA0001C1ZX). The unit was availing the CENVAT Credit under the CENVAT Credit Rules, 2004.

2.1 Briefly stated the fact of the case are that based on an intelligence gathered by DGGI, , RU, Vapi, it was observed that M/s. Aristo Chemicals and M/s Aristo Oil Chem Pvt Ltd, 204, Quantum Tower, Ram Baug Lane, S.V.Road, Malad (W), Mumbai-64, were engaged in trading of various petroleum products like Lubricating Oil, Base Oil and Light Liquid Paraffin etc. falling under Chapter 27 of First Schedule to the CETA, 1985 and HSN code 2710 and were facilitating the manufacturers/industrial users to avail the irregular Cenvat credit/ITC without actual receipt and use of inputs in or in relation to manufacture of excisable goods or without actual supply and receipt of the goods by way of issuing the Duty/Tax invoice without actual delivery of the goods specified therein. Intelligence further indicated that the business firms or persons who were actual recipient of these goods were re-packing/re-selling or selling their resultant goods clandestinely without preparing any bill/invoice for sale or supply of goods to their buyers and evading payment of Central Excise duty/Tax.



2.2 Intelligence further suggested that they were supplying a substantial quantity of the procured goods viz. Base Oil and Light Liquid Paraffin on cash basis without bill to the buyers who were engaged in repacking and selling. Besides genuine supply of these products to the industrial users under proper invoices, these dealers were also issuing the Cenvatable invoices in the name of such industrial users to facilitate these buyers to avail Cenvat credit/ITC without actual delivery of the goods to them, but the same goods were actually delivered to the buyers engaged in re-packing and selling business, who subsequently used to sale these goods in the market on cash basis. Since, the aforesaid goods were transported through tankers, the entire quantity of the consignment covered under manufacturer/supplier's invoice were being sold to the different buyers on cash basis other than the buyer to whom the Cenvatable/ITC invoices were raised. The information received indicated that these dealers were procuring their inputs from M/s Savita Oil Technologies Ltd, Silly, Silvassa, M/s Gandhar Oil Refinery Pvt Ltd, Silvassa, M/s Apar Industries Ltd, Silvassa, M/s Panama Petrochemicals Ltd, Daman and M/s Jell Pharmaceuticals Pvt Ltd, Silvassa etc. and were undertaking this business activity mainly through the transporters namely M/s Sanjay Road lines, Kurla, Mumbai and M/s Laxmi Bulk Carrier, Vapi etc.

2.3 Investigations also suggested that the Appellant-1 engaged in manufacture of processed Oil have engaged themselves in large-scale evasion of Central Excise duty by fraudulently availing CENVAT Credit on the basis of the invoices issued by the dealers/manufacturers, without actual receipts of the corresponding goods i.e. Pan oil 505 etc. from them and to adjust the non-receipts of such goods. The transporters in their respective statements have categorically stated that they have loaded and transported the goods i.e. Oil from the places like Silvassa/ Mumbai to various places such as Nagpur, Kolhapur, Kinnaur etc, whereas invoices were issued by M/s Aristo Chemicals to these parties i.e. M/s Green Petro Fuels LLP, **M/s Arham Petrochem Pvt Ltd**, M/s Command Resources, M/s Bagwan Petroleum, M/s Rossari Bio Tech Ltd, M/s Cauvery Petrochemicals Pvt Ltd, M/s Hindustan Enviro Life Protection Ltd, M/s Apex Traders etc., therefore, there is no question to engage any transporter for transportation of the goods. However, transportation bills were raised by the consignor for these parties instead of actual consignee where the goods have actually been dispatched. Further various transporters involved in the transportation of the goods have also clearly indicated in their written statement that they have transported the goods to some other places but have given LR's/Bills for some other location and have adjusted the differential transportation amount through Angadia or some other transportation. The major transporters such as M/s Laxmi bulk Carrier, M/s. Hariom Bulk Carriers, M/s. Pawan Transport etc. have already accepted in their statement that either they have given blank LR book to the consignees or have transported the goods to some places and have issued LR's/Bills for other places or request of consignee in fear of losing their business. It showed that the transportation shown by Appellant-1 was fake in order to avail the illicit benefit of Cenvat Credit.

2.4 Evidence gathered from M/s. Aristo Oil Chem Pvt Ltd & M/s Aristo Chemicals, Mumbai revealed that they have indulged in supply and delivery of goods without issuance of invoices/bills and issuance of ITC invoices without supply of goods simultaneously passing irregular Cenvat credit/ITC to certain entities. Further, it is found that the lorry receipts of other transporters namely M/s Hariom bulk Carriers, M/s Global



Bulk Carriers, M/s Laxmi Roadlines, Vapi, M/s Sachin Transport Co., Valsad, M/s Vapi Jamnagar Transport Co, Vapi, M/s Jai Gurudeo road lines , M/s M.K.Bulk Carriers, M/s Universal Logistics, M/s Varuna Road Lines etc. have also been used in the transaction where M/s. Aristo Oil Chem Pvt Ltd Mumbai & M/s Aristo Chemicals, Mumbai & M/s Rajkamal Industrial Pvt Ltd, Ahmedabad have issued invoices without actual supply of the goods to the companies/firms.

2.5 The depositions made by the transporters who issued LRs and attached with the cenvatable invoices or shown as transporters of cenvatable goods, revealed that the said transporters have not arranged such transportation of the goods from M/s Aristo Chemicals, Mumbai, M/s Rajkamal Industrial Pvt Ltd premises to M/s Arham Petrochem Pvt Ltd, Kalol. Further they have admitted that they had never transported such goods and never provided LRs, however, some of transporters in their statements have admitted that they keep blank LR Books with the consignor which has been used by M/s Aristo Chemicals/Rajkamal Industrials Pvt Ltd. as an evidence of transportation of goods and neither they have transported said consignments nor any transportation charges have been paid to them either from consignor or consignee.

2.6 Therefore, it appeared that Appellant-1 had wrongly availed Cenvat credit merely on strength of invoices of LLP IP/LLPCOM/HLP COMM LLP IP/ HLP BP IP/POWER LUBE12/PANOIL-505 etc. issued by M/s Aristo Chemicals, Mumbai/ M/s Oilchem Pvt. Ltd./ Rajkamal Industrial Pvt Ltd, Ahmedabad without actual purchase, receipt & consumption of inputs specified in the said documents. Thus, the Cenvat Credit wrongly availed and utilized by Appellant-1 during the period from April, 2015 to June, 2017 is required to be recovered under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(4) of the Central Excise Act, 1944 along with interest as provided under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944. The Appellant-1 to give the genuine colour to said bogus transactions have also connived with brokers and various transporters to create fake/bogus documents just to show the transportation of the goods mentioned in above said bogus documents. The dealers/ transporters are fully involved in the said fraud. It, therefore, appears that by all such acts of omission/commission done by M/s Aristo Chemicals, Mumbai & M/s Rajkamal Industrial Pvt Ltd, Ahmedabad /Transporters have rendered themselves liable for penalty for involvement in issuance of Central Excise invoices without delivery of the goods and thus defrauding the Government revenue by way of fraud, collusion, willful mis-statement, suppression of facts and mis-declaration with intent to enable the Appellant-1 evade the payment of duty in a lawful manner and by way of issuing the Central Excise invoices without delivery of the goods mentioned therein.

