



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन,

7th Floor, Central Excise Building,

Near Polytechnic,

सातवीं मंजिल, पॉलिटेक्निक के पास,

Ambayadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए.डी.द्वारा

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क फाइल संख्या (File No.): V2(85)16/Ahd-II/Appeals-II/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-298-299 -17-18**

दिनांक (Date): 29/01/2018 जारी करने की तारीख (Date of issue): 20/2/2018

श्री उमा शंकर, आयुक्त (अपील-II) 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. **46-59/JC/2016/GCJ** Dated: **06/03/2017**

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 Inductotherm 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 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 अंतत 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।

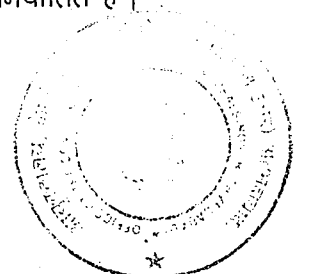
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

A. P. K.



- (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 हो।

- (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 मारु 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 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। 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 अपीलो 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।

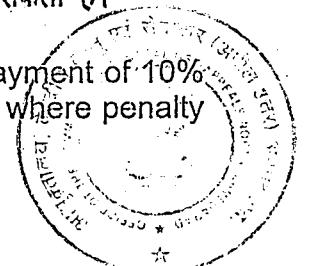
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



M/s Inductotherm (India) Pvt. Ltd., Plot No.SM-6, Road No.11, Sanand-II Industrial Estate, village: Bol, Sanand, Ahmedabad -382 170 (hereinafter referred to as 'the appellant') and **Shri Mihir G. Patel, Manager (Finance)** of the appellant (hereinafter referred to as 'the Manager') have preferred appeals against **O.I.O. No. 46-59/JC/2016/GCJ dated 06/03/2017** (hereinafter referred to as the 'impugned order') passed by the Joint commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). Briefly stated, the facts of the case are that the appellant, holding Central Excise registration No.AAACI36726XM001 and engaged in the manufacture of Induction melting / heating furnace & welder & parts thereof falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as CETA, 1985) was observed by Audit to have wrongly availed exemption benefit of **Notification No. 10/1997-CE dated 01/03/1997** on goods that were not Scientific and Technical Instruments or Apparatus or Equipments (including computers) not accessories and spare parts thereof and computers as the cleared goods were Induction furnaces or its parts.

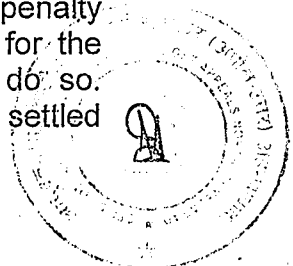
2. Fourteen Show Cause Notices (hereinafter the SCNs') were issued to the appellant for the periods ranging from **01/04/2005 to 31/12/2015** that were decided *vide* the impugned order confirming duty demands as follows:

Sl. No.	SCN F.No. & Date	Period covered	Amount confirmed
1.	F.No.V./85/15-96/OA/2007 dated 30/09/2008	01/04/2005 to 31/08/2005	₹7,79,374/-
2.	F.No.CCE-I/Dn.V/Dem/21/08-09 dated 06/02/2009	01/07/2008 to 31/12/2008	₹97,844/-
3.	F.No.CCE-II/Dn.V/Dem/11/09-10 dated 23/03/2010	01/07/2009 to 31/12/2009	₹2,071/-
4.	F.No.V./85/15-63/OA/2010 dated 23/12/2010	01/01/2010 to 30/06/2010	₹14,51,078/-
5.	F.No.V./85/15-21/OA/2011 dated 20/06/2011	01/07/2010 to 31/03/2011	₹5,48,474/-
6.	F.No.CCE-II/Dn.V/Dem/59/11-12 dated 24/04/2012	01/04/2011 to 31/12/2011	₹2,69,601/-
7.	F.No.V./85/15-94/OA/2012 dated 11/01/2013	01/01/2012 to 30/06/2012	₹92,12,917/-
8.	F.No.CCE-II/Dn.V/Dem/13/11-12 dated 15/07/2013	01/07/2012 to 31/12/2012	₹1,24,898/-
9.	F.No.CCE-II/Dn.V/Dem/05/Inducto/13-14 dated 28/10/2013	01/01/2013 to 30/06/2013	₹2,33,545/-
10.	F.No.V./85/15-37/OA/2014 dated 21/07/2014	01/07/2013 to 31/12/2013	₹7,85,355/-
11.	F.No.CCE-II/Dn.V/Dem/09/Inducto/14-15 dated 30/09/2014	01/01/2014 to 30/06/2014	₹4,016/-
12.	F.No.CCE-II/Dn.V/Dem-14/Inducto/14-15 dated 25/06/2015	01/07/2014 to 31/12/2014	₹3,67,198/-
13.	F.No.V./85/15-100/OA/2015 dated 19/01/2016	01/01/2015 to 30/09/2015	₹44,95,670/-
14.	F.No.CCE-II/Dn.V/Dem-01/Inducto/16-17 dated 27/06/2016	01/10/2015 to 31/12/2015	₹3,36,525/-
TOTAL Central Excise duty confirmed:			₹1,87,08,566/-

