सत्यमेव जयते

आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan,Revenue Marg,Ambawadi,Ahmedabad-380015
. ☎ 26305065-079 : टेलेफैक्स 26305136 – 079 :
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DIN-20201264SW000000E2F0

स्पीड पोस्ट

क फाइल संख्या : File No : File No : V2(CEX)12/North/Appeals/20-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-039/2020-21**
दिनाँक Date : **24.12.2020** जारी करने की तारीख Date of Issue : **29.12.2020**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **18/Ref/II/19-20** दिनाँक: **05.02.2020**, passed by Assistant/Deputy Commissioner, Central GST & Central Excise, Div-III, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant-M/s Navratan Specialty Chemicals LLP, Block No. 400, Sanand Viramgam Road, Village Chharodi, Taluka, Sanand, Dist- Ahmedabad.

Respondent- Assistant/Deputy Commissioner, Central GST & Central Excise, Div-III, Ahmedabad-North .

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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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.

(क) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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

This appeal has been filed by M/s. Navratan Specialty Chemicals LLP., Block No. 400, Sanand Viramgam Road, Village Chharodi, Taluka: Sanand, Dist. Ahmedabad *[hereinafter referred to as the 'appellant'],* against Order-In-Original No. 18/Ref/II/19-20 dated 05.02.2020 (hereinafter referred as "*impugned order*") passed by the Deputy Commissioner, CGST, Division-III, Ahmedabad North Commssionerate (hereinafter referred to as the "*adjudicating authority*").

2. Facts of the case, in brief, are that the appellant were having Central Excise Registration No. AAIFN8792 JEM001 and were engaged in the business of manufacturing of the product falling under Chapter 3921 of Central Excise Tariff Act, 1985. They had filed refund claim amounting to Rs. 1,20,712/- with the department in respect of CVD and SAD paid by them on imported goods. They had earlier imported raw materials under Advance Authorizations in pre-GST regime but could not fulfill export obligation. Accordingly, they had paid applicable customs duties (including CVD & SAD) on excess raw materials imported without payment of customs duties (including CVD & SAD) under Advance Authorization in GST regime. It is the contention of the appellant that the amount of CVD and SAD paid by them was available to them as Cenvat Credit under erstwhile Cenvat Credit Rules, 2004, however with the implementation of GST regime with effect from 01.07.2017, they were not in a position to avail the cenvat credit of CVD and SAD paid by them. Therefore, they filed the present refund claims under Section 11B of the Central Excise Act, 1944 and Section 142 of the CGST Act, 2017, on the grounds that they are not able to avail and utilize the credit of CVD and SAD as no provisions exist in the GST regime to avail such credit. The adjudicating authority, vide impugned order, has rejected the said refund claim on the grounds that the refund claim does not fulfill the conditions of Section 142(3) or 142 (6) of the CGST Act, 2017 supra and Section 11B of Central Excise Act, 1944. He further observed that the amount in question has been paid against liability that has arisen on account of excess import of raw material without payment of appropriate customs duties (including CVD & SAD) under advance license by the claimant and therefore, the amount paid by them in the case has to be treated as arrears of tax and hence the same is not available as input tax credit in view of the provisions of Section 142(8)(a) of the CGST Act, 2017.

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

- The appellants have applied for refund of cenvat credit which they have earned against payment of CVD and SAD but after 01.07.2017, such cenvat credit could not be availed. The refund for the said credit facility is applied in terms of Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017;
- From the reading of the Transitional provisions under Section 142(3) of CGST Act, 2017, it is clear that refund of cenvat credit accruing as per earlier law, is to be paid in cash;
- That the refund has arisen due to admissibility of cenvat credit of Additional duty of Excise under Section 3(1) and 3(5) of the Customs Tariff Act, 1975 which is paid as part of custom duty after implementation of GST law;
- That their claim to credit of cenvat credit in respect of CVD and SAD so paid is protected by Section 174of the CGST Act; Section 174 read with Section 174(2)(c) of the CGST Act, 2017, it is clear that even if the Central Excise Act has been repealed the right of the appellant under the repealed Act shall not be affected, since the cenvat credit is admissible under Rule 9(1)(b) of Cenvat Credit Rules, 2004 such credit shall be admissible even after repeal of the Central Excise Act/Rule;
- That they are always eligible for the cenvat credit of CVD and SAD equivalent amount and the adjudicating authority have grossly misunderstood and misinterpreted the law about the eligibility of the cenvat credit of CVD and SAD so paid, to the appellant and therefore, impugned order is liable to be set aside.
- That Section 142(3) of the CGST Act, 2017, Section 142(6)(a) of the CGST Act, 2017 states that every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed off in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash. It also provides that any refund/rebate arise out of various situation shall be refunded in cash irrespective of anything contrary to it except for the provision of Section 11B of CEA,1944;
- That even otherwise also the law never been intend to deny the legitimate claim of the assessee, which would otherwise admissible to them as credit and that was the reason, there were so many transaction provision are been made in the

