केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(39)/47/Ahd-I/2017-18 /891 to 895
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-312-2017-18**
दिनाँक Date : **02-02-2018** जारी करने की तारीख Date of Issue 08/02/18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं **MP/04/AC/Div-III/2017-18** दिनाँक: **5/5/2017,** से सृजित

Arising out of Order-in-Original No. **MP/04/AC/Div-III/2017-18** दिनाँक: **5/5/2017** issued by Assistant Commissioner, Central Tax, Ahmedabad-South

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

M/s. Shreyansh Synthoplast
Ahmedabad

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 a 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.

(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 मामलें 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 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) 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

(a) 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.

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

M/s. Shreyansh Synthoplast, A 1/331, GIDC Industrial Estate, Vatwa, Ahmedabad [*for short - 'appellant'*] has filed this appeal against OIO No. MP/04/AC/2017-18 dated 04.05.2017, passed by the Assistant Commissioner, Central Excise, Division III, Ahmedabad-I Commissionerate[for short - '*adjudicating authority*'].

2. Briefly stated, a show cause notice dated 2.2.2017, was issued to the appellant, alleging *inter alia,* that they had wrongly availed the CENVAT credit of Rs. 1,54,625/- in respect of excisable goods viz *reprocessed plastic granules*, received from M/s. Castle Polymers, Rakhial, Ahmedabad, [*for short –'manufacturer'*] which was absolutely exempted. The notice therefore, proposed that the CENVAT credit so availed, be disallowed and further proposed recovery of interest and imposition of penalty on the appellant.

3. This notice, was adjudicated vide the impugned OIO dated 4.5.2017, wherein the adjudicating authority disallowed the CENVAT credit of Rs. 1,54,625/- demanded interest on the said amount and further imposed penalty under Rule 15(2) read with Section 11AC(1)(c) of the Central Excise Act, 1944.

4. Feeling aggrieved, the appellant, has filed this appeal against the impugned OIO, wherein he has raised the following averments:

[a]that for the default of M/s. Castle Polymers Private Limited the appellant cannot be penalised and the CEVNAT credit availed bonafidely cannot be resorted to be recovered from them along with interest;

[b]that Section 5A only mandates the manufacturer to avail the unconditional exemption if applicable on the products manufactured by him. It is nowhere stated that if unintentionally or due to ignorance duty is charged by the manufacturer even if the products manufactured by him are unconditionally exempt, the CENVAT credit of duty would not be available to the downstream manufacturers;

[c] that M/s. Castle Polymers P Ltd has not been made a co-noticee; that instead of issuing the show cause notice to the appellant the notice should have been issued to the said manufacturer who has charged excise duty from them even when the same was unconditionally exempt because excise duty is indirect taxation;

[d] the appellant being purchaser have no option but to bear the burden of excise duty charged by the supplier of the goods supplied to them;

[e] that by issuing credit recovery proceedings against the appellant the revenue department is trying to recover double excise duty on the said goods because no refund has been granted in respect of duty wrongly paid on such goods and on the contrary the credit taken by the appellant is also proposed to be recovered from them;

[f]that they would like to rely on the case of Inductotherm (I) P Ltd. [2012(283) ELT 359]; Neuland Laboratories Ltd [2015(317 ELT 705; MDS Switchgear Ltd [2008(229) ELT 485], Nahar Granites ltd [2014(305) ELT 9] & 2007(5) STR 385], Johnson & Johnson Ltd[1999(1120 ELT 901], Kerala State Electronic Corp. [1996(84) ELT 44], Telelinks Ltd [2004(178) ELT 167], Hylite Cables [2007(212) ELT 284],

[g]that clarification vide Board's circular no. 940/01/2011-Cx dated 14.1.2011 are inconsistent with the statutory provisions and which defeats the intention of the legislature and is also contrary to the judgements pronounced by Supreme Court and High Court are not legally tenable;

[h] that they would like to rely on the case of Parasmpuria Synthetics [2005(191) ELT 899], Aggarwal Iron Industries [2005(184) ELT 397], Anand Arc Electrodes P Ltd [2010(252) E:T 411];

[i] that it is crystal clear that the buyer of goods is not duty bound to ensure that duty liability has been correctly discharged by the supplier of goods;

[j] that the denial of the CENVAT credit in the present case would lead to sheer harassment of the appellant because neither refund of duty paid by the supplier has been granted nor the availment of credit is being upheld;

[k] that assessment cannot be challenged at the input receivers end;
[l] that as per proviso to Section 5B of the Central Excise Act, 1944, the fact that the ultimate intention of the government is to facilitate the scheme of CENVAT credit and the CENVAT credit cannot be denied merely because the process undertaken is declared as not amounting to manufacture and not leviable to excise duty;
[m] that the basic requirements for availing credit is receipt of inputs in the factory of the manufacturer of dutiable final product; that these inputs are to be used in the manufacture of dutiable final products; that the inputs are eligible for availment of CENVAT credit; that the availability of documents/invoices as prescribed under Rule 9 of the CENVAT Credit Rules, 2004;that all these conditions were satisfied and there is no embargo in availing the CENVAT credit and its utilization subsequently;
[n] that they would like to rely on the case of Arvind Limited [2014(00) ELT 481];
[o]that they have not contravened the provisions of Rule 9(5) of the CENVAT Credit Rules, 2004 and the allegations levelled against them are totally baseless;
[p] that there was no suppression of facts from the department; that there was no reason for suppressing the facts because the issue of credit eligibility in the present case is covered in favour of the appellant by the Supreme Court in two decisions;
[q] the contention that the appellant should have been aware of the exemption is totally vague;
[r] that no penalty is imposable under Rule 15 read with Section 11AC of the Central Excise Act, 1944; that it is submitted in the preceding paragraphs that there was no suppression of facts so the extended period of limitation is not invocable in the present case.

