

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS) CENTRAL TAX केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 : 079-26305065		टेलिफैक्स : 079-26305136

रजिस्टर डाक ए.डी.द्वारा

2020  
2021

क फाइल संख्या (File No.): V2(40)100 /Ahd-II/Appeals-II/ 2016-17  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 114-17-18  
 दिनांक (Date): 26.09.2017 जारी करने की तारीख (Date of issue): 27/10/17  
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी  
 मूल आदेश सं----- दिनांक -----से सृजित  
 Arising out of Order-In-Original No. 19/JC/2016/GCJ Dated: 02.11.2016 issued by:  
 Joint Commissioner Central Excise (Div-III), Ahmedabad-II

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

**M/s Rubber King Tyres India Pvt. Ltd.**

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।

  
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- (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 दिनोंक 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 मेटल हास्पिटल 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की 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।

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 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."

## ORDER-IN-APPEAL

**M/s Rubber King Tyres India Pvt. Ltd.**, Plot No. 9 & 10 G.I.D.C., Viramgam, District: Ahmedabad (hereinafter referred to as 'the appellant') is engaged in the manufacture of excisable products Inner Butyl Tubes falling under Chapter 40 of the first schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant has filed the present appeal against **Order-in-original No.19/JC/2016/GCJ dated 14/10/2016** (hereinafter referred to as 'the impugned order') passed by Joint Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated, the facts of the case are that during the course of audit of the appellant's records conducted by C.E.R.A., it was observed that the appellant had carried out trading during the period **F.Y. 2010-11 to F.Y.2014-15** and while availing CENVAT credit of duty / tax paid on inputs and input services without maintaining separate records for dutiable / taxable goods and services as well as exempted goods and services as stipulated in Rule 6 (2) of Cenvat Credit Rules, 2004 (CCR, 2004) and without informing the department regarding exercise of option under Rule (3A) of CCR, 2004 for reversal of proportionate credit. On the basis of inquiry it appeared that the appellant had availed CENVAT credit for input services in relation to trading, which is an exempted service, and inputs / input services in generation of steam in the manufacture of exempted goods without maintaining separate records and without filing before the Superintendent of Central Excise any option that they would follow either of the options namely option (ii) and option (iii) of Rule 6(3) of CCR, 2004. As the appellant appeared to have forfeited the said options and failed to reverse amount equal to 6% (5% upto March, 2011) of the value of clearance under Rule 6(3)(i) of CCR, 2004, it appeared that in case of trading, an amount of Rs.19,30,750/- @ 6% (5% upto March, 2011) of the value and in the case of steam generation, Rs.3,67,632/- @ 6% (5% upto March, 2011) of value was required to be recovered from the appellant for the period of **F.Y. 2010-11 to F.Y.2014-15** along with interest and penalty. Therefore, a Show Cause Notice .F. No. V.40/15-27/OA/2016 dated 22/03/2016 (hereinafter referred to as 'the SCN') was issued to the appellant demanding an amount of **Rs.22,98,382/-** [Rs.19,30,750/- with regards to trading and Rs.3,67,632/- with regards to steam generation] under Rule 14 of CCR, 2004 read with Section 11A(4) and erstwhile Section 11A(5) of the Central Excise Act, 1944 (CEA, 1944); demanding interest under Rule 14 of CCR, 2004 read with Section 11AB / 11AA of CEA, 1944 and proposing to impose penalty on the appellant under Rule 15(2) of CCR, 2002 read with Section 11AC of CEA, 1944. This SCN was adjudicated *vide* the impugned order where the demand of Rs.22,98,382/- has been confirmed along with interest as proposed in the SCN and imposing a total penalty of Rs.12,96,545/- also as proposed in the SCN.