CGST Act, 2017 and therefore, if the refund is not covered by the provision of Section 142(3) and (6)(a), it is covered by other miscellaneous provision of CGST Act, 2017;

- That the reference to Section 11B of CEA,1944 in transitional provision of the CGST Act, 2017 is to convey the intent and the procedure of the refund or rebate of otherwise eligible credit of duties levied under existing law and not to deny the same;
- That they have not passed on the burden thereof to any one and not carried it forward under GST law and therefore eligible for refund because of the transitory provision under Section 142 of the CGST Act, 2017 and it has to be paid in cash;
- That the adjudicating authority relied upon relevant provision of Section 142 (8) (a) of CGST Act it totally irrelevant in the present case as there was no assessment and adjudication under the existing law of any tax liability and nothing is recoverable form them;
- That if the credit is been allowed and taken by them, there was no need for applying for refund. Since this facility was not extended under new law for the duty paid in cases under old law and that is the reason facility of refund is been provided for;
- That the observation of adjudicating authority of non-submission of Bills of Entry in the present case is irrational and illogical as it does not involves any clearance of goods but the additional payment of duties under Customs Tariff Act and they have already submitted copy of TR-6 challan under which they have paid CVD and SAD alongwith refund application;
- The Commissioner (Appeals), Central Tax, Raigad in case of M/s Sudarshan Chemicals Industries Ltd has decided identical matter in favour of assessee ;
- They rely on the judgement of Hon'ble High Court of Gujarat in case of M/s Thermax Ltd versus Union of India reported in 2019 (31) G.S.T.L 60(Guj)

4. Personal Hearing in the matter was held on 17.12.2020 through virtual mode. Shri Manohar Maheshwari, CA, appeared on behalf of the appellant for hearing. He reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and at the time of Personal Hearing. I find that the issue to be decided in the matter is as to whether in the facts and circumstances of

the case, the appellant's claims for refund of CVD and SAD paid in GST period in respect of import made under Advance Authorization during pre-GST period is legally permissible as per the provisions of Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017 or otherwise?

6. It is observed that the appellant had imported various raw materials duty free under Advance Authorization in pre-GST period. However, because of non-fulfillment of conditions prescribed under the Advance Authorization, Customs duty, including CVD and SAD, involved on such imports came to be paid under the Customs Act, 1962. This payment was made in GST period viz. after 01.07.2017. It is the contention of the appellant that the amount paid towards CVD and SAD is eligible to them as Cenvat Credit under the erstwhile Cenvat Credit Rules, but due to introduction of GST w.e.f 01.07.2017, they could not avail the said amount as Cenvat Credit and the only option left out was to file a refund claim under the provisions of Section 142 of the CGST Act, 2017.

7. I find that the provisions of Section 142(3) and 142(6) (a) of the CGST Act, 2017 deals with the refund relating to Cenvat Credit, duty, interest under the existing law. They are reproduced below:

- Section 142(3) of the CGST Act, 2017:

  (3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) :

  ***Provided** that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse :*

  ***Provided** further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*

- Section 142(6) (a) of the CGST Act, 2017:

  (6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to

him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

9. In the instant case, I find that the appellant has filed the refund claim in respect of CVD & SAD paid against earlier duty free import of items under the Advance Authorization, as they could not avail the Cenvat credit of such payment. Section 142 (3) *ibid* states that in case of refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, filed before, on or after 01.07.2017, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the CEA. A plain reading of the said provisions makes it amply clear that for refund of any amount paid under the said Section, be it Cenvat Credit or duty or tax or interest or another other amount, the amount should have been paid under the existing law. It is only in respect of amounts paid under the existing law that the refund envisaged under Section 142(3) of CGST Act would be applicable. In the present case, the amount paid towards CVD & SAD, while import of materials, is paid under Customs law and is not a duty prescribed under the existing law i.e. under Central Excise Act. Further, the said amounts are not cenvat credit paid under the existing law. When the amount paid is not under the existing law, the provisions of Section 142 ibid cannot be applicable and consequently, no refund in terms of Section 142 ibid arises in the case.