The demand for interest and penalties as proposed in the SCNs were confirmed and imposed on the appellant.

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

- 1) The adjudicating authority had erred in holding that goods in question were not 'instrument, apparatus or equipment' as contemplated under Notification No.10/07-CE that does not define what is scientific or what is 'instrument, apparatus or equipment' and hence popular meaning dictionary has to be considered. The adjudicating authority has not recorded what is scientific and technical. The goods in question are Induction Melting Furnaces, Induction Heating Machinery and Induction Welding Equipment and they are purchased by the buyer institutions for using them for a particular purpose which required careful and exact work and hence instruments, apparatus and equipment as contemplated under Column (3) of Notification No. 10/97-CE. The advantages of Induction [Technology are optimized consistency, maximized productivity; improved product quality, environment friendliness, reduced energy consumption, inductive stirring etc. This shows that the said goods are scientific and technical instruments, apparatus, equipment and parts / accessories thereof in as much as these goods are instruments and equipment which convert scientific principles to some common use of melting and heating of various metals for research and such specific purposes. It is nobody's case that the certificates pursuant to which the appellant had supplied goods were fake or wrong. It is no disputed that the appellant had supplied the goods in question to the institutions like Indian Institute of Technology, National Physical Laboratory, M.S. University of Baroda, Elctro Optical Instruments Research Academy, Defence Metallurgical Research Laboratory, Vikram Sarabhai Space Centre etc and none of these institutions was engaged in the manufacture or production of goods on commercial basis. In view of several decisions including the judgment of Hon'ble Bombay High Court in the cases of Lokesh Chemical Works – 1981 ELT 235 (Bom) and Bombay Chemicals Pvt. Ltd. – 1990 (49) ELT 1990 (Bom.), the action of the adjudicating authority in holding the certificates issued by authorized officers / authorities of specified institutions were wrong is illegal and without jurisdiction.
- 2) The proceedings initiated by way of the SCNs were *ex facie* time barred as the Revenue had not invoked extended period of limitation and there was no allegation of any suppression of facts or willful mis-statement or collusion or contravention of any provisions with intent to evade duty. The certificates issued by the Institutions were submitted by the appellant to the Central Excise officers in charge of the factory while availing exemption under the said notification along with purchase orders and hence there was no justification in the allegation of suppression of facts. Hon'ble Supreme court in the cases like HMM Ltd – 1995 (76) ELT 497 and Cosmic Dye Chemical – 1995 (75) ELT 721 has held that a specific allegation about any of the elements like suppression of facts, willful mis-statement, fraud, collusion or contravention of the provisions of the Act and Rules is required to be made in the SCN and the *mala fide* has to be established. Even in cases where certain information was not disclosed as the assessee was under a *bona fide* impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by Hon'ble Supreme Court in the case s of Padmini Products – 1989 (43) ELT 195 (SC) and Chemphor Drugs & Liniments – 1989 (40) ELT 276 (SC). The order for imposition of penalty of [Rs.25,72,288/- is *ex facie* illegal and without jurisdiction because there has been no intention to evade payment of duty on the appellant's part and was in violation of the principles laid down by Hon'ble Supreme Court in the case of Hindustan Steel Ltd. – 1978 ELT (J159)
- 3) As regards the co-appellant, it has been held that the action for imposing penalty of Rs.1,00,000/- on the co-appellant was wholly illegal and unjustified for the simple reason that no ground is adduced in the impugned order to do so. Following the principles laid down in several judgments / decisions, settled



