



सत्यमेव जयते

::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise
पोलिटेकनिक के पास, Building,
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,
Ambavadi,
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(38) 20/Ahd-II/Appeals-II/ 2015-16

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 0025 -16-17

दिनांक (Date): 21.07.2016, जारी करने की तारीख (Date of issue): 26/07/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. MP/10/DEM/AC/2015/AP Dated: 27/03/2015

issued by: Assistant. Commissioner., Central Excise (Div-II), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Archem Industries

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an 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:

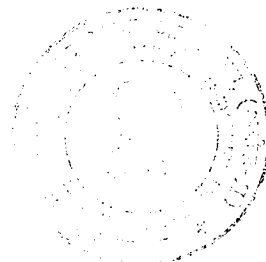
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



Cont...2

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

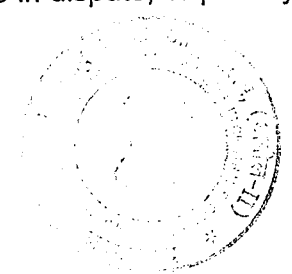
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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.

इस सन्दर्भ में 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।

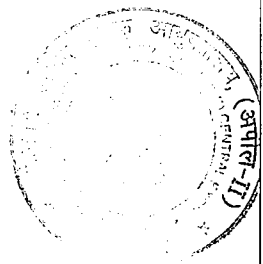
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDERIN APPEAL

Subject appeal is filed by M/s. Archem Industries, B/39 & 50, Arvind Industrial Estate, B/h Anil Starch, Bapunagar, Ahmedabad-380024, (hereinafter referred to as "the appellant] against Order in Original No.MP/10/DEM/AC/2015/AP [hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, Central Excise,div-II, Ahmedabad-II (hereinafter referred to as '*the adjudicating authority*').they are engaged in the manufacture of Miscellaneous Chemical Products falling under Chapter 38 of the first schedule of the Central Excise Tariff Act,1985[*hereinafter referred to as CETA, 1985*]

2. Briefly stated the facts of the case are that ,During the course of scrutiny of ER-1 returns *by* the JRO for the period November 2013 to April 2014, it was observed that the appellant had cleared their finished goods viz. Miscellaneous Chemicals ,without payment of duty, claiming exemption under Notification No.12/2012-CE (SI.No.133). At the time of clearance the Appellant had paid an amount (Rs.2,17,863/- for material period) equal to 6% of the value of such exempted goods as per the provisions of Rule 6 (3) of Cenvat Credit Rules. From the plain reading of the said notification it appeared that the Finishing agents, dye carriers, Printing paste and other products and preparations were exempted when used in the same factory for the manufacture of textiles and textile articles. In other words, those goods were exempted when manufactured in the same factory of production of subject goods which manufactures textiles and textile articles also.Whereas in the present case, the Appellant *was* not a manufacturer of textiles and textile articles and therefore the subject goods were not used in the same factory of production of subject goods for the manufacture of textile and textile articles. Therefore, it had appeared that the exemption under SI.No.133 of Notification No.12/2012-CE was not eligible to the said goods and thus goods had been cleared by them in contravention of Central Excise Rules which was liable for confiscation under Rule 25 of Central Excise Rules, 2002. Therefore, it appeared that the Appellant had cleared goods without payment of duty amounting to Rs.4,48,798/- during the period from November 2013 to April 2014 by availing the benefit of Notification No. 12/2012-CE dated 17.03.2012 (Sr. No. 133) without being eligible. Therefore, it appeared that the Appellant had contravened the provisions of the Rule 6 of Central Excise Rules, 20.02 in as much as they failed to determine the correct duty payable and Rule 8 *ibid* in as much as they failed



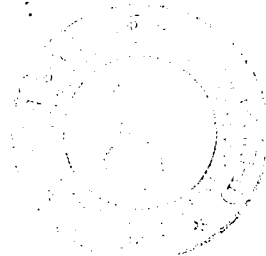
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to pay the duty on goods within the prescribed time limit. Therefore, it appeared that the Appellant had rendered themselves liable for penal action under provisions of Section I IAC(1)(b) of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules 2002. Accordingly, a show cause notice dated 05.12.2014 was issued demanding the recovery of Cenvat credit amounting to Rs. 4,48,798/- under the provisions of Section 11A(5) of the Central Excise Act, 1944 demanding interest under Section 11 AA of the Central Excise Act, 1944 and to impose penalty under Section 11AC(1)(b) of the Central Excise Act, 1944 read with Rule 25 of Cenvat Credit Rules, 2004. vide above order, confirmed the demand alongwith interest and also imposed penalty of Rs.5000/- on the appellant.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following main grounds.

