

- आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क \*  
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटिकनिक के पास, आमबाबाडि,  
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(39)/01/EA-2/Ahd-I/2015-16  
Stay Appl.No. NA/2015-16 *2851 102855*
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-007-2016-17  
दिनांक Date : 27/05/2016 जारी करने की तारीख Date of Issue 22/05/2016
- श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)
- ग DEPUTY Commissioner, केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
11/Deputy Commissioner/2014-Ref दिनांक: 18.02.2015, से सृजित
- Arising out of Order-in-Original No. 11/Deputy Commissioner/2014-Ref दिनांक: 18.02.2015  
issued by DEPUTY Commissioner, Central Excise, Div-IV, Ahmedabad-I
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Deputy Commissioner, C.Ex., Div-IV, A'bad-I in case of M/s. Madhu Hydrocollides Pvt Ltd  
Ahmedabad

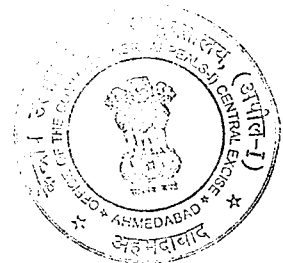
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि नीचे बताए गए सक्षम अधिकारी को  
अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त 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, 4<sup>th</sup> 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 प्रक्रिया 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.
- (b) 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.
- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...



(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

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

(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.

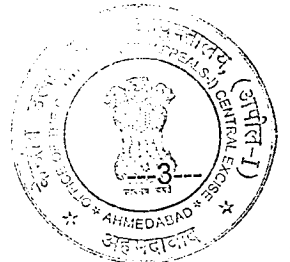
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



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 Appellate 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।

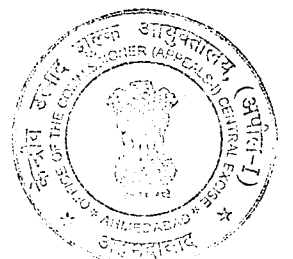
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 order arise out of following departmental appeal filed by the Deputy Commissioner, Central Excise, Division- IV, Ahmedabad-I (hereinafter referred to as 'the appellant') against the Order-in-Original No. 11/DC/2014-Reb dated 18.02.2015 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-I (hereinafter referred to as 'the adjudicating authority') in respect of M/s. Madhu Hydrocolloids Pvt. Ltd, 308, Ratna Complex, Oppo. Bank Of Baroda, Maninagar, Ahmedabad-380008 (hereinafter referred to as 'the respondent') in pursuance of Review Order No. 01/2015 dated 14.05.2015 passed by the Commissioner of Central Excise, Ahmedabad-I (hereinafter referred to as 'the reviewing authority') under the sub-section (2) of Section 35E of the Central Excise Act, 1944.

2 The respondent is engaged in the manufacture of Carboxy Methyl Cellulose- LVG falling under Chapter 39 and pregelatinized starch falling under chapter 35 of Central Excise Tariff Act, 1985 and are holding registration AAECM 4684 RXM 001. The respondent had supplied their final products on payment of duty and getting refund of terminal excise duty from DGFT. They had supplied their final product to ONGC under international competitive bidding paying the duty amounting to ₹72,02,137/- and made an application for refund of this of amount to DGFT 17-09-2012. However, DGFT vide order dated 07.03.2013 advised the respondent to approach Central Excise Department for refund of duty as per DGFT policy circular No.16(RE-2012/2009-14) dated 15.03.2013. The respondent has filed their refund claim to the division office on 16.09.2013. Since the claim is not filed within 1 year from relevant date i.e., the date erroneous payment of duty the same was found time-barred and liable for rejection as per Section 11B of Central Excise Act 1944.

