केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
7th Floor, Central Excise Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

सत्यमेव जयते
केंद्रीय उत्पाद शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2(84)106 /Ahd-II/Appeals-II/ 2016-17** /1336 to 1340

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 91-17-18**

दिनांक (Date): **25.09.2017** जारी करने की तारीख (Date of issue): _____

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं---------- दिनांक _----------से सृजित

Arising out of Order-In-Original No ._**23/ADC/2016/RMG__Dated: 11/24/16** issued by: Additional Commissioner Central Excise (Div-II), Ahmedabad-II

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

M/s Filter Concept 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 पूवोक्त 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 न्यायाधिकरणें की गई अपील के विरूद्व 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

रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in 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.

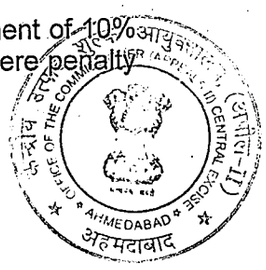
⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

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."



ORDER-IN-APPEAL

M/s Filter Concept Pvt. Ltd., A5, A6, Pushparaj Industrial Estate, Nutan Mill Compound, Near City Gold Theatre, Saraspur, Ahmedabad – 380 018 (hereinafter referred to as 'the appellant') who are holding Central Excise Registration No. AABCF5606MEM002 and are engaged in the manufacture of excisable products such as Filter Housing, Filter Cartridge, Filter Element, Filter Bags, Filter Media etc falling under CETH No. 84212190 of the first schedule to the Central Excise Tariff Act, 1985 (CETA, 1985) has filed the present appeal against **Order-in-original No.23/ADC/2016/RMG dated 24/11/2016** (hereinafter referred to as 'the impugned order') passed by Additional Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated, the facts of the case are that on verification of records of the appellant for the period January-2013 to December-2013, it was noticed that certain portion of finished goods were cleared on payment of duty and certain portion without payment of duty under Notification No. 03/2004 dated 08/02/2001, No.10/1997 dated 01/03/1995 (as amended by Notification No. 16/2007 dated 01/03/2007), No.64/1995 dated 16/03/1995 and No.12/2012 dated 17/03/2012 (Sr.No.338). However, the appellant had failed to maintain separate accounts for inputs used in exempted finished goods and dutiable finished goods as required under Rule 6(2) of Cenvat Credit Rules, 2004 (CCR, 2004) whereby it was liable to pay 6% of the value of exempted goods in terms of Rule 6(3) of CCR, 2004, which worked out to **Rs.6,05,763/-** for the period of **January-2013 to December-2013**. Therefore, a Show Cause Notice F.No.V.35/15-35/OA/2014 dated 28/03/2014 (hereinafter referred to as 'the SCN') was issued to the appellant demanding Rs.6,05,763/- under Rule 14 of CCR, 2004 read with Section 11A(1) of Central Excise Act, 1944 (CEA, 1944), along with interest under Rule 14 of CCR, 2004 read with Section 11AA of CEA, 1944 and proposing penalty on the appellant under Rule 15(1) of CCR, 2004 read with Section 11AC (1) (b) of CEA, 1944 and proposing to appropriate an amount of Rs.6,05,783/- and an amount of Rs.88,144/- paid by the appellant against the demand for credit and interest respectively, after vacating protest lodged at the time of payment. This SCN was decided vide O.I.O. No. 50/ADC/2014/DSN dated 16/09/2014 issued by Additional Commissioner, Central Excise, Ahmedabad-II, where the demand for credit and interest along with penalty was confirmed as proposed in the SCN. Aggrieved by O.I.O. No. 50/ADC/2014/DSN dated 16/09/2014, the appellant had filed an appeal with Commissioner (Appeals-II), Central Excise, Ahmedabad. The said O.I.O was set aside and the appeal was allowed by way of remand by Hon'ble Commissioner (Appeals) in the following terms:

*"7. In view of discussions appearing in the foregoing paras, **I find that the appellant have submitted records / documents before me which I find are convincing in nature and appear to support their case.** However, it is not possible for me to verify these records / documents to establish one to one co-relation between inputs and their*

use in manufacture of finished goods cleared under exemption. In these circumstances, I set aside the impugned order and allow the appeal by way of remand with directions to the adjudicating authority to pass a reasoned order in view of my foregoing findings after following the principles of natural justice. The appellant is also directed to produce all the necessary documents for verification by the adjudicating authority within 15 days of receipt of this order."