2.7 Further, Appellant-2 (Shri Ashish Sureshchandra Agarwal, Director of M/s Arham Petrochem Pvt Ltd, Kalol) was looking after the day to day business affairs of M/s Arham Petrochem Pvt Ltd, Kalol and was responsible for all the contraventions made by M/s Arham Petrochem Pvt Ltd, Kalol. Being, Director of the company, he was responsible for all the purchases and was actively looking after all the activities of M/s Arham Petrochem Pvt Ltd, Kalol. He was looking after all the work relating to accounts further he tried to mislead investigation by producing wrong information and created well planned systems which was working very well unless the modus operandi detected by the DGGI in the



month of November, 2018. It is an admitted fact that Appellant-2 was fully involved in availing inadmissible Cenvat credit by M/s ArhamPetrochem Pvt Ltd, Kalol. Various transporters and M/s Aristo Chemicals, Mumbai & M/s Rajkamal Industrial Pvt Ltd, Ahmedabad have admitted that they had dealt with Shri Ashish S. Agarwal for such illicit activities. He was aware that of LLP IP/LLPCOM/HLP COMM LLP· IP/ HLP BP IP/POWER LUBE12/PANOIL-505 etc. covered under the invoices issued by the M/s Aristo Chemicals, Mumbai & M/s Rajkamal Industrial Pvt Ltd, Ahmedabad were not received in the factory premises and not utilized in the manufacture of their final products. They have paid the amount through RTGS/cheques to M/s Aristo Chemicals, Mumbai & M/s Rajkamal Industrial Pvt Ltd, Ahmedabad and received differential cash through Angadia. Shri Ashish S. Agarwal knowingly availed Cenvat Credit on the strength of invoices issued by M/s Aristo Chemicals, Mumbai & M/s Rajkamal Industrial Pvt Ltd, Ahmedabad without actually receiving the goods. It is thus evident that being the Director of **M/s Arham Petrochem Pvt Ltd, Kalol**, was fully involved in the said fraud. All such acts of omission/commission done by Shri Ashish S. Agarwal, has rendered himself liable for penalty for involvement in fraudulent availment of Cenvat Credit and thus defrauding the Government revenue by way of fraud, collusion, willful mis-statement, suppression of facts and mis-declaration with intent to evade the payment of duty. Appellant-2 has deliberately indulged himself and also responsible for legal entity, in activity of availment of fraudulent Cenvat Credit without actual receipt of goods in contravention of Rule 9 of Cenvat Credit Rules, 2004. He therefore has rendered himself for penal action under Rule 15(1) of Cenvat Credit Rules, 2004.

2.8 A SCN No. V/15-21/DGGI/Vapi/2018-19 dated 16.09.2020 was issued to the Appellant-1 proposing recovery of Cenvat credit of Rs.48,08,435/- under Section 11A(4) of the CEA, 1944 read with Rule 14 of the CCR, 2004 alongwith interest under Section 11AA and penalty under Section 11AC of the CEA, 1944. Penalties under Rule 15(1) of the CCR, 2004 were also proposed to be imposed on Appellant-2 (**Shri Ashish S. Agarwal, Director of the Appellant-1**); Shri Jigar Kothari, Proprietor of M/s. Aristo Chemicals, Mumbai; Shri Dattaram Bhagwan Shinde, Office Admin & Logistic Officer of M/s. Aristo Chemicals; Shri Bhadresh Chinubhai Mehta, Director of M/s. Rajkamal Industrial Pvt. Ltd.. Separate penalty under Rule 26(2) of the CER, 2002 was also proposed on the transporters listed at Sr.No.06 to 15 of the SCN.

3. The said SCN was adjudicated vide the impugned order wherein, the inadmissible Cenvat credit of Service Tax demand of Rs.48,08,435/- was confirmed alongwith interest. Penalty of Rs.48,08,435/- was imposed on the Appellant-1 under Section 11AC and penalty of Rs.48,08,435/- was imposed on Appellant-2 (**Shri Ashish S. Agarwal, Director of the Appellant-1**) u/r 15(1) of the CCR, 2004. Penalty of Rs.10,75,919/- was imposed on Shri Jigar Kothari, Proprietor of M/s. Aristo Chemicals, Mumbai; Penalty of Rs. 5000/- was imposed on M/s Aristo Oilchem Pvt Ltd, under Rule 26(2) of Central Excise Rules, 2002; However, penalty on Shri Dattaram Bhagwan Shinde, office Admin and Logistic officer of M/s. Aristo Chemicals was dropped. Penalty was also imposed on various the transporters.

4. Aggrieved by the impugned order, both the appellants has preferred this appeal.

The Appellant-1 is in appeal on following grounds:



➤ The impugned order has been issued without conducting proper investigation, without conducting cross examination and drawing conclusions only on presumptions and assumptions that Appellants have availed cenvat credit based on **one** Invoice issued by M/s. Aristo Oilchem Pvt. Ltd., **twelve** Invoices issued by M/s. Aristo Chemicals, **forty three** Invoices issued by M/s. Rajkamal Industries Pvt. Ltd, without physically receiving goods. It does not say as to whom the inputs covered under cenvatable invoices, were diverted by suppliers. The impugned order are based on incomplete investigation and without ascertaining these vital details. The impugned order does not adduce any evidence as regards disposal of the duty paid inputs supplied by the aforesaid registered suppliers to us under valid duty paying documents. It is vividly evident that :

- (i) there is absolutely no evidence as to whom the duty paid inputs were sold,
- (ii) not a single buyer is traced out or investigated;
- (iii) not a single evidence is brought on record against movement of such inputs for such alleged disposal;
- (iv) there is not a single evidence about even a single financial transaction for such alleged disposal of duty paid inputs.

It is thus a pure presumption resorted to by the Department that the duty paid inputs supplied by the 3 suppliers were syphoned off surreptitiously to parties other than the Appellants. Consequently, the impugned order cannot sustain the scrutiny of law, hence, liable to be set aside.

➤ The proof of supply of the proper inputs as per description given in the invoices stands proved by no less authenticate documents than the Central Excise invoices issued by the concerned suppliers. Appellants have also made payment to the concerned suppliers for such supplies of inputs as described in the relevant duty paying documents. The said invoices so issued by the suppliers have been duly accounted for by them in their statutory and official records and so also the subject inputs were duly accounted for in the relevant statutorily prescribed Cenvat Credit registers by Appellants. Thus, as per the statutory records available, there is no act of omission or commission committed by Appellants to justify denial of cenvat credit.

➤ The impugned Order have no legs to stand on, for the following solid reasons :

- (a) There is no evidence nor is there even an allegation / findings that there was any flow back of money in cash or otherwise from us to the concerned suppliers for any difference in the value of inputs described in the invoice;
- (b) In fact the value of inputs involved in the impugned order is Rs.15,70,88,017/- plus Excise duty plus sales tax etc. It is rather ridiculous or unbelievable that such alleged transportation of gigantic sum of Rs.16.5 crores and spread over a span of three years could remain unnoticed and undetected by various government authorities including



Sale Tax / VAT, RTO, Highway Check Post, Central Excise authorities, etc.

