


 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b> <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> 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	 भारतीय सरकार
 079-26305065	टेलीफैक्स 079-26305136	

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(48)49 /North/Appeals/ 2017-18 / 1884 to 1888  
 ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 350-17-18**  
 दिनांक (Date): **28-Feb-2018** जारी करने की तारीख (Date of issue): 23/03/18  
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित  
 Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी  
 मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No **11/AC/D/2017/AKJ** Dated: **25/09/2017**  
 issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad North

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

**M/s Corous Décor 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।

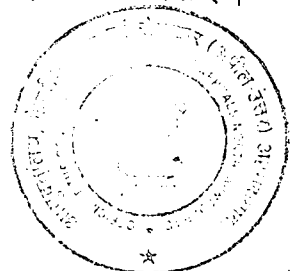
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by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

O.C



- (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 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.

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

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

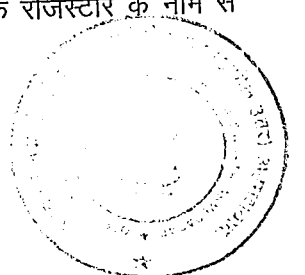
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 इ.ए-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 वहाँ 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 वहाँ रूपए 10000/- 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।

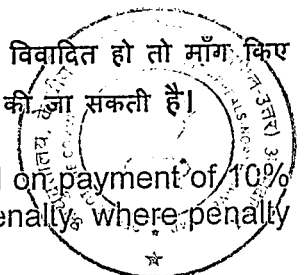
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



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F.No. V2(48)49/North/Appeals/17-18

## ORDER IN APPEAL

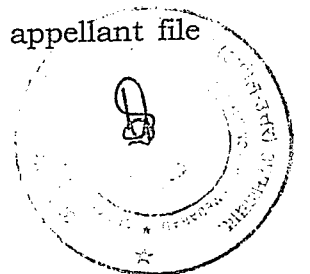
The subject appeal is filed by M/s. Corous Decor Pvt Ltd. S.No. 115. Bavla- Sanand Road, Daran, Sanand, Dist: Ahmedabad (hereinafter referred to as 'the appellant') against OIO No. 11/AC/2017/AKJ (hereinafter referred to as 'the impugned order') passed by the Asstt. Commissioner, CGST& Central Excise, DIV-IV, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of Laminate sheet and electrical insulator board falling under chapter 48 and 85 under the Central Excise Tariff Act, 1985 [hereinafter referred as CETA-1985], and availing benefit of Cenvat credit under Cenvat Credit Rules, 2004.

2. Briefly stated facts of the case are that during the scrutiny of ER1 returns, the Range Supdt. had observed that central excise duty was not paid on the goods returned during Dec-2014 To Aug-2015. As per provision of Rule 16(1) and 16(2) of the Central Excise Rule 2002, whenever the goods cleared from factory are received again in the factory of the manufacturer it is deemed input for the manufacturer. Cenvat credit on the return goods was availed on dated 23-9-2015 amounting to Rs. 1013245/- and debited towards clearance of return goods on dated 23-9-2015. The appellant had taken cenvat credit on the basis of non duty paid invoices. As per Rule 9(1) of the Cenvat Credit Rules, cenvat credit availed is not admissible to them. The finish goods were cleared to vendors before 14-09-2014. The appellant availed cenvat credit on dated 23-09-2015, therefore, all the original invoices were more than one year of the date of issue of the same. The appellant has availed cenvat credit beyond time limit. The appellant indulged in contravention with Intent to evade payment of duty, and extended period of limitation in terms of Sec. 11A of CEA 1944 is applicable. Show cause notice dated 10-04-2017 was issued for Cenvat credit recovery with Interest and Penalty. Same was confirmed vide above impugned order.