3. Being aggrieved by the impugned order, the appellant has preferred the instant appeal on the following grounds:

- 1) If any assessee is availing CENVAT credit and is engaged in the business of providing both taxable / dutiable and exempted goods or services, then under Rule 6 of CCR, 2004 they have the following options a) to maintain separate records for inputs and input services used in taxable and exempted items and reverse CENVAT credit of those inputs and input services attributable to exempted items; b) In case the assessee does not maintain separate records, then they can pay certain percentage amount (presently 5% / 6%) of the value of exempted items and c) In case the assessee does not maintain separate records, then they can reverse proportionate amount as per the procedure / method provided under Rule 6(3A) of CCR, 2004 from the total CENVAT credit taken, which is in the ratio of exempted items to total turnover, in which case the assessee needs to intimate the department regarding their willingness to accept this option. The salient features of Rule 6(3A) are as follows: a) The assessee has to file an intimation with the concerned Superintendent regarding their wish to avail this option and provide few details; b) The assessee can reverse the CENVAT credit proportionately every month based on the turnover of last year; and c) At the end of the year, the assessee should finalize his CENVAT credit reversal amount based on the figures of that year and make payment of excess credit reversal or re-take credit in case of lesser reversal amount within 2 months from the end of the financial year. As per the analysis of these options in the case of the appellant by the department it has been held that the appellant has not maintained separate records of input services used for both taxable / dutiable and exempted goods and exempted services; that in case of the option of proportionate reversal of CENVAT credit as per Rule 6(3A) of CCR, 2004, the appellant needs to intimate the authorities which they have not done and hence they cannot avail this option and the appellant will have to make payment of 5% / 6% of the value of exempted goods and exempted services as reversal of CENVAT credit attributable to them. The appellant would like to submit that they had cleared steam which is exempted goods and undertook the activity of trading in goods which is a exempted service and hence is required to reverse proportionate CENVAT credit on input services attributable to those exempted items. Rule 6 of CCR, 2004 provides three alternatives and an assessee can avail an alternative which is beneficial to them. Rule 6(3A) of CCR, 2004 nowhere provides that it is mandatory to file the intimation and non-filing of the same will take away the proportionate reversal chance from the appellant. Filing of intimation is procedural action and non-compliance of same does not take away a huge benefit from the appellant. In the case of M/s Aster Pvt. Ltd. vs CCE, Hyderabad-III – 2016-TIOL-1035-CESTAT-HYD], Hon'ble Tribunal has held that Rule 6(3A) does not say that on failure to intimate, the manufacturer / service provider would lose his choice to avail option of reversing the proportionate credit; that Rule 6(3A), as seen expressly stated is nothing but a procedure contemplated for application of Rule 6(3); that therefore the argument of Revenue that the requirement to intimate the department about the option exercised, is mandatory and that on failure, the appellant has no other option but to accept and comply Rule 6(3)(i) and make payment of 5% / 10% of sale price of exempted goods / value of exempted services is not acceptable or convincing. The appellants have also placed reliance on the CESTAT decisions in the case of Mercedes Benz India (P) Ltd. vs CCE, Pune-I – 2015 (40) STR 381 (Tri-Mum); Rathi Daga vs CCE, Nashik – 2015 (38) STR 213 (Tri.Mum) and Foods, Fats & Fertilizers Ltd. vs CCE, Guntur – 2009 (247) ELT 209 (Tri.Bang.). In the case of Foods, Fats & Fertilizers Ltd., vs CCE, Guntur – 2011 (22) STR 484 (Tri.Bang.), CESTAT has agreed that Rule 6(3A) is not a substantive provision but procedural provision and levy of penalty was not justified. The appellant has also relied on the case laws UOI vs Grasim Industries Ltd. – 2006 (204) ELT 230 (Raj.); CCE Belgaum vs. India Sugars and Refineries Ltd. – 2002 (149) ELT 173 (Tri.-Bang.) and Maxcare Laboratories Ltd. vs CCE, Bhubaneswar – 2001 (138) ELT 1185 (Tri.-Cal.) to contend that if there is an issue of procedural lapse, the defect of the same can be rectified at a later date.