3. In view of the above order, the case was re-adjudicated vide the impugned order where the adjudicating authority has confirmed the demand for recovery of Rs.6,05,763/- under the provisions of Rule 14 of CR, 2004 read with Rule 6(3)(i) of CCR, 2004 and Section 11(A)(1) of CEA, 1944. The demand for interest has been confirmed under Section 11AA of CEA, 1944 read with Rule 14 of CCR, 2004. The protest lodged by the appellant has been vacated and the amounts of Rs.3,02,881/- and Rs.88,144/- paid by the appellant have been appropriated towards duty and interest liability. A penalty of Rs.60,576/- (10% of demand confirmed) has been imposed on the appellant under Rule 15(1) of CCR, 2004 read with Section 11AC (1)(a) of CEA, 1944.

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

1) This is the second round of appeal before Commissioner (Appeals). The matter was earlier remanded vide O.I.A. No.AHM-EXCUS-002-APP-0012-15-16 dated 26/05/2015 to the adjudicating authority for passing a reasoned order. The appellant with the help of documentary evidences had submitted that exempted finished goods were manufactured from inputs on which CENVAT was not passed on. Therefore, appellant was not required to maintain separate records as envisaged under Rule 6(2) of CCR, albeit appellants maintained separate stock account of non-cenvatable inputs and usage in the manufacture of exempted final products. The adjudicating authority has confirmed the demand on the ground holding that *"I find it difficult to endorse the view that only on-cenvatable inputs were used n the finished exempted goods"*. In connection with the allegation that 6% amount of value of exempted goods was liable to be recovered under the provisions of Rule 6(2) of CCR, 2004 as appellant had not maintained separate accounts of raw materials used in the manufacture of dutiable and exempted goods, the appellant had produced stock account of exempted inputs and use thereof in exempted final products under annexure namely Annexure-'B-1" and Annexure 'B-2' containing photocopies of invoices issued under Rule 11 of CER, 2002 in respect of exempted goods; Delivery Challans corresponding to excise invoices; project authority certificate to establish exemption available to finished goods; Purchase orders issued by the appellants to their suppliers; Bill of Material and Xerox copies of suppliers' invoices. Further, the appellants had in para 9 and 10 of their reply to the show cause notice, specifically explained the procedure adopted for procurement of inputs and manufacture of goods specifically stating that there was one to one co-relation between procurement of raw material and finished goods. However, in the first round of adjudication, the adjudicating authority, without perusing and discussing the evidences contained in Annexure-B-1 and B-2 had confirmed the demand. Hon'ble Commissioner (Appeals) had after perusing the said documents had found the records / documents to be convincing in nature and appearing to be supporting the case of the appellants. Accordingly, in first round of appeal, Hon'ble Commissioner (Appeals) allowed the appeal by way of remand with directions to the adjudicating authority to pass a reasoned order in view of his findings. However, the adjudicating authority has confirmed the demand against the evidences of separate account of stock of non-cenvatable inputs and use thereof in exempted final product furnished under Annexure B-1. In its letter dated 27/07/2016, the appellant had clarified that the appellants had used non-cenvatable inputs for manufacture of exempted goods and stock of