○ that the Assistant Commissioner had acted without jurisdiction. The goods were cleared against a certificate issued by Assistant Commissioner of Central Excise, Amravati Division (Exhibit-A) on the basis of bond executed by M/s Raymond UCO Denim Pvt. Ltd., Yavatmal for procurement of goods without payment of duty. The said Bond has been executed in terms of provisions contained in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001. When any goods are cleared against such bond executed under the said removal rules, the liability to pay duty has been shifted on the manufacturer who executed the bond for procurement and not on the manufacturer who had cleared the goods. Rule 6 of said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 stipulates that the said Assistant Commissioner i.e., the Assistant Commissioner with whom the Bond is executed, shall take action to recover the duty from the manufacturer i.e the manufacturer who had executed the bond.

that the Assistant Commissioner of Central Excise, Division-II, Ahmedabad-II is not the proper officer for issuing the notice and hence the notice was not sustainable under law. Appellant rely upon the decision of Tribunal in the case of *Cosmo Ferrites Ltd-2014 (308) E.L.T. 633 (Di. - Del.)* wherein it is held that the Assistant Commissioner with whom the Bond executed is the proper officer to recover the duty. Also in the case of *Supreme Industries Ltd-2002 (144) E.L.T.*



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729 (G.O.1.) it is held that action for recovery of duty and imposition of penalty rests with the authority with whom the bond has been executed and the officer in-charge of factory is not competent to take action.

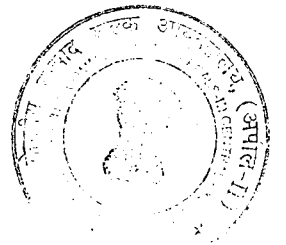
that cleared the goods against the Certificate issued by proper officer of the department i.e. Assistant Commissioner, Amravati Division. The certificate has not been withdrawn by him or cancelled by a higher authority till date. Therefore the present demand overruling the said certificate is not sustainable under law.

Further it is to submit that the purchaser of goods viz. M/s Raymond UCO P9.nim Pvt. Ltd. Yavatmal had executed a Bond for procurement of goods. As per Board Circular No.87189/94.CX dated 26.12.1994, the liability to pay duty is on the person who executed the bond. in view of the above circular, no duty is demandable from the appellant.

That the Assistant Commissioner had confirmed the demand on the grounds that the Assistant Commissioner, Amravati Division had stated that certificate has been issued wrongly. In this regard it is submitted that at the time of clearance of goods the certificate was valid. Therefore the clearance made against the certificate is also valid.

in case of goods cleared under bond, the duty is demandable when the goods are not reached the intended destination. In the present case all the goods cleared against the bond have been re-warehoused. The Central Excise officer having jurisdiction over the factory of the consignee has certified that the goods have been re-warehoused. Without prejudice to the above submissions it is to further submit that there is no condition attached to SI.No.133 of said notification. The wordings of the notification that the goods used in the same factory for the manufacture of textiles and textile articles do not mean that the goods should be used within the factory of manufacture. It only means that the goods should be used in the same factory which manufactures textile and textile articles. In the present case the goods have been used in a factory where textile and textile articles are being manufactured. Therefore, the condition of notification stands fulfilled. The appellant rely upon the decision of Hon'ble Supreme Court in the case of *Malwa Industries Ltd-2009 (235) E.L.T. 214 (S.C.)*

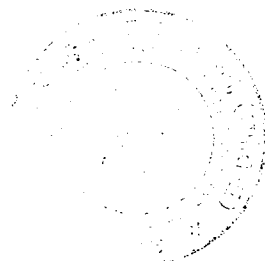
The appellant further submits that when no contravention has been made by the appellant, there was no requirement of imposing penalty.



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The Assistant Commissioner had conceded that there was no intention on the part of appellant to evade duty and all the transactions were reflected in ER-1 returns. In the circumstances the imposition of penalty under rule 25 of Central Excise Rules 2002 was unwarranted.