- d) It is not the case of the department that the concerned suppliers are not in existence or they are not capable or not having capacity to supply the type of inputs described in the invoices;
 - e) These suppliers have raised valid invoices against which they have also received full payment for the goods described in the invoices through legal bank channels;
 - f) The entire amounts of excise duty shown to have been paid on the inputs as per relevant invoices of the suppliers have been deposited in the Government treasury. At the same time, such entire amounts of excise duty have been and reimbursed by us to the concerned suppliers. There is no finding that either the excise duty was not deposited with the Government by the person liable to pay such duty or that we have not borne/reimbursed the amounts of duty to the suppliers of inputs.
 - g) There is also evidence in the statutory record about receipt and use of the aforesaid inputs in our factory. Not only that but corresponding to the quantity of receipt and use of the said inputs, Appellants have also manufactured dutiable excisable goods which have been cleared by Appellants on payment of duty. As the department cannot and does not deny the fact of manufacture of finished goods by Appellants, it cannot, in the same way deny receipt and use of the said inputs which are basic raw materials for manufacture of finished excisable goods by Appellants;
 - h) Appellants have maintained a number of Non-Statutory records such as (i) Stores records for receipt of inputs and their issue for consumption (ii) Production regards related to consumption of inputs and Production of finished products etc. The Show Cause Notice did not say anything about any discrepancy in these records and the Show Cause Notice avoided dealing with this issue as Department did not find any discrepancy in this regard.
- All these concerned parties to the transaction, namely, the concerned suppliers of inputs who are also registered dealers and our Company have duly filed necessary statutory returns under the various applicable legal provisions for recording the receipt, supply and use of the inputs with the respective statutory authorities as regards the aforesaid transaction, starting with movements from input manufacturer/consignor to the ultimate receipt and use by Appellants for manufacture and clearance of our final product on payment of Central Excise duty.
- It is an undisputed fact that all the purchases of inputs were duly recorded in our statutory books and the goods. There is no evidence which can show that the records maintained by us are not correct. The receipt of inputs is duly recorded in our statutory books and there is no evidence to show that the records maintained by us are



incorrect.

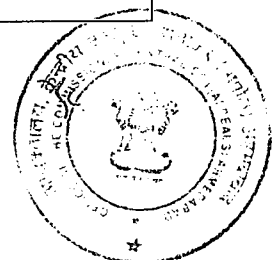
- The basic finding in the impugned order is that Appellants have not received inputs from the 3 suppliers who have given Appellants only Invoices on the strength of which cenvat credit was availed by Appellants. These findings are based on certain statements of suppliers and transporters. Therefore, in order to have the true and correct pictures, Appellants requested for cross-examination of witnesses on whose statements the reliance is placed for such findings in the impugned order, before the learned Adjudicating Authority. However, Adjudicating Authority has not accorded opportunity of cross examination to Appellants and rather denied such opportunity in the impugned order. The learned Adjudicating Authority has erred in rejecting the Appellant's request for cross examination of the witnesses whose statements were recorded and relied upon. In this context, reliance is placed on the following judgements :-

- i) 2016 (340) ELT 67 (P&H) Jindal Drugs Pvt. Ltd. Vs. UOI
- ii) 2016 (339) ELT 209 (P & H) G-Tech Industries Vs. UOI
- iii) 2016-TIOL-769-CESTAT CCE Vs. Kuber Tobacco India Ltd.
- iv) 2015 (327) ELT 596 (T) Slotco Steel Products (P) Ltd. Vs. CCE
- v) 2013 (294) ELT 353 (Del.) Basudev Garg Vs. CC
- vi) COMMISSIONER Versus MOTABHAI IRON AND STEEL INDUSTRIES- 2015 (316) E.L.T. 374 (Guj.)

It is therefore requested that impugned order passed without Cross examinations of all deponents on whose statements reliance has been placed is illegal and needs to be set-aside.

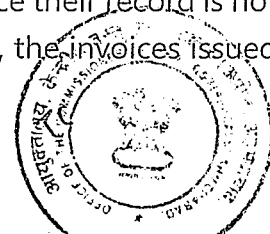
- Show Cause Notice dated 16.9.2020 (received on 25.9.2020) has been issued covering a period from 1.4.2015 to 30.6.2017 invoking Section 11 A (4) of Central Excise Act, 1944. Some part of the proposed demand is beyond 5 years period and therefore Show Cause Notice for such period cannot be issued even invoking extended period of time. With regards to charges of suppression of facts and imposition of equal penalty under Section 11AC of the Central Excise Act, 1994, it is submitted that Appellants Unit was audited periodically by the Department. In this connection, we give below the details of audits of our unit conducted during the relevant time:

Sr. No.	Audit Period	Dates of visit of Audit Officers	Audit Report No. & Date
1	September, 2013 to December, 2014	8.1.2015, 9.1.2015, 10.1.2015 & 12.1.2015	137/2014-15(CEX.) dated 24.4.2015
2	January, 2015 to December, 2015	4.2.2016 & 6.2.2016	ST/857/2015-16 dated 5.4.2016



3	January, 2016 to March, 2017	30.1.2018, 31.1.2018 & 1.2.2018	1739/2017-18 (CE&ST) dated 23.4.2018

- Therefore, the auditors who conducted audits had exercised all the essential checks/verifications including the above mentioned important checks/verification and no such discrepancies of the nature was pointed out by Auditors. Therefore, the charges of suppression of facts and imposition of equivalent penalty are not justified.
- The transporter prepares the Bills as per instructions of his client with details appearing on LR. Further in transit sale the delivery is directly taken by final buyer & therefore there is only single freight incidence. The driver is instructed by transporter to deliver the goods as per the instruction of the consignee. If we refer to Panchanama & Statement of Transporter we will find many verbal Instructions. Even all the four/Five copies are given to driver without retaining any copy etc. etc.
- The transportation charges as paid by Arham are as per terms and conditions negotiated at the time of purchase and are not the transportation charges from Ahmedabad to Arham Petrochem as the sale is transit sale & not sale from Rajkamal Ahmedabad to Arham Petrochem, Ahmedabad. It should be noted that all transactions are for full lorry load and is for door delivery to the final buyer.
- Certain Petroleum products other than the Petrol/Diesel are also sold on both liter basis as well as on Kgs basis. Accordingly, in the consignments you will find liters as well kgs mentioned on LRs. In spite of above, since Original Supplier has supplied on liters basis to Rajkamal Ind. Pvt. Ltd. & accordingly, M/s Rajkamal Ind has supplied on litres basis to Arham Petrochem.
- We do not follow any practice of keeping records of weightment slips, issue slip, Consumption slip, etc. for any product. Therefore, we have not produced above. However, we have provided copies of the RG-23 PART-I register, RG-23 PART-II cenvet credit register evidencing the receipt of material in factory & quantity used & Stock thereof at SR No. & Date, Product, Supplier Name etc. etc. and month wise.
- As regards Laxmi Bulk Carrier, wherever the freight was payable by us, the M/s Laxmi Bulk Carrier had raised the invoices & we have made the payment by RTGS or cheque and have also paid service tax on RCM. Copies of ledger/invoice/service tax statement were submitted to the investigation Authorities. All LRs are also supported by interstate tax form 403 duly stamped by check post authorities. This point was explained to investigation Authorities. They have also confirmed that they were receiving scan copies of signed invoices & were taking SINGLE print out which were handed over to the driver of the tanker.
- Drawing an inference from the statement of Mr. Bhadresh that since their record is not available and invoices were destroyed after the delivery of goods, the invoices issued



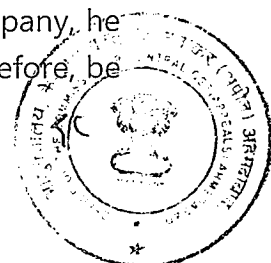
to Arham are the one's where above stock quantities are adjusted is a wild guess. Mr. Bhadreshbhai has not confirmed that the invoices issued to Arham were for only stock adjustment. In their Annexure-"B" they have included the invoices for which they have not recorded the statement or any panchnama i.e. Inv No. at Sr No. 037 Dt. 15-06-2017, Invoice No. RIPL/EIMP/17-18/98 for BED where in freight outward of Rs. 26,195/- is also charged.