- 2) The appellant would like to state that on being pointed out, the appellant had reversed CENVAT credit on common input services used for undertaking trading activity and clearing steam. For F.Y. 2014-14, CENVAT credit amounting to Rs. 766/- is attributable towards common input services for exempted goods / service, which was reversed vide entry in CENVAT credit register on 22/04/2016. The interest amounting to Rs.213/- on the same was paid on 17/08/2016 vide Challan No. 7209. Considering the above submission and judicial precedents, we believe that issue does not appear to be greater than procedural lapse. We submit before your good self that we would intimate the Range Superintendent from now onwards as prescribed in Rule 6(3A) of CCR, 2004. Hence we request for condonation for non-filing of intimation regarding *pro rata* reversal option and accept our payment. We assure you that the same is mere procedural lapse and the same shall not happen again. Accordingly we are of the view that the demand of tax @ 5% / 6% of the value of exempted services and exempted goods under Rule 6(3)(i) of CCR, 2004 is complete void. The appellant further rely on a catena of decisions to contend that CENVAT credit cannot be denied on the basis of a procedural lapse.
- 3) The appellant submits that the SCN is legally untenable and is barred by limitation since the notice seeks to invoke extended period of limitation beyond one year, which is inappropriate without in any way having established the pre-conditions required in this regard with specific instances of intent to evade payment of tax. None of the reasons mentioned in Section 11A (4) are applicable to them as they have neither committed any fraud or collusion or have not given any willful mis-statement with an intent to evade payment of duty. The appellant submits that it has also not suppressed any facts or contravened the provisions of the Act with the intent to evade payment of tax. No extended period can be invoked when the appellant had submitted returns within prescribed time limit and the appellant relies on a catena of decisions in support of this contention. No extended period is applicable when SCN is issued based on audit objection as held in several case laws. Further, no extended period is applicable when department is aware of the functionalities of the appellant. No extended period is applicable when similar observation has been raised in earlier audit for the part of the period under dispute. When audit was conducted for the period February, 2012 to January, 2014, covering the period of SCN, then it cannot be alleged that they were not aware of the fact that the appellant was undertaking trading activity and clearing steam. Further in the absence of the element of *mens rea* or any positive act to evade duty is conspicuously absent in the instant case, it is amply clear that no penalty can be levied on the appellant considering the facts and circumstances of the case. Moreover, as the appellant had paid applicable interest on late reversal of the said CENVAT credit, the question of payment of additional interest thereon does not arise.
4. Personal hearing in the case was held on 14/09/2017, when Ms Pooja Shah, C.A. appeared for personal hearing. The learned C.A. reiterated the grounds of appeal.
5. I have carefully gone through the impugned order as well as the grounds of appeal. In the instant case there is no dispute that the inputs / input services were used in dutiable as well as exempted products / services and that the appellant had not maintained separate accounts for the receipt, consumption and inventory of inputs as envisaged under Rule 6(2) of CCR, 2004. The disputed issue is whether the reversal of proportionate credit by the appellant in terms of Rule 6(3A) of CCR, 2004, can be held to be valid in view of the fact that while exercising this option the appellant had failed to intimate in writing to the Superintendent of Central Excise giving the full particulars as stipulated in Rule 6(3A)(a)(i) to (v) of CCR, 2004.