3. Being aggrieved with the impugned order the appellant has filed the instant appeals, on the following main grounds;

i. that that good cleared were received back in the factory, and same were cleared from factory under proper invoice; that they did not availed cenvat credit on the returned goods and did not pay duty on the clearance of return goods; That the facts were reflected in the relevant ER-1 return. That Range Supdt. vide letter dated 15-09-2015 raised query on ER1 return about nonpayment of Central Excise duty on return goods, and invited reference of Rule 16 of the Central Excise Rule 2002 and asked them to pay duty with interest @18% for delayed payment period and penalty of 1% of duty amount. They availed credit on dated 23-9-2015 and debited the same on dated 23-9-2015; also paid interest Rs.56496/- and 1% penalty Rs. 23604/- on 26-9-2015.

ii. The subject goods were originally duty paid goods, not disputed in the show cause notice, the credit availed on the return goods during the month of Sept. 2015 and debit of duty on clearance of return goods in the month of Sept 2015. Therefore, the same were not reflected in ER1 for Sept 2015; matter was under correspondence with the Range Superintendent. The facts were well within the knowledge of the department. Therefore there is no suppression of facts on the part of the appellant; even the appellant file amended ER1 return On 30-12-2015 prior of issue of SCN .



iii. that as provided under Rule 16 of the Central Excise Rules 2002 credit of the duty paid on returned goods can be taken, does not laid down time limit of return goods and its subsequent clearance; provisions of rule 9 of cenvat credit rules 2004 becomes immaterial; relied on case law reported at 201S(343)ELT 1175; due to ignorance of provisions of Rule 16 they did not avail cenvat credit immediately on receipt of goods and subsequently paid duty on clearance of the return goods; on receipt of letter dated 15-9-2015 the appellant availed credit and debited the same and for such technical reasons the legitimate right of the appellant cannot be denied; the appellant were in bonafide belief that once duty paid goods return to factory, no duty is required to be paid for its subsequent clearance, therefore, there appears late payment of excise duty on subsequent clearance of return goods, that required duty, interest and penalty were paid. Issue of show cause notice deserves to be vacated;

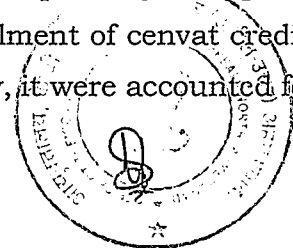
iv. therefore, it cannot be alleged to have contravened the provisions of rule 4(1) of the CCR 2004; that the duty paid goods were returned to the factory and according to the provisions of Rule 16 the appellant is entitled to availed credit of the returned goods, therefore not contravened the provisions of Rule 9(5) of the CCR 2004, the appellant have discharged the burden cast upon them;

v. the return goods were accounted for in the daily stock register and stored separately, subsequent clearance were under cover of invoice and also reflected in the relevant ER-1 return, in compliance of the letter of the Range Supdt credit were availed on the returned goods, paid interest and penalty, the relevant ER-1 return for the month of Sept 2015 was amended prior to issue of SCN. The entire exercise was within the knowledge of the department, and there is no question of suppression of facts.

vi. That credit was availed within one year time limit as per the instruction of board vide circular No. 267/44/2009-CX-8 dated 25-11-2009. The provisions of Rule 16 of the Central Excise Rules 2002, it clearly provides that the duty paid goods brought in the factory, the assessee can avail the Cenvat credit as if there is receipt of input. The appellant own invoice in present case is duty paid invoice, Therefore, irrespective of fact where the invoices are of appellant or otherwise if duty paid goods is brought in the factory of the appellant credit can be allowed. As regard, the procedure has not been followed, on-going through the aforesaid Rule 15, no procedure is prescribed for taking credit on the returned goods, therefore, only requirement is duty paid goods should be brought in the factory and same should be recorded in their books and at the time of re-issue of such repaired/reprocessed goods proper duty has to be paid. Therefore, Cenvat credit is allowable. reliance is made on the judgment in the case of Balmer Lawrie & Co. Ltd. as reported at 2016(343) ELT (1175) (Tri. Mumbai).

vii. That CBEC vide letter F.No. 267144/2009-CX.8 dated 25.11-2009 has clarified that. "The matter has been examined. ....the invoice of the returned goods would be a valid document for availing credit and duty is deemed to have been discharged. In this case, the whole procedure is revenue neutral,

viii. They have furnished detailed worksheet to the JRO, of receipt of-rejected goods under invoice No and date issued by the vendor and date of availment of cenvat credit. that they declared the receipt of the rejected goods in their factory, it were accounted for



in the relevant register and also reported it in the monthly ER-1 return filed, enclosed all relevant duty paid invoices, copy of LR of receipt of goods in the factory, copy of form 403 declaration. All documents were also furnished with the defense reply to the SCN. The adjudicating authority not disputed about receipt of rejected goods in the factory.

ix. The Assistant Commissioner have rejected the citation relied upon by the appellant. It is necessary to give reasons. They rely on the *case of Tata Engineering & Locomotive Co. Ltd.*, reported at *2006-TIOL-i64-SC- CX-LB*.