non-cenvatable inputs used in the manufacture of exempted goods was maintained as per Annexure-B-1. The learned adjudicating authority in para 14 of the impugned order has held that verification was sought from Range officers to ascertain as to whether (i) final exempted goods cleared during disputed period; (ii) list of inputs used in the manufacture of exempted goods; (iii) whether any other cenvatable inputs were used in the manufacture of exempted goods, if so details thereof and (v) whether inputs used in exempted goods were non-cenvatable in nature?. In connection with the above verification, the appellant submits that such details were already available in the documents submitted by the appellants, in as much as (i) details of goods cleared under exemption were shown in tabular form in para 5 of the written submissions dated 27/07/2016 enclosed as Annexure-F; (ii) list of inputs used in the manufacture of exempted goods are available in AnnexureB-1, which also contains stock account of inputs used in the manufacture of exempted final product and such details are also available in Bill of Material, furnished under Annexure B-2 prepared after receiving order for supply of finished goods by the appellants; (iii) the list of inputs used in the manufacture of exempted goods were available in Annexure B-1 and B-2 and (iv) the details of inputs used in the manufacture of exempted goods are available in Annexure B-1 and B-2 in form of Bill of Material, purchase order issued by appellants to the suppliers and photocopies of the supplier's invoices. Thus even though the details were apparently available on record, the Assistant Commissioner, Division-II, without verification of the details sought by the learned adjudicating authority reported that the appellant was not maintaining separate records for inputs used in dutiable and exempted goods in terms of Rule 6 of CCR, 2004. It was reported that for the final exempted goods cleared during the period Janurary-2013 to December-2013, CENVAT in respect of inputs used in the manufacture of finished exempted goods cleared under **invoices No.B0467 dated 12/03/2013; B0493 dated 28/03/2013, B0494 dated 28/03/2013; B0193 dated 11/07/2013 and B0198 dated 12/07/2013 was not reversed** whereas CENVAT in respect of input used in manufacture of final exempted goods cleared under Invoice no. B0208 dated 16/07/2013; B0331 dated 14/09/2013; B0333 dated16/09/2013 and B0386 dated 11/10/2013 has been reversed by the appellant. It was also reported that the assessee vide letter dated 01/10/2016 had stated that cenvatable inputs were not used in the manufacture of exempted goods but no evidence was provided to the department to this effect. The A.C. also reported that the appellant had not produced any other list of dutiable inputs used in the manufacture of exempted goods other than the inputs listed in Annexure-A & B and that the invoices submitted to the department was verified and inputs mentioned herein were found to have been procured from traders. Such a report by the Assistant Commissioner was against details contained in the documents furnished by the appellants and this report does not meet with the verification called for by the learned adjudicating authority. In respect of the report by A.C. that the appellant had not used cenvatable inputs in the manufacture of exempted goods but no evidence was provided to the department to this effect, it is submitted that under Annexure B-2, Bill of Material shows the inputs to be used for manufacture of exempted goods and copies of purchase orders issued by the appellants to the suppliers and photocopies of the suppliers' invoices specifically established that non cenvatable inputs were procured from traders and used in the manufacture of exempted goods. Since all inputs used in the manufacture of exempted goods were mentioned in the Bill of Material, purchase orders and copies of suppliers' invoices, no other input , whether dutiable or not, was used and therefore, question of producing any other list, which does not exist, does not arise. The learned adjudicating authority in para 16 of his findings has held that *"the fact that cenvatable inputs were also used in some exempted final product cannot be denied especially because the assessee in some case has already reversed in CENVAT credit taken (10,973/0) on such inputs justifying that separate records in such cases was not maintained."* This inference has been drawn without any evidence or details. The appellants from the beginning maintained that amount equal to 6% value of the goods cleared under exemption was paid as no separate records were maintained. However, in the present case, appellants did not use the inputs on which CENVAT credit was availed. The inputs were procured from the traders who were not registered dealers. As such the appellant

had received non-cenvatable invoices and therefore question of availing CENVAT credit did not arise.

2) With respect to the findings of the learned adjudicating authority in para 16 that *"Though the inputs purchased under invoice no. B0467 dated 12/03/2013; B0493 dated 28/03/2013; B0494 dated 28/03/2013; B0193 dated 11/07/2013 and B0198 dated 12/07/2013 were from trader under non-cenvatable invoice but whether any other cenvatable inputs were used in the exempted goods could not be ascertained"*, it is submitted that the appellant had not used any cenvatable inputs in the manufacture of exempted goods and in spite of documentary evidence the learned adjudicating authority cannot ascertain as to whether any cenvatable input was used in the manufacture of exempted goods, the same cannot be ground to presume that cenvatable inputs might have been used in the manufacture of exempted goods. In fact when the learned adjudicating authority could not ascertain that any cenvatable input was used in the manufacture of exempted goods, it establishes that no cenvatable input was used in the manufacture of exempted goods. The furnishing of data by the appellant has been construed in paragraph 16 of the impugned order as not complete list of all inputs but a restrictive list of only those inputs used in disputed exempted goods. There is no distinction between cenvatable inputs and non-cenvatable inputs except that CENVAT credit is passed on or not. The inputs are same but when the inputs are procured from unregistered dealer, a manufacturer cannot avail CENVAT credit on the invoice issued by unregistered dealer. When inputs are procured from a manufacturer or registered dealer, under the cover of invoices issued under Rule 9 of CCR, 2004, the manufacturer can avail CENVAT credit on such inputs. Since the appellant had furnished list of all inputs, there does not remain any input to be shown in list. A demand cannot be confirmed on a perceived view without support of any evidence as has been held in paragraph 16 of the impugned order. The appellant had submitted in its defence reply that non cenvatable goods were purchased against exempted goods to be manufactured and there is direct co-relation of procurement of non-cenvatable goods with manufacture of exempted goods. A demand cannot be confirmed merely because the adjudicating authority does not reach a specific conclusion. The penalty imposed in the impugned order is beyond the scope of the SCN because penalty was proposed in SCN for contravention of provisions with intent to evade duty. Even though it has been held in para 23 of the impugned order that there is no allegation with regards to fraud or collusion or any willful misstatement or suppression of facts or contravention of any provisions with intent to evade duty, penalty has been imposed under Section 11AC(1)(a) of CEA, 1944.