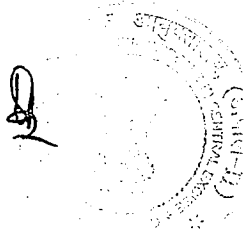


6. The appellant has claimed in the grounds of appeal that the failure on its part while exercising the option under Rule 6(3)(ii) of CCR, 2004 to intimate in writing to the jurisdictional Superintendent regarding the particulars relating to such reversal as stipulated in Rule 6(3A)(a) of CCR, 2004, is merely a procedural lapse that needs to be condoned. The appellant has relied on the case laws M/s Aster Pvt. Ltd. vs CCE, Hyderabad-III – 2016-TIOL-1035-CESTAT-HYD]; Mercedes Benz India (P) Ltd. vs CCE, Pune-I – 2015 (40) STR 381 (Tri-Mum); Rathi Daga vs CCE, Nashik – 2015 (38) STR 213 (Tri.Mum) and Foods, Fats & Fertilizers Ltd. vs CCE, Guntur – 2009 (247) ELT 209 (Tri.Bang.). The appellant had raised a similar plea before the adjudicating authority also. Discussing the same, in paragraph 18 of the impugned order, the adjudicating authority has held that

*"The assessee has cited various case laws wherein it has been held that if there is an issue of procedural lapse, the defect of the same can be rectified at a later date. However, I find that as held in Amar Colour Chem India v/s GOI (2012 (282) ELT 153 (GOI); Bajaj Electricals Ltd (2012 (281) ELT 146 (GOI); Synergy Technologies (2012 (280) ELT 578 (GOI) that the compromise or leniency cannot be on the directory aspects and basic requirements; the procedural lapse has to be appreciated on case to case basis, in light of the facts of the each case, which I do not find in the instant case."*

7. On going through the case laws cited by the adjudicating authority, it is seen that all of them pertain to revision applications filed with the Government of India against rejection of rebate claims. In all these three cases, the revision applications have been rejected on the ground that that lapses such as non-submission of records proving use of said duty paid inputs in the manufacture of export goods; the non-submission / non-preparation of statutory document of ARE-I and not following the basic procedure of export goods as well as the non-compliance of the B-I Bond condition / CT-I conditions cannot be treated as mere minor / technical or procedural lapses because the requirement for fulfillment / compliance of such conditions cannot be altered as per individual company's internal policy. On considering the applicability of the ratio of the decisions relied upon in the impugned order to the facts of the present case, it is seen that in the instant case, the issue involved is not claim of rebate but it is the failure to file intimation with the jurisdictional Superintendent under Rule 6(3A)(a) of CCR, 2004.

8. On the issue covered in the instant case i.e. failure to file intimation with the jurisdictional Superintendent under Rule 6(3A)(a) of CCR, 2004 there are clear decisions that are directly applicable to the facts of the present case. One such decision cited by the appellant is ASTER PVT. LTD. vs CC&CE, HYDERABAD-III – 2016 (43) S.T.R. 411 (Tri.-Hyd.), where relying on Mercedes Benz India (P) Ltd. v. CCE, Pune-I – 2015 (40) S.T.R. 381 (Tribunal); Rathi Daga v. CCE, Nashik - 2015 (38) S.T.R. 213 (Tri.-Mum.) and Foods, Fats & Fertilisers Ltd. v. CCE, Guntur - 2009 (247) E.L.T. 209 (Tri.-Bang.), it has been decided as follows:



“The above Rule 6(3A) states that while exercising the option, the manufacturer of goods or the provider of output service shall intimate in writing the department regarding the option exercised. In the present case, admittedly there is no intimation given by the appellant informing his exercise of option. The contention of the department is that when the appellant has not intimated his option in writing then the appellant is bound to pay the duty amount calculated under the first option. I am afraid I cannot endorse this contention. **The said rule does not say that on failure to intimate, the manufacturer/service provider would lose his choice to avail second option of reversing the proportionate credit. Rule 6(3A), as seen expressly stated is nothing but a procedure contemplated for application of Rule 6(3).** Therefore, the argument of the Revenue that the requirement to intimate the department about the option exercised, is mandatory and that on failure, the appellant has no other option but to accept and comply Rule 6(3)(i) and make payment of 5%/10% of sale price of exempted goods/value of exempted services is not acceptable or convincing. The Rule does not lay down any such restriction. **The procedure and conditions laid in Rule 6(3A) is intended to make Rule 6(3) workable and not to take away the option available to the assessee.** In any case, at no stretch of imagination can it be said that on failure to intimate the department, Rule 6(3)(i) would automatically come into application.