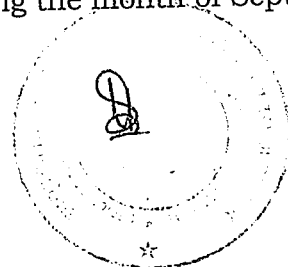
x. Regarding interest and penalty, they relied upon the judgment in the case of *M/s NCL Industries Ltd.* reported at 2016 (337) ELT (438) (Tri. Hyd)

4. Personal hearing in this case was granted on 23.1.2018, Shri B.R.Parmar, constt. appeared on behalf of the appellant. He reiterated submissions made in their GOA . I have carefully gone through the case records, facts of the case, OIO, submission made by the appellant and the case laws cited.

5. I find that during scrutiny of ER1 returns, the Range Supdt. had observed that central excise duty not paid on the goods returned, during Dec-2014 To Aug-2015. As per provision of Rule 16(1) and 16(2) of the Central Excise Rule 2002, whenever the goods cleared from factory are received again in the factory of the manufacturer it is deemed input for the manufacturer. Cenvat credit on the said return goods was availed on dated 23-9-2015 total Rs. 1013245/- and debited said amount towards clearance of return goods dated 23-9- 2015. They had cleared the goods returned at lower rate and duty thereon works out to Rs. 962157/- they have debited the duty of Rs. 1013245/- as availed by them. The appellant had taken cenvat credit on the basis of non duty paid invoices. As per Rule 9(1) of the Cenvat Credit Rules, cenvat credit availed is not admissible to them. The goods were cleared to vendors before 14-09-2014. The appellant availed cenvat credit on dated 23-09-2015, after more than one year of the date of issue of the same. The appellant has availed cenvat credit beyond time limit. The appellant indulged in contravention with an Intend to evade payment of duty and accordingly extended period of limitation in terms of Sec. 11A of CEA 1944 is applicable. SCN was issued for Cenvat credit recovery with Interest and Penalty. Same was confirmed vide impugned order.

6. I find that, that good cleared were received back in the factory, and same were cleared from factory under proper invoice; that they did not availed cenvat credit on the returned goods and did not pay duty on the clearance of return goods; I find that, that the facts were reflected in the relevant ER-1 return and department did not objected the said action of the appellant at the material time; that Range Supdt. had raised query on ER-1 return about non payment of Central Excise duty on return goods, and invited reference of Rule 16 of the Central Excise Rule 2002 and asked the appellant to pay duty with interest @18% for delayed payment period and penalty of 1% of duty amount. The appellant availed credit on the return goods, and debited the same on dated 23-9-2015; also paid interest Rs.56496/- and 1% penalty Rs.23604/- on 26-9-2015. These facts are not reflected in the subject SCN.

7. I find that, the subject goods were originally duty paid goods, it is not disputed in the show cause notice, the credit availed on the return goods during the month of Sept.



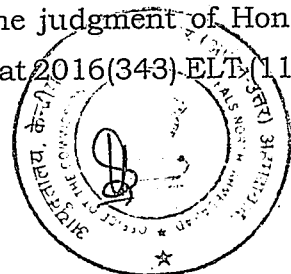
2015 and debit of duty on clearance of return goods in the month of Sept 2015 were not for the month of Sept 2015. The facts were well within the knowledge of the department. Therefore, there is no suppression of facts on the part of the appellant; even the appellant file amended ER-1 return on 30-12-2015 prior to issue of SCN .

8. I find that, as provided under Rule 16 of the Central Excise Rules 2002 credit of the duty paid on returned goods can be taken , does not laid down time limit of return goods and its subsequent clearance; provisions of rule 9 of cenvat credit rules 2004 becomes immaterial; due to ignorance of provisions of Rule 16 they did not avail cenvat credit immediately on receipt of goods and subsequently paid duty on clearance of the return goods; on receipt of letter dated 15-9-2015 the appellant availed credit and debited the same and for such technical reasons the legitimate right of the appellant cannot be denied; the appellant were in bonafide belief that once duty paid goods return to factory, no duty is required to be paid for its subsequent clearance, therefore there appears late payment of excise duty on subsequent clearance of return goods, that required duty, interest and penalty were paid. Issue of show cause notice deserves to be vacated.