- Mr. Ashish Agarwal, Director was summoned for recording statement to Supdt. Office, Gandhinagar during Covid-19 regime. He has little access to records as most of the concerned staff were not reporting duty COVID-19. We have specifically replied to all the questions by denying the allegation of not having dispatched material by transporter & Suppliers. We have also provided copies of the ledgers of transporter & supplier along with proof of payment by cheque/RTGS. We have also provided Form 403 to prove interstate movement of goods (applicable in case of Aristo to Aristo oil).
- Appellants have not violated any of the provisions contained in the Central Excise Act, 1944 and the Rules made thereunder. Supreme Court in the case of **Continental Foundation Joint Venture Versus CCE Chandigarh-I reported in 2007 (216) ELT 177 (SC)**; has held that mere omission to give correct information is not suppression of facts. Supreme Court in the case of **Anand Nishikawa Co. Ltd., versus CCE reported in 2005 (188) ELT 149 (SC)** has held that while dealing with the meaning of the expression "*suppression of facts*" in proviso to Section 11A of the Act, the term must be construed strictly, it does not mean any omission and the act must be deliberate and willful to evade payment of duty. In taxation, it ("*suppression of facts*") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

In view of aforesaid submissions, penalty is not imposable.

Appellant-2 is in appeal on the grounds that;

- The learned Assistant Commissioner has erred in passing the impugned order in gross violation of principles of natural justice.
- The learned Assistant Commissioner has erred by imposing penalty on the Appellant inasmuch as there is no material or evidence or proof in the Show Cause Notice or in the impugned order to indicate any specific role played by, or to establish any guilt on the part of, the Appellant.
- There is no basis or justification or any findings discussed in the impugned order to justify complicity or implication of the Appellant and fastening the liability of personal penalty on him.
- The learned Assistant Commissioner has failed to appreciate that even otherwise also, the Appellant was a mere Director and so as a Director of the Company, he was carrying out orders given by the Board of Directors. He cannot, therefore, be



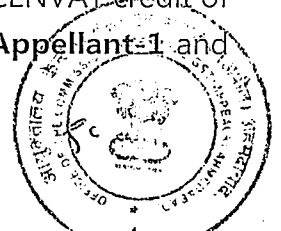
considered as a person in charge/ responsible for conduct of the employer company's business. Consequently, the Appellant cannot be held liable to penalty under Rule 15(1). In this context, following judgments are relied upon :

- i) 2006 (200) ELT 593 (T)- Carpenter Classic Exim Pvt. Ltd.
- ii) 2006 (198) ELT 379 (T)- Rammaica (India) Ltd. Vs. CCE

- The learned Assistant Commissioner has failed to appreciate from the facts and circumstances of the case, that the Appellant cannot, by any stretch of imagination, be considered to have acquired possession of, or in any way concerned in transporting, removing, depositing, keeping concealing, selling or purchasing etc. of the dutiable goods which he know or had reason to believe were liable to confiscation. In other words, neither the Show Cause Notice alleges nor the impugned order contains any findings as to the existence of knowledge or reason for beliefs or consent of the Appellant, in relation to the alleged offence.
- The learned Assistant Commissioner has failed to appreciate the 'Mens Rea' is a prerequisite under the relevant penal provisions. There is no allegation or finding in the impugned order about presence of any mens rea, and consequently it is liable to be quashed.
- The learned Assistant Commissioner has failed to appreciate that Rule 15(1) is omnibus provisions contemplating imposition of penalty for multiple reasons such as acquiring possession of or being concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing etc. of the offending goods. From the narration by the Department itself in the Show Cause Notice it is a fact on record that none of the ingredients for purpose of breach under Rule 15(1) has been discussed, which may justify implicating the Appellant for the alleged offence. Such ingredients are not even expounded in the Show Cause Notice with relevant facts, reasons and grounds which is required to be done before any person is to be brought within the mischief of the said penal provision. The learned Adjudicating Authority is thus not sure whether the Appellant is concerned with any one of the specified activities or more than one or all of them. In this background, it is submitted that the impugned order is liable to be quashed. By mere virtue of the fact that the Appellant is a Director in the said unit, there is no warrant to implicate the Appellant in the penal proceedings and that too without evidence. Hence, it prayed to set-aside the personal penalty on the appellant.

5. Personal Hearing in the case was held on 10.04.2024. Shri R. Subramanyam, Advocate appeared for personal hearing on behalf of the appellants. He reiterated the contents of the written submission and requested to allow their appeals.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the recovery of CENVAT credit of **Rs.48,08,435/-** confirmed alongwith interest, and penalty against the **Appellant-1** and



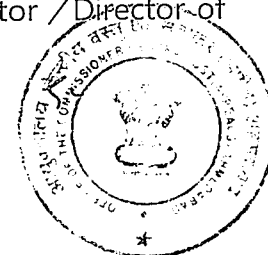
whether the personal penalty of **Rs. Rs,48,08,435/-** imposed upon **Appellant-2** vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period **F.Y. 2015 to up to June 2017.**

6.1 The present demand is the outcome of the DGGI investigation which revealed that Appellant-1 have availed Cenvat/ITC Credit totally amounting to Rs.48,08,435/- on the basis of Invoices issued by M/s. Aristo Chemicals, Aristo Oilchem Pvt. Ltd., and M/s. Rajkamal Industries Pvt. Ltd., as per the following details:

Sr. No.	Consignor	Total No. of Invoices	Value of goods purchased (Rs.)	Duty Involved (Rs.)	F.Y.
1	Aristo Oilchem Pvt. Ltd.	1	7,52,868	99,910	2016-17
2	Aristo Chemicals	12	12,73,51,244	9,76,009	2015-16
3	Rajkamal Industries Pvt. Ltd.	16	1,05,14,616	13,99,007	2015-16
4	Rajkamal Industries Pvt. Ltd.	20	1,18,37,202	15,77,250	2016-17
5	Rajkamal Industries Pvt. Ltd.	8	66,32,087	9,38,391	2017-18
	Total			Rs.49,90,567/- (proposed demand in SCN - Rs. 48,08,435/-)	

Invoices issued by M/s. Aristo Chemicals, M/s. Aristo Oilchem Pvt. Ltd., and M/s. Rajkamal Industries were supported by Lorry Receipts of M/s. Laxmi Bulk Carriers, M/s. Pawan Transport Service, M/s. Hariom Bulk Carrier, M/s. Jai Gurudev Roadlines, M/s. Global Bulk Carriers, M/s. M.K.Movers, M/s. Varun Roadlines etc. The SCN has made following allegations on Appellant-1;