4. Personal hearing was held on 21/08/2017. Shri P.G. Mehta, Advocate appeared on behalf of the appellant. The ld. Advocate explained the case. However, I required an affidavit showing their procurement of materials which is not cenvatable. 15 days time was allowed for making detailed submission along with affidavit. Accordingly, the appellant submitted an affidavit dated 29/08/2017 sworn by Shri Mehul J. Panchal, Director of the appellant affirming, *inter alia*, that the appellant had used non cenvatable inputs in the manufacture of exempted finished goods cleared under central excise invoice nos. B0467 dated 12/03/2013, B0493 dated 28/03/2013, B0193 dated 22/07/2013 and B0198 dated 12/07/2013.

5. I have carefully gone through the impugned order as well as the grounds of appeal. During the first round of appeals, the case was remanded back to the adjudicating authority vide O.I.A. No. AHM-excus-002-app-0012-15-16 dated 20/05/2015 (the first O.I.A), with the following directions:

"7. In view of discussions appearing in the foregoing paras, I find that the appellant have submitted records / documents before me which I find are convincing in nature and appear to support their case. However it is not possible for me to verify these records / documents to establish one to one co-relation between inputs and their use in manufacture of finished goods cleared under exemption. In these circumstances, I set aside the impugned order and allow the appeal by way of remand with directions to the adjudicating authority to pass a reasoned order in view of my foregoing findings after following the principles of natural justice. The appellant is also directed to produce all the necessary documents for verification by the adjudicating authority within 15 days of receipt of this order."

7. In accordance with the above directions, the Advocate for the appellant filed written submissions dated 27/07/2016 before the adjudicating authority in *de novo* proceedings. The contents of Paragraph 2 of these written submissions are reproduced as follows:

"2. It is submitted that show cause notice was issued on the ground that noticee did not maintain separate accounts for raw material used in the manufacture of dutiable and exempted goods as per Rule 6(2) of cenvat credit Rules. In fact noticee had maintained separate records and availed Cenvat credit in respect of the inputs used in the manufacture of final products cleared on payment of duty of excise. ***However, here it is submitted that noticee used non-cenvatable inputs for the manufacture of exempted goods. Therefore, question of maintaining separate records under the provisions of Sub-rule (2) of Rule 6 of CCR does not arise.*** *Inasmuch as separate records are required to be maintained where a manufacture avails of cenvat credit on inputs, which are used in the manufacture of final products which are chargeable to duty as well as exempted goods. Albeit noticee maintained separate records of non-cenvatable inputs and use thereof in the manufacture of exempted final product."*

Further, it is on record that in a letter REF.No. FCPL/GEN/0110/2016 dated 01/10/2016 addressed to the Superintendent of Central Excise, AR-V, Division-II, Ahmedabad-II in reply to letter F.No. AR-V/Filter Concept Pvt./2014-15 dated 19/09/2016 in connection with the *de novo* proceedings arising out of O.I.A. No. AHM-EXCUS-002-app-0012-15-16 dated 20/05/2015, the appellant had stated as follows:

"5. As regards details of dutiable inputs used in the manufacture of exempted goods called for under Sr. No. 5 and details of Cenvatable inputs used in the manufacture of exempted goods required to be submitted under Sr. No. 7, ***it is submitted that we have not used Cenvatable inputs in the manufacture of exempted goods****. As such required information / details are NIL."*

8. After considering the above directions in the first O.I.A. and the submissions of the appellant in the de novo proceedings, the adjudicating authority has given the factual findings for confirming the demand in terms of Rule 6(3) of CCR, 2004 along with interest and penalty in paragraph 16 of the impugned order. The gist of the findings is reproduced as follows:

"Though the inputs purchased under invoice No:B0467 dtd 12.3.2913, B0493 dtd 28.03.2013, B0494 dtd 28.03.2013, B0193 dtd 11.07.2013 and B0198 dated 12.07.2013 were from trader under non-cenvatable invoice but whether any other cenvatable inputs were used in the exempted goods could not be ascertained, as complete details was not submitted by the assessee as was communicated by the jurisdictional Asstt Commissioner, Div-II vide letter dated 14.10.2016. The assessee has purposely highlighted only on their non-cenvatable inputs, the documents like P.O., Delivery Challan, Tax invoices etc submitted relates only to non-cenvatable inputs. Since the list of inputs used in finished exempted goods was sought, the assessee should have furnished a complete list of all inputs instead of providing a restrictive list of only those

inputs used in disputed exempted goods. **Since no supporting documents were submitted to establish that cenvatable inputs used in exempted finished goods (in respect of which CENVAT was reversed) are different compared to the non-cenvatable inputs, I find it difficult to endorse the view that only non-cenvatable inputs were used in the finished exempted goods.** I also observed that Shri P.G. Mehta at the time of hearing stated that the assessee has been maintaining separate records and wherever it is not possible to maintain separate records, they on their own have paid the required duty. Thus form the records submitted at the time of hearing and the details submitted to the Range Office, **it is not clear as to how much and which inputs were used in a particular final product cleared under exemption** as no separate account were maintained."