9.1 The appellant has further contended that they were eligible to take Cenvat Credit of the said amount under the erstwhile Cenvat Credit Rules and in the present situation, they could not take any credit of such duty. Therefore, the only option left out is to file refund of the amount. I find that this argument does not have any legal backup. For getting refund of Cenvat Credit under existing law i.e under the Cenvat Credit Rules, 2004, one has to avail the Cenvat Credit first under the said Rule. The provisions under Cenvat Credit Rules do not allow refund of Cenvat Credit in cash, unless it is availed. I find that the appellant had procured duty free raw materials under Advance Authorization and hence were not eligible for availment of Cenvat at the time of receipt in their premises. Therefore, there is no merit in the said contention of the appellant.

9.2 Another contention of the appellant is that upon payment of the CVD and SAD involved in the imports, they have earned or there accrued a right to avail the cenvat credit on such duties paid and as per the provision of Section 174 (2) (c) of the CGST Act, they are entitled to the credit of such duties paid. I do not find any merit in the said contention of the appellant for the reason that accrual of any rights or privileges mentioned under Section 174 ibid would be only to extent available on date of repeal of the relevant law viz. Cenvat Credit Rules, 2004 which is 01.07.2017. Regarding saving clauses of repealed laws, it is settled principle that saving means that it saves all the rights, it previously had, it does not give any new rights. Saving clauses are introduced in the Act, safeguard right after repeal, which but for saving would have been lost. It is not dispute in the present case that the amount towards CVD and SAD were paid after 01.07.2017. Therefore, even if the appellant's argument is considered, then also a right for credit of the said duties paid can be said to have earned or accrued only upon payment of such duty, not before that. It is more so when considering that at the time of import of goods, there was no intention of availing cenvat credit in respect of the said duties as the excess goods were imported duty free against Advance Authorization and the duties came to be paid as a consequence of that breach. The contention of the appellant in this regard is, therefore, not legally sustainable for there being no right for claim of cenvat credit accrues to them as on the date of repeal in this case. My above view is supported by the decision of the Hon'ble CESTAT in the case of Escorts Ltd. Vs. Commissioner of Central Excise, Delhi-IV [2017 (358) ELT 1140 (Tri.-Chan.)], wherein the Hon'ble Tribunal dealing with a similar kind of argument in the context of Rule 57E of the erstwhile Central Excise Rules, 1944 has held that:

> *" **9.** The appellants have also submitted that the dispute in the present case pertains to the period from March 1995 to November 1995 as they had procured the inputs during that period. They argued that Section 38A protects their rights and privileges which have accrued to the appellants. The appellants relied upon the case law of Tamil Nadu Petro Products Ltd. (supra). They are apparently referring to Section 38A(c) of the Act on the basis that they had received the inputs in the year 1995 and had manufactured their final products.*
>
> ***10.** We find that in the present case the spare parts were supplied to M/s. Escorts Ltd. - AMG (Tractor Plant) in 1995, the cause of action for payment of differential duty as per Settlement Commission took place in 2004 when the duty was paid in three equal installments between October, 2004 and December, 2004. Rule 57E of the Central Excise Rules, which is the basis of refund claim, was abolished w.e.f. 1-4-2000. Even if the party's claim of accrual of rights under*

Section 38A is admitted for a moment, it would only protect the claim of duty paid on date of abolition of the said rule. The accrual of any rights and privileges to the appellants would be limited to the extent available on the date of repeal of Rule 57E. Since on the date of repeal of Rule 57E, the extra differential duty liability fixed by Settlement Commission had not been paid, the same cannot be protected under Rule 57E, which had already been extinguished from the statute book on the date of such payment. It is the established principle that the law has to be applied as it existed at the time it was invoked. The refund claim for differential duty was filed in 2005 under Rule 57E but the said Rule was not in existence at that point of time. Hence, the relief sought by appellants under Rule 57E is not available to the appellants even by virtue of provision of Section 38A ibid."