- i) Appellant-1 failed to identify Transporters in many cases and have tried to shift the responsibility of transportation to suppliers;
- ii) They failed to produce weighment slips or any evidence of consumption of the said material in their factory premises;
- iii) They failed to produce details of transportation charges in many cases;
- iv) They failed to produce any contract of purchase order with M/s. Rajkamal/Aristo that the goods are sold on FOR Basis;
- v) They tried to skip the responsibility by repeating allegation of the transporters and suppliers;
- vi) They have not made any comments on the statements of Director of M/s. Aristo wherein he has accepted that he has issued only invoices to Arham Petrochem Pvt. Ltd, Kalol and accepted cheque payments for the said Invoices whereas returned differential cash through Angadia;
- vii) They have not made any comments when he was shown the statement of various Transporters wherein the Transporters have accepted that they have not transported the goods in question and have prepared the LR's only on the direction of Shri Jigarbhai Kothari. Proprietor Kothari. Proprietor / Director of M/s. Aristo/Rajkamal;



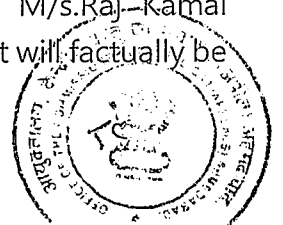
- viii) Further certain LR are shown as 'to pay' which means that Appellant-1 will pay the Transportation charges whereas Shri Ashish Sureshchandra Agarwal has stated that they received goods on FOR basis simultaneously which is against the factual position;
- ix) Appellant-1 have fraudulently availed Cenvat Credit without actual receipt of inputs on the strength of Invoices issued by M/s. Aristo Chemicals to the tune of Rs. 9,76,244/-, M/s. Aristo Oilchem Pvt. Ltd., to the tune of Rs. 99,910/- and Rs. 37,32,516/- on the strength of Invoices issued by M/s: Rajkamal Industries Pvt. Ltd., totally amounting to Rs. 48,08,435/-.
- x) They wrongly availed Cenvat Credit merely on Invoices of LLP IP/LLP COM/HLP COMM/LLP IP/HLP BP IP/POWER LUBE12/PANOIL- 505 etc. issued by M/s. Aristo Chemicals, Mumbai, M/s. Oilchem Pvt. Ltd, Rajkamal Industries Pvt. Ltd., Ahmedabad, during the period April 2015 to June 2017, without actual purchase, receipt and consumption of inputs specified in the said documents.

6.2 The Adjudicating authority confirmed the demand on the findings that;

- a) As per the statement dated 11.08.2020 of Shri Ashish Suresh Chandra Agarwal, Director of M/s. Arham Petrochem it was submitted that following are the Transporter who transported the goods purchased by them, to their factory :-

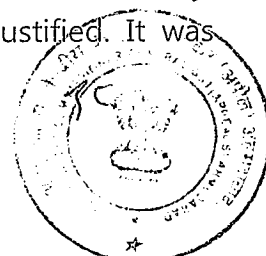
Name of the Supplier	Transporter
M/s Aristo Oilchem	M/s Laxmi Roadlines
M/s Aristo Chemicals	M/s Laxmi Bulk Carriers, M/s Vapi Jamnagar Transport, M/s Sachin Transport Company, M/s Pawan Transport Service
M/s Rajkamal Industries	M/s Hariom Bulk Carrier, M/s Gurdev Roadlines Pvt. Ltd., M/s Laxmi Bulk Carriers, M/s Global Bulk Carriers, M/s Pawan Transport Service, M/s M.K. Movers, M/s Universal Logistics, M/s Varuna Roadlines

- b) M/s. Rajkamal Industries Private Limited has endorsed the LR copy and redirected the consignment to Appellant-1 which is not a prescribe manner and practically not possible as once the driver of the vehicle is directed to deliver the goods at specified place how he will deliver the goods on the direction of the third party i.e. M/s. RajKamal Industries Private Limited.
- c) Ongoing through the ledger submitted by Appellant-1, it revealed that freight Bill showing transportation for payment of Tax under RCM but LR copy is showing transportation of goods from Silvassa to Ahmedabad for M/s. RajKamal Industries Private Limited and from Silvassa to M/s.Raj-Kamal Industries Private Limited, Ahmedabad to Appellant-1, amount will factually be



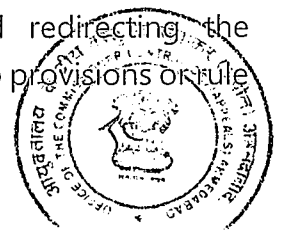
less than Silvassa to Ahmedabad, this factual position is supported by evidence i.e. LR copy and freight paid by the Appellant-1 did not tallied, which clarifies that these exercise were made to be appear transaction genuine, but that there was no actual supply of goods.

- d) Regarding the clerical/typographical error with respect to invoice number 113 dated 31.03.2016 of the LR of M/s. Globe Bulk career, the correct LR number is 410 to which quantity shown as liters but they have received goods in kgs and same is written on bill, he held that in a normal trade practice transportation of Oil and Chemicals except Petrol and Diesel is undertaken in Kg. basis but LR bearing liters is not acceptable and is required to be considered as fake. In the said LR quantity is shown in liters while gross weight is shown in kg which implies that transportation of goods on the basis of such fake LR is legally not tenable. These also implies that there was no transportation of goods and only paper transaction in order to avail Cenvat credit in fraudulent manner was undertaken by Appellant-1.
- e) Appellant-1 has failed to produce weightment slip, issues slip consumption slip or any evidence of consumption of the said material in their factory premises. Therefore, mere contention not supported by evidence is not acceptable and legally not sustainable.
- f) Shri Ashish Suresh Chandra Agarwal, Director (**Appellant-2**) has not given any comment in the matter of Statement dated 09.05.2018 and 11.07.2019 given by Sri Sudhir B Singh, Authorise Signatory of M/s. Lakshmi Road Lines regarding invoice number 006/16-17 dated 07.04.2016 issued by M/s Aristo OilChem Pvt., Ltd., and statement of other Transporters. In statement of Shri Sudhakar B Singh, Partner of M/s. Laxmi Bulk carriers, it has been admitted that M/s. Lakshmi Bulk carriers has transported the goods at the location of actual buyer which is different from the consignee mentioned in LR and adjusted the differential freight amount caused by change in actual distance by cash through angadia or in subsequent trip, on which no comment made by Appellant-1. It is not only statement but also supported by documentary as well as electronically drawn evidence, therefore it was necessary for the Appellant-1 to have brought on the record substantial and cogent evidence to defend their self rather than not to comment. This makes it clear that there was no transportation of goods as mentioned in the LR of the Transporters. When the person responsible for transportation of goods admitted that they have not transported the goods at the place of Appellant-1, then the appellant should have brought on the record that they have actually received the goods, as they failed to do so, it can be very well concluded that there was no actual supply of goods.
- g) On the payment of service tax under RCM on freight made to various transporters, he held that when this issue was brought before the Director, they submitted the copy of ledger before the investigating officers, however in many of the cases investigating officer finds that the amount did not tally. Therefore, service tax paid by them on RCM basis is not justified. It was



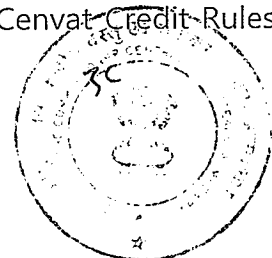
necessary on the part of notice that they would have submitted it before the Adjudicating authority, the details of freight paid by them and to whom and for which transportation such freight charges were paid. There is nothing on the record which justifies the statement given by them in their defense submission, therefore, I am not incline to accept that freight charges are paid with regards to impugned goods received by them.