4. Personal hearing was fixed on 04-5-16, which was attended by Shri M.H. Raval, consultant on behalf of the appellants. He reiterated the ground of appeal and filed additional written submissions, and requested to allow the appeal. I have carefully gone through all case records placed before me in the form of Show Cause Notice, the impugned order and written submissions made by appellant. I find that the issue to decide in this appeal pertains to whether the appellant is eligible for exemption under Notification No.12/2012-CE (S1.No.133). I find that, the Appellant submitted that the subject notice was issued without jurisdiction as they have cleared the goods against a certificate issued by Assistant Commissioner of Central Excise, Amravati Division with whom M/s Raymond LICO Denitn Pvt. Ltd., Yavatmal had executed a Bond for procurement of goods and hence the liability to Pay duty had been shifted on the manufacturer who executed the bond, and not on the manufacturer who had cleared the goods. They submitted that rule 6 of said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 stipulated that the said Assistant Commissioner i.e., the Assistant Commissioner with whom the Bond is executed, should take action to recover the duty from the manufacturer i.e. the manufacturer who had executed the bond. The appellant relied upon the decision of Tribunal in the case of *Cosmo Ferrites Ltd-2014 (308) E.L.T. 633 (Tn. ; Del.)* and *Supreme Industries Ltd- 2002 (144) E.L.T. 729 (G.O.I.)*. The appellant further submitted that they had cleared the goods against the Certificate issued by proper officer of the department and the certificate had not been withdrawn by him or cancelled by a higher authority till date. The appellant further submitted that as per Circular N6.87/89/94.CX dated 26.12.1994, the liability to pay duty was on the person who executed the bond. Since they had cleared the goods against the bond executed by M/s Raymond UCO Denim Pvt. Ltd., the appellant submitted that, no duty was demandable from them. The appellant further Submitted that no condition was attached to SI.No.133 of said notification. The wordings of the notification that the goods used in the same factory for the manufacture of textiles and textile articles did not mean that the goods should be used within the factory of manufacture. It only meant that the goods should be used in the same factory which manufactures textile and textile articles. The appellant submitted that the goods had been

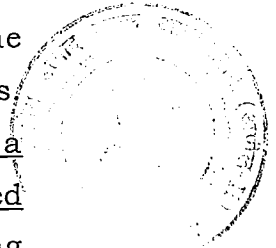


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used in a factory where textile and textile articles are being manufactured. They relied upon the decision of Hon'ble Supreme Court in the case of **malwa Industries Ltd-2009 (235) E.L.T. 214 (S.C.)**

5. I find that the appellant had cleared their finished goods without payment of duty claiming exemption under Notification No.12/2012-CE (SI.No.133). At the time of clearance of the subject goods, the appellant had paid an amount (Rs.2,17,863/- for material period) equal to 6% of the value of such exempted goods as per the provisions of Rule 6 (3) of Cenvat Credit Rules. From the plain reading of notification No.12/2012-CE, I find that at SI.No.133 exemption has been granted to Finishing agents, dye carriers, printing paste and other products and preparations when used in the same factory for the manufacture of textiles and textile articles. As per the wordings of the said notification, it is evident that the exemption to the goods mentioned at Si. No.133 is available when the goods are used in the same factory for manufacture of textile and textile articles. In other words, these goods were exempted when manufactured in a factory manufacturing textiles and textile articles. I find that, in the present case, the assessee is the manufacturer of miscellaneous chemicals and not a manufacturer of textiles and textile articles. The said goods were not used in the appellant's factory for manufacture of textile and textile articles. Therefore the appellant is not eligible for exemption under SI.No.133 of Notification No.12/2012-CE for the said goods viz. Miscellaneous Chemicals falling under Tariff Heading 38099190.