2.1 Being aggrieved with the impugned order, the respondent has filed appeal with the Commissioner (Appeal-V) Central Excise Ahmedabad and vide OIA No. AHM-EXCUS-001-APP-017-2014-15 dated 11.06.2014. The Commissioner Appeal has found that the "relevant date, for filing of refund claim should be consider from the date of direction of DGFT i.e., 09.09.2013 and accordingly refund claim was well within the time limit and was not barred by the limitation as per Section 11B of Central Excise Act 1944 and Commissioner(A) set aside the impugned order and allow the appeal filed by the respondent with all consequently benefit due to the respondent.

2.2 The department did not accept the OIA No. AHM-EXCUS-001-APP-017-2014-15 dated 11.06.2014 and accordingly an appeal was preferred to the CESTAT on 11.09.2014. The Grounds of the appeal were as follows:-



- a. Since as per Notification No. 12/2012-Central Excise the goods cleared under ICB are exempted from duty, the assessee had cleared the goods to ONGC on payment of duty on its own violation, and now as the final product is exempt from payment of duty, the manufacturer should not have paid the duty on such exempted goods.
- b. As per Rule 6 of Cenvat Credit Rules, 2004, when the final product is exempt from payment of duty, the manufacturer is required to reverse the input Cenvat Credit availed thereon or pay an amount specified under said Rule 6 of the Cenvat Credit Rules, 2004 at the time of clearance of such exempt goods.
- c. The aspect of unjust enrichment also needs to be ascertained in terms of the provision of section 11B and 12B of the Central Excise Act, 1944. Accordingly the manufacturer is required to prove that the incidence of such duty has not been passed on to the buyer of such goods.

2.3 On the above appeal the CESTAT, West Zonal Branch vide its Final Order No. A/12126/2014 dated 01.12.2014, remanded the case back to the adjudicating authority observing as follows:-

*" In our considered opinion, the entire issue needs reconsideration by the adjudicating authority, in as much as the adjudicating authority has only considered the aspect of limitation as was in the show cause notice and other aspects have not been considered. Since we are remanding the matter to the adjudicating authority, we are not passing any observations on the merits of the case and are keeping all the issues open. The adjudicating authority is directed to reconsider the issue afresh, after following the principles of natural justice".*

2.4 Vide impugned order the adjudicating authority has sanctioned a refund claim for amounting to ₹. 72,02,137/- being the duty paid on the goods cleared to ONGC against Project Authority Certificate vide notification No. 12/2012- Central Excise(Sr. No.336)

3. Being aggrieved with the impugned order, the appellant has filed the present appeal mainly on the grounds that:-

3.1 During the material period, the assessee had cleared the goods under International Competitive Bidding, for which Central Excise duty is exempted,



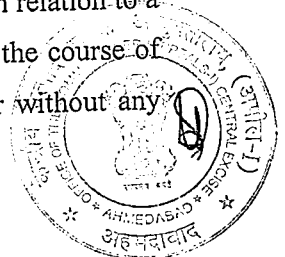
vide Notification No. 12/2012-Central Excise (Sr No 336) the said notification is reproduced here below:

### Notification No. 12 /2012-Central Excise

G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) and in supersession of (i) notification of the Government of India in the Ministry of Finance ( Department of Revenue), No. 3/2005-Central Excise, dated the 24th February,2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 95(E), dated the 24th February,2005,(ii) notification No. 3/2006- Central Excise, dated the 1st March,2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 93 (E), dated the 1 st March,2006,(iii) notification No. 4/2006-Central Excise, dated the 1 st March,2006 , published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 94 (E) dated the 1 st March,2006,(iv) notification No. 5/2006-Central Excise, dated the 1st March,2006 , published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i), vide number G.S.R 95 (E) dated the 1st March,2006,(v) notification No. 6/2006-Central Excise, dated the 1 st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 96 (E) dated the 1st March,2006, and (vi) notification No. 10/2006-Central Excise, dated the 1st March,2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 100 (E) dated the 1 st March,2006, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid: Provided that nothing contained in this notification shall apply to the goods specified against serial number 296 and 297 of the said Table after the 31st day of March, 2013.