- h) They have availed the Cenvat credit of Rs. 99,910/ on the basis of Invoices issued by M/s. Aristo OilChem Pvt. Ltd., Cenvat credit of Rs. 9,76,009/- based on Invoices issued by M/s. Aristo Chemicals Pvt. Ltd., and Rs. 39,14,648/- based on the Invoices issued by M/s. RajKamal Industries Pvt. Ltd., totally amounting to Rs. 49,90,507/-. These goods have been actually received by them and entered in RG 23 Pt-I & Pt-II Register, in testimony of goods received by them in factory. I find that no such documents are available on file to substantiate the facts, even otherwise, It has been alleged that entries and documents were framed and fabricated to make the transaction appears to be legal, but when the person responsible for transportation of goods had admitted that they have not transported the goods at the place of Appellant-1, entries made is not supported by evidence such as weighment slip, consumption slip issue slip etc. from which it can be concluded that the goods were received by them and were used for manufacture of final product. Hence, this contention is not acceptable and legally not sustainable.
- i) When the suppliers and the Transporter stated that the goods were not delivered, it was obligatory on the part of the Appellant-1 to have submitted the documentary proof such a details of transportation charges, weighment slip, issues slip, consumption slip to negate statement of the suppliers and Transporters.
- j) To establish that they have received the goods physically as per invoices issued by M/s. Aristo OilChem Private Limited, M/s. Aristo Chemicals and M/s. Rajkamal Industries Private Limited they have relied on LR copy, Excise invoice and Form 403 etc. However, the LRs copies are treated as fake on the basis of statement of Transporters, along with the records such a trip register etc., therefore LR copies cannot be accepted as evidence of receipt of goods, even excise invoice cannot be accepted as evidence for actual receipt of goods and Form 403 of the State VAT act is the valid document to be carried for movement of good, the documents for movement of goods does not in any way prove that goods were actually received by them. It becomes necessary for Appellant-1 to have brought on record documentary evidence such as purchase order with the suppliers that goods are sold on FOR bases, in absence of such documentary evidence it can be said that there was no actual supply of goods.
- k) M/s.Rajkamal Industries and endorsed some LRs for delivery by putting Stamp on LRs, therefore, it cannot be said that LRs are in the name of M/s. Rajkamal industry to this. He held that by endorsing LRs and redirecting the consignment to Appellant-1, is not permissible under law, no provisions or rule



prescribe such manner of redirection. The onus to submit details of freight paid so as to substantiate their submission is on the appellant.

- l) Co-noticee Shri Bhadresh Chinubhai Mehta, Director of M/s. Rajkamal industries has not category admitted that they have only issued invoice to Appellant-1 without supply of goods. He stated that there is no record available that is to say invoice where destroyed after delivery of the goods to some parties by M/s. Raj Kamal industries and it was stated and accepted that to adjust the stock of the goods delivered to some parties only invoices where issued, the list of invoices issue to the Appellant-1 as per Annexure-A and Annexure-B were verified by the Transporters and it was found that they did not transported such goods as per their 'Trip Register'. Therefore, invoices were issued to adjust the stock without actual supply of goods.
- m) Further, to whom duty paid goods were sold or who was the buyer of the goods and evidence of financial transaction for the alleged goods is not the case on hand. There are records and evidence collected during the investigation and search and seizure, therefore, by no stretch of imagination one can say that investigation is either incomplete or based on assumption and presumption.
- n) On the argument that there is no evidence nor even an allegation that there was any flow back of money in cash or otherwise from Appellant-1 to the suppliers, he held that for availing Cenvat credit invoice is the document. The Transporter such as M/s. Sachin Transport carriers, M/s. Laxmi Bulk Carriers, M/s. Hariom Bulk Carriers and others has stated and submitted the records of transportation such as trip register etc., it revealed that there was no actual supply of goods and no transportation was undertaken for the said invoices, the flow of cashback is not the relevant parameter for non-receipt of the goods, the moot question here is actual receipt of goods and not the cash flow back, therefore such contention is nothing but a shield for non-production of documentary evidence for receipt of goods and not legally tenable.
- o) On the contention as to how come gigantic sum of Rupees 16.5 crores over a period of three years remained undetected or unnoticed, he held that the intelligence was received by the department and prompt action were taken to prevent the government revenue, investigation was undertaken by the department. The department can undertake scrutiny of returns, audit etc., but for search and seizure specifications intelligence is required, this is to allow the honest taxpayer to conduct smooth business.
- p) He finds that there is no dispute that the supplier is capable of supplying such goods or supplier is capable to supplies such quantity of the goods, the dispute is with regards to receipt of the goods by Appellant-1, when the person who were named and responsible for transportation has denied such transportation, the receipt of a good by Appellant-1 remains questioned. The payment of Duty/Tax paid by the suppliers is not under dispute, the Cenvat credit can be taken as per the conditions laid down in Cenvat Credit Rules,



2004, neither reimbursement is relevant in the present case nor payment of Duty/Tax, the dispute is with regards to receipt of the goods and Cenvat Credit taken without actual supply of goods by the appellant. There is evidence of entry made in statutory record about receipt of goods in factory and also use of input in final product, as no such evidence was submitted by the Appellants so that proper verification can be undertaken, in absence of which it can be said that there is no actual supply of goods, it was obligatory on the part of the Appellant-1 to have submitted such evidence as mentioned in the subject notice, so that proper conclusion can be arrived at but Appellant-1 have not submitted till the finalization of the subject notice, mere contention cannot help to prove that goods in question were actually received by them.

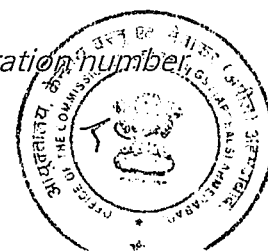
6.3 Appellant-1 however has contested the above findings mainly on the grounds that they have received the goods for which valid invoices were raised by the suppliers. They have paid full payment for the disputed goods through banks and the entire excise duty paid and deposited in the government treasury. The receipts of such inputs were recorded in the statutory records (Stores records of receipts of inputs & their issue for consumption) and were subsequently used in the manufacture of excisable goods. All these transactions were also reflected in their statutory returns. Appellant-1 have availed Cenvat Credit of Rs. 99,910/- on Invoices issued by M/s. Aristo Oilchem Pvt. Ltd., Cenvat of Rs. 9,76,009/- on the Invoices of M/s. Aristo Chemicals and Rs. 39,14,648/- on Invoices issued by M/s. Rajkamal Industries Pvt. Ltd., totally amounting to Rs. 49,90,567/-. These goods have been actually received by Appellants and entered in RG 23 Part 1 Register and RG 23 Part II Register in testimony of receipt of goods in factory. Further, they contended that the impugned order does not say where the inputs covered under the cenvatable inputs were diverted by suppliers. They strongly claim that the statutory records show the receipt of inputs in factory and their use in manufactured dutiable excisable goods and subsequent clearance of such finished goods on payment of duty, which was never disputed by the department.

6.4 I find force in their above argument. Rule 4 of the CENVAT Credit Rules, 2004 provides for different conditions for allowing CENVAT credit. Sub-rule (1) of Rule 4 allows CENVAT credit on inputs immediately on receipt of the inputs in the factory of manufacturer. Relevant text is reproduced below:

"the CENVAT credit in respect of inputs can be taken immediately on receipt of the inputs in the factory of the manufacturer/ premises of provider of output service."