9. I find that, it cannot be alleged that they have contravened the provisions of rule 4(1) of the CCR 2004; that the duty paid goods were returned to the factory and according to the provisions of Rule 16 the appellant is entitled to availed credit of the returned goods, therefore, they have not contravened the provisions of Rule 9(5) of the CCR 2004.

10. I find that the matter was under the correspondence with the Range Supdt., the return goods were accounted for in daily stock register and stored separately, the subsequent clearance of the same were under cover of invoice and also reflected in the relevant ER-1 return, in compliance of the letter of the Range Supdt credit were availed on the returned goods, paid interest and penalty, the relevant ER-1 return for the month of Sept 2015 was also amended prior to issue of SCN and submitted to Range office, and therefore, the entire exercise were within the knowledge of the department, and there appears no question of suppression of facts. That credit was availed within one year time limit as per the instruction of CBEC vide circular No. 267/44/2009-CX-8 dated 25-11-2009.

11. I find that, from the plain reading of the Rule 16 of the Central Excise Rules 2002 , it clearly provides that the duty paid goods brought in the factory, the assessee can avail the Cenvat credit as if there is receipt of input. Rules do not prohibit taking credit on the assessee's own invoices. The appellant's own invoice in present case is duty paid invoice, Therefore, irrespective of fact where the invoices are of appellant or otherwise if duty paid goods is brought in the factory of the appellant credit can be allowed. As regard the contention of the show cause notice as well as adjudication order that the procedure has not been followed, on-going through the aforesaid Rule 15 no procedure is prescribed for taking credit on the returned goods, therefore, only requirement is duty paid goods should be brought in the factory and same should be recorded in their books and at the time of re-issue of such repaired goods proper duty has to be paid. Therefore, Cenvat credit availed on the returned goods is allowable. I rely on the judgment of Hon'ble Tribunal in the case of BALMER LAWRIE & CO. LTD. as reported at 2016(343) ELT 1175 (Tri. Mumbai).




12. I find that, regarding availing credit on their own invoices, Rule 16(1) of the Central Excise Rules, 2002, allows the assessee to do so. As per rule 4(1) of the Cenvat Credit Rules 2004 they have furnished detailed worksheet to the JRO during the course of compliance of the objection. The details of receipt of rejected goods under invoice No and date issued by the vendor and date of availment of cenvat credit. That they have declared the receipt of the rejected goods in their factory, it were accounted for in the relevant register and also reported it in the monthly ER-1 return filed. The appellant submitted reply on 28-9- 2015, enclosing all relevant documents. The adjudicating authority has not disputed about receipt of rejected goods in the factory. In any case, the whole procedure is revenue neutral, In view of above; the impugned order is required to be set aside.

13. With respect to imposition of penalty, I find that the appellant has availed the credit strictly in consonance with the provisions of cenvat credit rules. Further, Hon'ble Tribunals /Courts have consistently been holding the view that cenvat credit is admissible. Therefore, penalty imposed is not sustained.

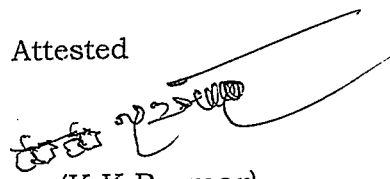
14. In view of above discussion and findings, I allow the appeal filed by the appellant.

15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.

  
(उमा शंकर)  
आयुक्त (अपील्स )

Attested

  
(K.K.Parmar)  
Superintendent (Appeals)  
Central tax, Ahmedabad.

Date- /02/18

By Regd. Post A. D

M/S. Corous Decor Pvt Ltd.

Survey No. 115.

Bavla Sanand Road,

Daran, Sanand,

Dist: Ahmedabad -382230

Copy to-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North.
3. The Asstt. Commissioner, CGST C.Ex. Div-IV, Ahmedabad- North.
4. The Asstt. Commissioner (Systems), CGST C.Ex. Ahmedabad-North.
5. Guard file.
6. PA File.