Explanation 1.- For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

Explanation 2.- For the purposes of this notification, brand name|| means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and a person using such name or mark with or without any indication of the identity of that person.



SI. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No
1	2	3	4	5
335	Any Chapter	Parts of hearing aids	Nil	---
336	Any Chapter	All goods supplied against International Competitive Bidding.	Nil	41

## ANNEXURE

Condition No.	Condition
41	If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India.

3.2 Section 5A of the Central Excise Act 1944 empowers Central Government to exempt goods from payment of duty by issuing notification, which is as below:

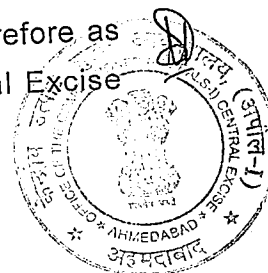
**Section 5A. Power to grant exemption from duty of excise.—(1)** If the Central Govt. is satisfied that it is necessary in public interest so to do, it may, by notification in the Official Gazette exempt generally

**Further Sub section (1A) of this section clarifies that-**

(1A) For the removal doubts, it is hereby declared that where an exemption under sub section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods

3.3. As per the said notification, the goods cleared under ICB are exempted from duty. However, the assessee had cleared the goods to the ONGC on payment of duty on its own volition. Now, as the final product is exempted from payment of duty, the manufacturer should not have paid the duty on such exempted goods.

3.4 On this point, the adjudicating authority is of the view that the exemption under Notification No. 12/2012 is conditional and therefore as per the provisions of Sub-section (1A) of section 5A of Central Excise

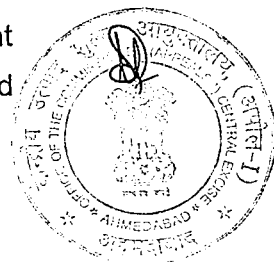


Act, mandatory nonpayment of duty and availment of exemption cannot be insisted. The adjudicating authority has erred in holding the above as the provision of notification no. 12/2012, Central Excise are clear as far as exemption from payment of duty is concerned in ICB. I find that so far Central Excise is concerned, the exemption was absolute because goods were exempted from the Custom duty on well. I find that Notification No. 12/2012 C.X does not give any option of choosing, whether to pay duty or not to pay the assessee. The issue is simple that the assessee availing the benefit of notification should not have paid the duty.

3.5 The Hon'ble High Court of Gujarat in the case of M/s Arvind Ltd reported at 2014(300) ELT-481(Guj) held that:

*"it is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the benefit of Notfn 59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat Credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notfn 29/2004 as amended by Notfn. 59/2008-CE and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provisions of the Customs Act and Rules, we are of the opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 118 of the Act read with Rule 18 of the Rules"*

3.6 Now, as the assessee has not complied with the provisions of the said Notification No. 12/2012-Central Excise therefore, as per Rule 6 of Cenvat Credit Rules, 2004, when the final product is exempted from payment of duty, the manufacturer is required to reverse the input Cenvat Credit availed thereon or pay an amount specified under said Rule 6 of Cenvat Credit Rules, 2004 at the time of clearance of such exempted products. As per the above judgment which is squarely applicable to the present case, the said assessee has to reverse the Cenvat Credit availed on the manufacture and clearance of the goods supplied to the ONGC vide Notification No 12/2012-CE without payment of duty. The said assessee had not reversed the same. The assessee is claiming refund of duty, paid on its own volition, otherwise exempted. Hence, they have to reverse the credit as per Rule 6 of Cenvat Credit Rules, 2004 or pay an amount as specified under the said Rule 6. The assessee has neither reversed





the Cenvat Credit availed on inputs used in the manufacturing and clearance of the goods to the ONGC under ICB during the period 11.10.11 to 12.07.2012 nor they had paid an amount specified under the said Rule 6 ibid at the time of its clearance.