Thus, CENVAT credit can be availed on the basis of the documents as specified under Rule 9 of CENVAT Credit Rules, 2004 and that such documents should contain details as required under Rule 11 of Central Excise Rules, 2002. As per Rule 11 of Central Excise Rules, 2002. Rule 9(1) stipulates that the CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

"The invoice shall be serially numbered and shall contain the registration number"

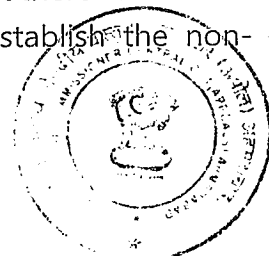


address of the concerned Central Excise division old [shall contain the registration number], name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty quantity and value, of goods and the duty payable thereon."

6.5 It is not disputed that the relevant invoices on the basis of which the CENVAT Credit has been availed by Appellant-1 does not clearly mention all the prescribed details. So, far as all the purchases of inputs are duly recorded in statutory books, non-receipt of such goods cannot be assumed merely on the depositions of the transporters. The Appellant-1 & Appellant-2 both of them before the adjudicating authority have claimed that the receipt of goods were entered in RG-23 Part-I and RG-23 Part-II Register however, these documents were not examined by the adjudicating authority. Merely because the transportation of Oil & Chemicals is undertaken in Kgs but the LR bears Ltr does not establish that the goods were not received. Appellant-1 has categorically stated that it was the clerical/typographical error with respect to invoice number 113 dated 31.03.2016 of the LR of M/s. Globe Bulk career, the correct LR number is 410 to which quantity shown as liters but they have received goods in kgs and same is written on bill.

6.6 Appellant-1 also contended that all the freight payments were made through cheque or RTGS and all LRS are supported by interstate tax Form 403 duly stamped by Check Post authorities. However, the adjudicating authority held that for availing Cenvat credit, invoice is the proper document. The Transporter such as M/s. Sachin Transport carriers, M/s. Laxmi Bulk Carriers, M/s. Hariom Bulk Carriers and others have stated and submitted the records of transportation such as trip register etc., which revealed that there was no actual supply of goods and no transportation was undertaken for the said invoices. However, the LRs copies are treated as fake on the basis of statement of Transporters, along with the records such a trip register etc., therefore he held that LR copies cannot be accepted as evidence of receipt of goods, even excise invoice cannot be accepted as evidence for actual receipt of goods and Form 403 of the State VAT act is the valid document to be carried for movement of good, the documents for movement of goods does not in any way prove that goods were actually received by them. He held that Appellant-1 should have brought on record documentary evidence such as purchase order with the suppliers that goods are sold on FOR bases, in absence of such documentary evidence it can be said that there was no actual supply of goods. He, also held that the flow of cashback is not the relevant parameter for non-receipt of the goods, the moot question is actual receipt of goods.

6.7 It is observed that CENVAT credit can be availed on the basis of the documents as specified under Rule 9 of CENVAT Credit Rules, 2004, if, such documents contain details as required under Rule 11 of Central Excise Rules, 2002. So far as it is not disputed by the department, the allegation of non-receipt of inputs/goods in the factory cannot sustain merely on the basis of the statement of Suppliers and Transporters who admitted that they have only issued invoices to the Appellant-1 without supply of goods. Appellant-1 has vehemently requested to allow cross-examination of witness on whose statement allegations were framed against the appellants. However, the adjudicating authority by relying on various case-laws and by countering the case-laws relied by the appellants denied the cross-examination of Transporters & Suppliers. He held that there are various other corroborative evidences and independent evidences which establish the non-



receipt of goods. However, the adjudicating authority has not come up with any corroborative evidence to establish the non-receipt of goods in the factory of Appellant-1. The entire demand has been confirmed on the admissions made by the Transporters that they did not transport such goods as per the 'Trip Register' and the admissions made by the Suppliers. No findings is given on the documentary or electronical evidences drawn which prove non-receipt of goods in the factory.

6.8 Hon'ble Supreme Court in *Cooperative Company Ltd. v. Commissioner of Trade Tax, U.P.* [(2007) 4 SCC 480], has held that burden of proof of establishing the levy of tax lies on the revenue authorities. The adjudicating authority has passed on the onus on the appellants to prove the receipt of goods, which I find is not justifiable. The adjudicating authority at para-25.14 of the impugned order has admitted that there is evidence of entry made in statutory records about receipt of goods in the factory and also used of inputs in final products. However, no evidence is submitted by the Appellant-1 to verify the non-receipt or actual supply of goods. I find that such findings are not legally sustainable as it is not the obligation of the notices to produce evidence to prove the allegation in fact the onus is on the department, which I find was clearly misplaced in the impugned order.

6.9 The appellants have also requested to allow cross-examination of witness, which was dismissed by the adjudicating authority. In my considered view, denying the opportunity of cross-examination of the witnesses whose statements were relied upon by the Adjudicating authority, is a serious lapse, which makes the order nullity, inasmuch as it amounted to violation of principles of natural justice. Hon'ble Supreme Court, in the case of *Andaman Timber Industries v. CCE, Kolkata-II- 2015-TIOL-255-SC-CX = 2015 (324) E.L.T. 641* (S.C.) set aside the order and allowed the appeal of the assessee. It has been observed that the Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the Appellants themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the Appellant wanted to cross-examine those dealers and what extraction the Appellant from them.

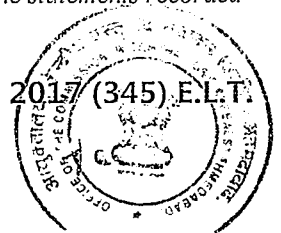
6.10 Further, I find that Hon'ble CESTAT, Ahmedabad Bench in the case of **GUJARAT CYPROMET LTD. -2013 (289) E.L.T. 467 (Tri. - Ahmd.)** has also held that;

"29. I also find that identical sets of facts were in the case of NICO Extrusions Pvt. Ltd. (supra). In both these cases, the Bench has clearly held that the statements of the transporters, owners, owners of the vehicles, drivers and CHAs who have given inculpatory statements against the assessee, should be made available for cross-examination and it is also held that there were many statements which were inculpatory, in my view, the ratio of the said two cases in identical sets of facts would cover these cases also. I also find strong force in the contentions of the Id. Counsel that the director of the company has recorded in his statement that the statutory records indicate the true and correct entries as regards receipt and consumption of the goods. I find that in the cases of Dhakad Metal Corporation & Others (supra), Self Knitting Works (supra), Harika Resins Pvt. Ltd. (supra) (wherein I was one of the Member), in identical sets of facts, the co-ordinate Bench of the Tribunal, has remanded the matter back to the adjudicating authority at the stay stage itself by directing the lower authorities to allow the cross-examination of the persons as sought for by the assessee.

30. In my view, the charges of availment of Cenvat credit without receipt of the inputs are serious allegations which cannot be held as correct without adequate/cogent evidences and it is also imperative that the witnesses be cross-examined to bring the truth on record as to how they have stated that the goods were never transported to the appellant.

31. In my view, the Revenue's case in both these sets of appeals is mostly based upon the statements recorded of various persons and not on any corroborative evidences, as has been claimed."