9.3. The appellant has further referred to Section 142(6) (a) of CGST Act, 2017. The said Section referred pertains to refund claim arising out of proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after GST regime. I find that the instant refund claim is not arising out of any appeal, review or reference proceedings under the existing law relating to a claim for Cenvat Credit. Therefore, the argument placed by the appellant in terms of Section ibid has no relevance in the matter.

10. Further, I find that the adjudicating authority has also considered provisions of Section 142 (8) (a) of the CGST Act, 2017 for rejecting the refund claim in question. In this regard, it is observed that the adjudicating authority's reliance on Section 142(8) (a) ibid is totally misplaced on the facts of the case as the amount of duty paid in the case was not under the existing law but under the Customs law, for which the above said provisions of CGST can not be applied. Section 142(8) (a) ibid would be applicable only in cases of duties/taxes recoverable under the existing law. Therefore, the adjudicating authority has erred in applying the above provision of CGST law for the present case. I agree with the contention of the appellant in this regard, but I hold that this fact, in any way, does not support their cause for refund under reference.

11. The appellant has relied on the Orders-in-Appeal issued by the Commissioner (Appeals), Central Tax, Raigad in case of M/s Sudarshan Chemicals Industries Ltd on similar matter. I do not agree with the views taken by the above authorities in the matter for the reasons discussed in the foregoing paras. The appellant have also relied upon the decision of Hon'ble High Court of Gujarat in case of M/s Thermax Ltd

versus Union of India reported in 2019 (31) G.S.T.L 60(Guj) which are distinguishable from the facts of the instant case.

12. In this regards, I find that recently, the Hon'ble CESTAT, Chennai has decided an identical issue in the case of M/s Servo Packaging Ltd [2020-VIL-72-CESTAT-CH-CE], denying refund of CVD and SAD paid on unfulfilled export obligation against Advance Authorization. The Relevant para of the said decision is as under:

> *"10. Thus, the availability of CENVAT paid on inputs despite failure to meet with the export obligation may not hold good here since, firstly, it was a conditional import and secondly, such import was to be exclusively used as per FTP. Moreover, such imported inputs cannot be used anywhere else but for export and hence, claiming input credit upon failure would defeat the very purpose/mandate of the Advance Licence. Hence, claim as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reasons, also since the rules/procedures/conditions governing normal import VILGST Passion to Deliver VATinfoline Multimedia www.vilgst.com Page - 5 - of 5 compared to the one under Advance Authorization may vary because of the nature of import.*
>
> *11. The import which would have normally suffered duty having escaped due to one which ultimately stood unsatisfied, naturally loses the privileges and the only way is to tax the import. The governing Notification No. 18/2015 (supra), paragraph 2.35 of the FTP which requires execution of bond, etc., in case of non-fulfilment of export obligation and paragraph 4.50 of the HBP read together would mean that the legislature has visualized the case of nonfulfilment of export obligation, which drives an assessee to paragraph 4.50 of the HBP whereby the payment of duty has been prescribed in case of bona fide default in export obligation, which also takes care of voluntary payment of duty with interest as well. Admittedly, the inputs imported have gone into the manufacture of goods meant for export, but the export did not take place. At best, the appellant could have availed the CENVAT Credit, but that would not ipso facto give them any right to claim refund of such credit in cash with the onset of G.S.T. because CENVAT is an option available to an assessee to be exercised and the same cannot be enforced by the CESTAT at this stage."*

13. Looking into the facts and circumstances of the instant case and by following the decision of the Hon'ble Tribunal referred to above, I find that the adjudicating authority has correctly rejected the refund claims and I do not find any reason to

interfere with the impugned order passed by the adjudicating authority. I also observed that the identical issue has been decided by me vide OIA No. AHM-EXCUS-002-APP-35/2020-21 dated 23.11.2020 in case of M/s. Baxter Pharmaceuticals India Private Limited, Bodakdev, Ahmedabad wherein same view has been taken. Therefore, I reject the appeal filed by the appellant, being devoid of merits, and uphold the impugned order.

14. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

24 December, 2020.

(Akhilesh Kumar)
Commissioner (Appeals)
Ahmedabad
/ /2020

Attested

(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D
To,

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Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad North
3. The Deputy Commissioner, CGST, Division -III, Ahmedabad North
4. The Assistant Commissioner, System-CGST Ahmedabad North
5. Guard File.
6. P.A. File.