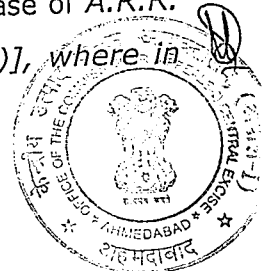
4. Personal hearing in the matter was conducted on 17.03.2016 but no one appeared on behalf of departments. Personal hearing in the matter was held on 06.04.2016 wherein Shri P P Jadeja, Consultant and Shri Milan Madhu, Director the respondent has appeared and reiterated the cross objection and explains how OIO is fair and proper and their written submission dated 15.07.2015 submitted that the appeal is not maintainable as it is filed after prescribed time limit and they relied on following case laws.

- 2008 (221) E.L.T. 163 (S.C.) , SINGH ENTERPRISES
- 1998 (101) E.L.T. 9 (S.C.)

5. I have gone through the fact of the case, the respondent's grounds of appeal, and their submissions at the time of personal hearing. I find that the following two issues are involved in the present appeal :

(1) The appeal hit by the time limitation permitted u/s 35(1) of CEA 1944:- in the present appeal, as per Section 35E(4) " Where in pursuance of an order under sub-Section (1) or sub-Section (2) the adjudicating authority or the authorized officer makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-Section (1) or sub-Section (2) to the adjudicating authority," Date of communication of the order in the present case is 14.05.2015 and revenue has filed the appeal on 20.05.2015, which within a period of one month. Hence the allegation made by the respondent is not valid and proper.

(2) I find that, the respondent has made clearance to ONGC under Notification No. 12/2012-C.Ex. the said goods cleared under International Competitive Bidding are exempted from Duty and the respondent had cleared the goods to ONGC on payment of duty on its own violation and has not complied with the provisions of the Notification No. 12/2012- Central Excise now as the final product is exempted from the duty, the manufacturer should not have paid the duty on such exempted goods and as per Rule 6 of Cenvat Credit Rules, 2004, when the final product is exempt from payment of duty, the manufacturer is required to reverse the input Cenvat credit availed thereon, or pay an amount specified under said Rule 6 of the CCR, 2004 at the time of clearance of such exempt goods. Case law 2014(300) ELT-481(Guj.) in the case of M/s. Arvind Ltd, by the Hon'ble High Court of Gujarat cited by the revenue is squarely applicable to this case. I also relied upon the decision of Madras High Court in the case of *A.R.R. Sales Agency v. Commissioner - 2015 (318) E.L.T. A170 (Mad.)*], where in

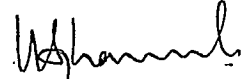


Hon'ble High Court has passed the order that " the refund of duty paid through Modvat account when final product was not dutiable, was not admissible as the refund of such duty paid would be in effect, refund of duty paid on inputs which were dutiable."

6. In view of the above, I pass the following order:

**ORDER**

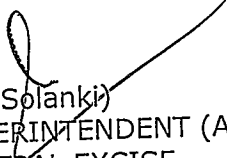
I allow the appeal filed by the revenue and set aside the impugned Order-in-Original.



(UMA SHANKER)  
COMMISSIONER (APPEAL-I)  
CENTRAL EXCISE, AHMEDABAD.

Date:- 27/05/16

ATTESTED

  
(N.I. Solanki)  
SUPERINTENDENT (APPEAL-I),  
CENTRAL EXCISE,  
AHMEDABAD.

BY R.P.A.D.

To,  
The Deputy Commissioner,  
Central Excise, New Central Excise Bhavan,  
Division-IV, Ambawadi, Ahmedabad-I

**Copy To:-**

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-I.
3. M/s. Madhu Hydrocolloids Pvt. Ltd, 308, Ratna Complex, Oppo. Bank Of Baroda, Maninagar, Ahmedabad-380008
4. The Assistant Commissioner, System-Ahmedabad
- ✓ 5. Guard File.
6. P.A. File.