The above decision was affirmed by Hon'ble High Court of Gujarat - **2017 (345) E.L.T.**



520 (Guj.) in Tax Appeal Nos. 269-273 of 2013, decided on 28-3-2013, wherein it was held that the Adjudicating Authority has heavily relied on the Cross-examination of witnesses therefore the assessee has right to seek their cross-examination. It cannot be rejected merely because the statements, according to the adjudicating officer, were recorded without threat, duress or coercion or that the witnesses at no stage retracted their statements, cannot be a ground for rejecting the request for cross-examination.

6.11 Another contention put-forth by the Appellant-1 is that some part of the demand is time barred as their statutory records were already audited by the departmental officers in the year 2015, 2016 & 2018 covering the period from September, 2013 to March, 2017. They placed reliance on following case laws;

- i) 2015 (322) E.L.T. 819 (S.C.)- CCE Vs. Pragathi Concrete Products (P) Ltd.
- ii) 2012 (282) ELT 196 (Kar.)- CCE Vs. MTR Foods Ltd.
- iii) 2016 (6) TMI 162 – Cestat - Sanjay Automobile Engineers Pvt. Ltd. Vs. CCE

The adjudicating authority however held that the extended period is invocable as full facts came to the knowledge of the department only after carrying out investigation. It is observed that Hon'ble Apex Court in the case of PRAGATHI CONCRETE PRODUCTS (P) LTD.- 2015 (322) E.L.T. 819 (S.C.) held that;

3. It is also found as a matter of fact, that the unit of the respondent was audited during this period several times and there were physical inspections by the Department as well. Therefore, there could not be any case of suppression. We are in agreement with the aforesaid view taken by the CESTAT. As a result, this appeal is dismissed.

6.12 In the case of Appellant-1, three times audit was undertaken and FAR No.137/137/2014-15 (CEx.) dated 24.4.2015 (covering period September, 2013 to December, 2014); FAR No. ST/857/2015-16 dated 5.4.2016 (covering period January 2015 to December 2015) & FAR No. 1739/2017-18 (CE&ST) dated 23.4.2018 (covering period January, 2016 to March, 2017) were issued. The present dispute covers the F.Y. 2015-16 to 2017-18 (upto June, 2017), out of which the period from April, 2015 to March, 2017 was already audited, therefore, in light of above Apex Court's decision, I find that invoking suppression for said period may not sustain when the entire records for said period were inspected by the department and no such discrepancy was noticed then.

7. As regards the **penalty of Rs.48,08,435/-** impose under Rule 15(1) of the CCR, 2004 on Appellant-2, the adjudicating authority observed that the appellant was shown the statements of suppliers who have denied to supplied the materials and Transporters who have denied to transport the goods in question covered under the invoice as tabulated in Annexure "A" and Annexure "B" attached to the Show Cause Notice; he was specifically asked by quoting invoice number 113 dated 31.03.2016 raised by M/s. Global Bulk Carriers and it was asked why Lorry receipt number and weight has been change, it was stated that it was a clerical mistake but he could not give any explanation or produce any evidence. He was specifically asked to pursue para 2,3 and 4 of page number 4 of statement of Shri Sudhakar B Singh, Partner of M/s. Lakshmi Bulk carrier dated 09.05.2018, for which he stated that in para 2,3 and 4 it has been admitted by Shri Sudhakar B. Singh that M/s. Lakshmi Bulk Carrier has transported goods at the location of actual buyers which is different from the consignee mention in lorry receipt and adjusted the differential freight amount caused by change in actual distance by cash through angadia or in

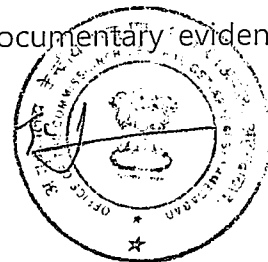


subsequent trips. However, he did not come out with any comment on this, neither any documentary evidence was brought on record neither he denied that the statement given by the said Transporters are false nor he even remotely suggested that Transporter has given wrong statement/ information. This is act of acceptance of what was stated by the Transporter in their statements. It was obligatory on the part of Appellant-2 to have denied such statement and to produce factual evidence, therefore, there was strong reason to believe that what is stated by the Transporters is true and correct and as such there was no actual supply of goods in question. Further, there is no comment offered by Appellant No.2 nor any evidence is brought on record which can establish that goods vide invoice number 000/6/16-17 was received by them. The adjudicating authority by relying on the decision of Hon'ble Supreme Court of India in case of COLLECTOR OF CUSTOMS, MADRAS AND OTHERS Versus D. BHOORMULL reported in 1983 (13) ELT 1546 (S.C.), held that each and every transaction cannot be linked, but in the instant case sufficient links of documentary evidence and records, are available on file. The onus to prove is shifted on the appellant and no evidence or records which can prove that goods were actually received by them is brought on record. Appellant-2 being a natural person was deliberately indulged himself and also responsible for legal entity, in activity of availment of fraudulent Cenvat Credit without actual receipt of goods in contravention of Rule 9 of Cenvat Credit Rules, 2004, hence has rendered himself for penal action under Rule 15(1) of Cenvat Credit Rules, 2004.


7.1 Appellant-2 on the other hand have contended that the learned Assistant Commissioner has failed to appreciate that he was a mere Director and as a Director of the Company, he was carrying out orders given by the Board of Directors. He cannot, therefore, be considered as a person in charge/ responsible for conduct of the employer company's business; the adjudicating authority has failed to appreciate from the facts and circumstances of the case, that the Appellant cannot, by any stretch of imagination, be considered to have acquired possession of, or in any way concerned in transporting, removing, depositing, keeping concealing, selling or purchasing etc. of the dutiable goods which he know or had reason to believe were liable to confiscation. Neither the Show Cause Notice alleges nor the impugned order contains any findings on the existence of knowledge or reason for beliefs or consent of the Appellant, in relation to the alleged offence. He failed to appreciate that there is no allegation or finding in the impugned order about presence of any mens rea, and consequently the penalty is liable to be quashed.

7.2 It is observed that the penalty has been imposed on Appellant-2, who is a Director in Appellant-1 firm. This penalty is in consequence to the Cenvat credit recovery of Rs.48,08,435/- confirmed against Appellant-1. The penalty has been imposed on the Appellant-2 on same set of facts. I, therefore, find that my observations made **para-6.3 to 6.12** above shall squarely apply to the facts and circumstances of Appellant-2 also.

8. As such, I am of the view that the impugned order is liable to be set aside on my above observations and findings and the matters are required to be remanded for fresh decision after allowing cross-examination of the witnesses whose statements are relied upon; re-examining the time bar aspect and considering the documentary evidences produced by the appellants.



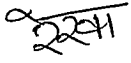
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the Appellant-1 & Appellant-2 stands disposed of in above terms.


ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 24th April, 2024

सत्यापित/Attested :



रेखा नायर
अधीक्षक (अपील्स),
सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D



To,

M/s Arham Petrochem Pvt Ltd, - **Appellant-1**
Survey No. 1163/A Village Moti Bhoyan,
Gata Road, Tal Kalol, Gandhinagar

Shri Ashish S. Agarwal - **Appellant-2**
Director of M/s Arham Petrochem Pvt Ltd
Survey No. 1163/A Village Moti Bhoyan,
Gata Road, Tal Kalol, Gandhinagar

The Assistant Commissioner, - **Respondent**
CGST & CEX, Kalol Division
Gandhinagar Commissionerate

Copy to:

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar
3. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
4. Guard file.