In the above findings there is an element of uncertainty as to whether any cenvatable inputs have been used or not and the demand has been confirmed on the likelihood that cenvatable inputs for which no separate records were maintained had been used in the manufacture of exempted finished goods. Such a probability has been derived from the fact that the appellant had reversed 6% of the value of finished goods in the matter of certain exempted clearances where credit had been availed on inputs without maintaining separate records. The onus has been cast on the appellant to provide evidence that the impugned inputs were different from the inputs in respect of which the 6% of value had been reversed by the appellant. In this regard, the appellant has raised a valid contention that similarity of inputs used in such finished goods on which 6% of value had been reversed and used in such finished goods for which demand has been raised does not suffice to confirm demand. The question to be determined on the basis of factual verification is whether CENVAT credit was availed on inputs used in exempted goods without maintaining separate records and if yes then whether such goods were cleared without reversing 6% of the value of such exempted goods. Only then can it be determined whether there is contravention of the provisions of Rule 6(2) and 6(3) of CCR, 2004. This is a matter of factual verification at the jurisdictional Division / Range level. The plea raised by the appellant in the grounds of appeal is that in the matter of all disputed exempted clearances covered in the impugned order, only such inputs were used that were procured from unregistered traders under the cover of invoices where no credit was passed on to the appellant. Thus the appellant is emphatically claiming that no CENVAT credit was availed on any input used in the manufacture of exempted finished goods covered under the impugned order. After personal hearing the appellant has filed an affidavit dated 29/08/2017 sworn by Shri Mehul J. Panchal, Director solemnly affirming, *inter alia*, as follows:

> ***"That M/s Filter Concept Pvt. Ltd. purchased non cenvatable input from unregistered traders and did not avail Cenvat credit in respect of the inputs used in the manufacture of exempted goods.***
>
> ***That M/s Filter Concept Pvt. Ltd. used non cenvatable inputs in the manufacture of exempted finished goods cleared under central excise invoice Nos. B0467 dated 12-03-2013, B0493 dated 28-03-2013, B0494 dated 28-03-2013, B0193 dated 22-07-2013 and B0198 dated 12-07-2013.***
>
> ***That M/s Filter Concept Pvt. Ltd. maintained separate records of inputs purchased from unregistered traders and use of inputs in the manufacture of exempted finished goods."***

When considering the above affirmations in the light of the probability brought out in the impugned order that Cenvatable inputs were used in exempted goods, it is clear that unless the certainty of facts is established and the probable contravention is backed by evidence, a correct decision cannot be made in the case. The affirmations made in the affidavit *supra* are required to be verified and confirmed or refuted at the level of jurisdictional Range / Division office. The findings that the appellant had not produced details of Cenvatable inputs used in exempted products cannot be sustained unless it is proved by way of evidence that Cenvatable inputs were actually used in the said exempted finished goods. Therefore, the case is allowed by way of remand to the original authority with directions to get the facts verified to establish categorically whether any Cenvatable inputs were actually used in the manufacture of the exempted finished goods covered under the impugned order. The details of all such inputs used in the exempted goods where Cenvat credit was availed but no separate records were maintained is required to be clearly brought out in a reasoned order to uphold the case against the appellant. The confirmation of duty, interest and penalty cannot be upheld on the basis of mere suspicion unless evidence is adduced to disprove the claim of the appellant that it had not used Cenvatable inputs in the manufacture of the impugned exempted goods. The appellant may be granted adequate opportunity to present its case in accordance with the principles of natural justice.

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)
आयुक्त
केन्द्रीय कर (अपील्स)

Date: 25/09/2017

Attested

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

By R.P.A.D.

1) To
M/s Filter Concept Pvt. Ltd.,
A5, A6, Pushparaj Ind. Estate, Nutan Mill Compound,
Near City Gold Theatre, Saraspur
Ahmedabad -380 018.

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: II, Ahmedabad (North).
5. Guard File.
6. P.A.