6. The contention raised by the appellant is that they have cleared the goods, without payment of duty, on the basis of certificate issue by the Assistant Commissioner, Central Excise, Amravati Division submitted by their buyer Mis Raymond UCO Denim Pvt. Ltd. In this regard I find that the certificate has been issued by the Assistant Commissioner of Amaravati division, under the provisions of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001. These Rules specify the procedure to be followed to receive exempted goods without payment of duty from suppliers, i.e. the manufacturers of exempted goods, by the the manufacturer who uses the said exempted goods for specified purposes. As per rule 2 of the said rule, the said Rules are applicable to a manufdcturer Who intends to avail of the benefit of a notification issued under sub-Section (1) of section 5A of the 'central Excise Act 1944 granting exemption of duty to excisable goods when used for the purpose specified in that notification. In other words, Central Excise (Removal of Goods at

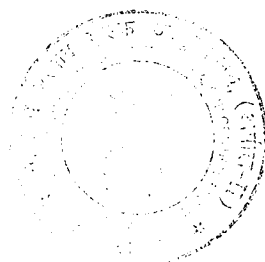


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Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 is only applicable in those cases where the goods are to be used for specified purposes by the manufacturers other than the manufacturer of subject exempted goods. In such cases, the notification issued under Section 5A itself specifies to follow the procedures of the above said Rules. The notification No.12/2012-CE (SI.No.133) stipulates the condition that where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001, is followed. When the notification No.12/2012-CE (SI.No.133) did not stipulate such condition, *obviously due to the fact that exempted goods were to be used in the same factory*, the certificate issued by the Assistant Commissioner, Central Excise, Amravati Division, is not proper as far as the exempted goods referred in notification No.12/2012-CE (SI.No.133) are concerned. I find that, The matter was taken up with the Assistant Commissioner, Central Excise, Division Amravati and vide letter dated 14.01.2015 he has informed that the said certificates were wrongly issued and requested to take action to safeguard the duty.

In view of the above it is evident that the said certificates have been issued wrongly by the Assistant Commissioner, Amravati Division and hence the said certificates ceased to be a valid document for clearance of excisable goods without payment of duty. Therefore the duty is correctly demanded from the appellant. The case laws of ***Cosmo Ferrites Ltd-2014 (308) E.L.T. 633 (Tn. - Del.)*** and ***Supreme Industries Ltd-2002 (144) E.L.T. 729 (G.O.1.)*** relied upon by the appellant in their defence, that the liability to demand duty is shifted on the officer with whom the bond is executed, will not come to their help as the said proper officer himself had stated that the certificates have been issued wrongly.

Regarding the contention of the appellant that the wordings of the notification that the goods used in the same factory for the manufacture of textiles and textile articles did not mean that the goods should be used within the factory of Production (of exempted goods) and it only meant that the goods should be used in the same factory which manufactures textile and textile articles, I find that it is settled law that a notification should be strictly interpreted and no word should be added or retrieved so as to give a different meaning. The notification says that the goods be used in the same factory for the manufacture of textiles and textile articles. The legislature has used the words same factory for the manufacture of textile




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and textile articles and not same factory of the manufacture of textile and textile articles. Therefore there is no substance. in the contentions of the appellant that the goods had been used in a factory where textile and textile articles are being manufactured. I have also gone through the decision of Hon'ble Supreme Court in the case of *Malwa Industries Ltd-2009 (23.) E.L.T. 214 (S.C.)* relied upon by the appellant find that, it pertains to import of goods and hence it is not relevant in the instant case. therefore, I hold that appellant is not eligible for exemption under Notification No.12/2012-CE.

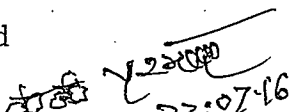
7. Regarding issue of penalty, I find that, In the present case, there was no intention on, the part of appellant to evade duty and all the transactions were reflected in ER-1 returns. Since the appellant has not suppressed any facts relevant to the issue, In the circumstances the imposition of penalty under rule 25 of Central Excise Rules 2002 is unwarranted. Therefore, I set aside penalty.

8. In view of the foregoing discussions, I uphold the impugned order and reject the appeal. The appeal is disposed off accordingly.


[Uma Shanker]

Commissioner (Appeals-II)
Central Excise, Ahmedabad

Attested


22.07.16
[K.K.Parmar]

Superintendent (Appeals-II)
Central Excise, Ahmedabad.

By Regd. Post A. D

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Ahmedabad-380024,

Copy to :

- 1 The Chief Commissioner, Central Excise, Ahmedabad.
- 2 The Commissioner, Central Excise, Ahmedabad-II.
3. The Asst. Commissioner, Central Excise, Div-II, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.