7. In support of their arguments, the appellants have placed reliance on the judgment passed by Co-ordinate Bench of CESTAT in *Mercedes Benz India (P) Ltd. v. CCE, Pune-I* [2015-TIOL-1550-CESTAT-MUM = 2015 (40) S.T.R. 381 (Tribunal)]. The issue under consideration is squarely covered by the said judgment. In *Rathi Daga v. CCE, Nashik* [2015 (38) S.T.R. 213 (Tri.-Mum.)] and *Foods, Fats & Fertilisers Ltd. v. CCE, Guntur* [2009 (247) E.L.T. 209 (Tri.-Bang.) = 2011 (22) S.T.R. 484 (Tribunal)], it has been held that the condition in Rule 6(3A) to intimate the department is only a procedural one and that such procedural lapse is condonable and denial of substantive right for such procedural failure is unjustified. Taking into account the facts, evidence and following the precedents cited above, I am of the view that the demand raised is not legal and proper.

The above ratio is directly applicable to the facts of the present case in as much as in the present case also the option for proportionate reversal of credit has been denied to the appellant only on the ground that no intimation was filed with the jurisdictional Superintendent of Central Excise. Following the above ratio, the failure to file the requisite intimation is to be considered as a procedural lapse that is condonable so that the substantive benefit cannot be denied. Therefore, once the amount of proportionate reversal of credit under Rule 3(ii) of CCR, 2004 is determined and finalized, the confirmation of demand of 5% / 6% of the value of clearance value is not sustainable. As regards interest, the same is very much leviable on the delayed reversal of proportionate credit under Rule 6(3)(ii). The appellant had clearly failed to intimate the jurisdictional Superintendent as required under Rule 6(3A) of CCR, 2004. Therefore, extended period is applicable for the reversal of any shortfall pointed out by department and penalty is also attracted. The quantum of penalty imposed under the provisions of Rule 15 of CCR, 2004 read with provisions of Section 11AC of CEA, 1944 is to be re-quantified in accordance with the final reversal verified and confirmed by the adjudicating authority in terms of Rule 6(3)(ii) of CCR, 2004. As regards the payment of proportionate credit, the appellant has stated in paragraph 16 of the grounds of appeal that they have reversed an amount of Rs.766/- for F.Y. 2014-15 attributable to common input services for exempted goods and services which was reversed along with interest of Rs.213/-. There is no clarity regarding the proportionate reversal for the entire period



F.Y.2010-11 to F.Y.2014-15 covered in the SCN and the impugned order. It is an admitted fact that the appellant had failed to file the requisite intimation to the department and the department had no knowledge about their intention to exercise the option for proportionate reversal. Therefore, I find that there is no scope to raise the plea of limitation to avoid reversal of any short payment with regards to proportionate reversal under Rule 6(3)(ii) of CCR, 2004. I order that the proportionate credit for the entire period of demand is liable to be reversed by the appellant under Rule 6(3)(ii) of CCR, 2004 read with Rule 6(3A)(a) of CCR, 2004. The quantum of proportionate credit reversal is required to be factually verified and confirmed by the jurisdictional Range / Division office and the appellant is directed to provide all the details to the department for such verification. Accordingly, I remand the case back to the original authority to pass a fresh order in accordance with the above findings after giving the appellant reasonable opportunity to furnish all the details and present their case.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in the above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 26/11/2017

Attested

*(K.P. Jacob)*  
Superintendent,  
Central Tax (Appeals),  
Ahmedabad.

By R.P.A.D.

- 1) To  
M/s Rubber King Tyres India Pvt. Ltd.,  
Plot No. 9 & 10, G.I.D.C.,  
Viramgam,  
Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: III, Ahmedabad (North).
5. Guard File.
6. P.A.



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Handwritten signature or initials.