personal penalty cannot be imposed on the co-appellant as there was no contravention on his part.

4. Personal hearing in the appeal was held on 10/01/2018 that was attended by Shri Paresh M. Dave, Advocate. Learned Advocate reiterated the grounds of appeal and pointed out that original authority's observation at Para 30.5 that appellant had not submitted any material is not correct. He took me through his replies to original authority. He explained the case in details and requested for remand in view of observation at Para 30.5 of the impugned order.

5. Having carefully gone through the contents of the impugned order as well as the grounds of appeal, I find that the matter for decision before me is whether the exemption benefit under Notification No. 10/1997-CE dated 01/03/1997 is available to various types of Induction furnaces as well as products like Induction Coil, Spares of Induction Furnace, Induction Billet Heater & Accessories; Air Vacuum furnace, Non-asbestos insulation sheets etc. cleared by the appellant. In the grounds of appeal the appellant has pointed out that the adjudicating authority had not appreciated the evidences. Even during the personal hearing it was emphasized by the learned Advocate appearing for the appellant that in view of paragraph 30.5 of the impugned order stating that the appellant had not submitted any material the facts were incorrect and hence the case may be remanded for fresh order by the adjudicating authority.

6. On considering the finding of the adjudicating authority in paragraph 30.5 of the impugned order holding that the notice was not able to bring out any evidence on record to establish that the goods cleared under exemption Notification No. 10/97-CE are Scientific and technical Instruments, apparatus or equipment or accessories or spare parts thereof, I find that the appellant has contended in the grounds of appeal that it had submitted purchase orders as well as certificates issued by the specified institutions describing the use of the Induction Melting Furnaces, Induction Heating Machinery and Induction Welding Equipment showing clearly that these equipments were in the nature of 'Scientific and Technical Equipment'. The evidentiary value of such certificates cannot be set aside without proper verification and without adducing evidence to the contrary that the equipments were not used as 'Scientific and Technical Equipment'. Therefore, the case is remanded back to the original authority for proper findings on the evidentiary value of the purchase orders as well as the certificates from the specified Institutions produced by the appellant. Once the use of the equipments by the Institutions is ascertained then a decision can be arrived at as to whether the equipments can be considered as 'Scientific and Technical Equipment'. The appellant is directed to produce all the material that it wishes to rely on before the adjudicating authority as well any other evidence in support of its claim to exemption under the said Notification, when the case is posted for person hearing. As regards the appeal against

penalty imposed on the Manager, the same can be decided only in conjunction with the decision of the case on merits. In view of the above discussions, both the appeals are allowed by way of remand.

7. अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellants stands disposed of in the above terms.

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 29 / 01 / 2018

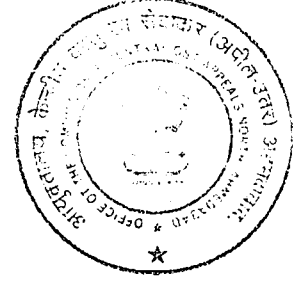
Attested

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To

- 1) M/s Inductotherm India Pvt. Ltd.,
Plot No. SM-6, Road No.11,
Sanand-II Industrial Estate, Bol-village,
Sanand, Ahmedabad – 382 170.
- 2) Shri Mihir G. Patel, Manager (Finance)
M/s Inductotherm India Pvt. Ltd.,
Plot No. SM-6, Road No.11,
Sanand-II Industrial Estate, Bol-village,
Sanand, Ahmedabad – 382 170.



Copy to:

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

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