5. Personal hearing in the matter was held on 24.1.2018, wherein Shri Pradeep Jain, CA, appeared for the appellant and reiterated the submissions advanced in the grounds of appeal. He reiterated the fact that no show cause notice was issued to the supplier in the instant case.

6. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing. The question to be decided in the present appeal is whether the appellant is eligible for CENVAT credit in respect of inputs supplied by M/s. Castle Polymers, who had removed their goods on payment of duty, despite these goods being absolutely exempt from payment of duty.

7. I find that I have already decided the issue in the appellant's case wherein the appellant had received goods from M/s. Castle Polymers, Ahmedabad, through a registered dealer, vide OIA No. AHM-EXCUS-001-APP-054-2017-18 dated 18.8.2017. Since the dispute is exactly the same, I would like to reproduce the operating part of the order:

> "7. The genesis of the dispute is that M/s. Castle Polymers, Ahmedabad, manufacturer of reprocessed plastic granules, which is absolutely exempted vide notification Nos. 4/2006-CE dated 1.3.2006 and 12/2012-CE dated 17.3.2012, had cleared the goods to the M/s. Ranka International [a dealer] who had subsequently cleared it to the appellant, on payment of duty. Vide OIO No. AHM-EXCUS-001-COM-003-16-17 dated 15.2.2016 in the case against M/s. Castle Polymers, Ahmedabad, the Principal Commissioner, Central Excise, Ahmedabad-I, held as follows : [refer para 20 of the OIO dated 15.2.2016]
>
> *"I hold that the said noticee M/s. Castle Polymers Pvt. Ltd., Ahmedabad have wrongly and in contravention of the provisions of Section 5A(1A) of the CEA, 1944 paid an amount representing it as Central Excise duty on goods which were unconditionally and absolutely exempted from payment of Central Excise duty and collected the same from their buyers."*

8. In this regard, I find that CBEC has issued circular no. 940/1/2011-CX., dated 14-1-2011, which clarifies as follows:

2. It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the CENVAT Credit Rules, 2004.

*3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944 . **Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004.***

[emphasis supplied]

The departmental view in such a situation is vividly clarified vide the above circular.

9. The appellant however, amongst other cases, has relied upon the below mentioned case.

[a] Neuland Laboratories Limited [2015(317) ELT 705 and 2015(319) A 140 (AP) – relevant extracts

7. Further, the Board's Circular No. 940/1/2011-CX, dated 14-1-2011 was also brought to my notice. In this Circular, it has been stated that where an assessee pays Excise duty on exempted goods, the amount recovered as Excise duty has to be deposited with the Central Government and Cenvat credit also needs to be recovered in terms of Rule 14 of the Cenvat Credit Rules, 2004. Rule 14 of the Cenvat Credit Rules, no doubt, provides for recovery of credit taken. The Board assumes that if an assessee takes credit of duty which was not required to be paid but paid, availment of credit would attract the provisions of Rule 14 of the Cenvat Credit Rules. The conclusion is that the credit which was taken wrongly would arise when an assessee is required to determine whether the inputs/capital goods received by him are liable to duty or not and whether duty is payable or not. There is no rule which puts an obligation on the receiver of goods. When we take note of the fact that the assessee may receive inputs/capital goods/services classifiable under almost all the headings, it is difficult to imagine that legislature would require the assessee to determine whether duty is payable for all these items or not and then take credit. Even a jurisdictional Central Excise officer may not have all the items listed in the Schedule for assessment. In fact, assessment has been taken away even from the Central Excise officer. That being the case, the Board's Circular which has been issued without taking into consideration and considering the implications of the provisions and implications of the instructions on the assessees cannot be applied blindly to arrive at a conclusion against the assessee.

This case was upheld by the Hon'ble High Court of Andhra Pradesh, wherein the Court held as follows:

"This appeal is sought to be preferred against the judgment and order of the learned Tribunal dated 5-9-2013 and sought to be admitted on the following suggested questions of law.

"(i) Whether the Hon'ble Tribunal is correct in allowing the respondent to avail Cenvat credit on Ethanol, a non-excisable commodity, under Rule 3 of Cenvat Credit Rules, 2004, which provides that a manufacturer of final product shall be allowed to take the credit of duty of Excise specified in the First Schedule to the Central Excise

Tariff Act, more so when the Central Excise Officer at the supplier's end has held the product to be wrongly classified and paid duty wrongly with intention to pass the unutilized Cenvat credit to customers?
(ii) Whether the Hon'ble Tribunal is correct in setting aside the order of the Commissioner (Appeals-I), Hyderabad against the respondent (MLL), when they availed the credit contrary to the provisions of Rule 3 read with Rule 9(5) of the Cenvat Credit Rules, 2004?"

We have heard the learned Counsel for the appellant and gone through the impugned judgment and order of the learned Tribunal.

We have noticed that the learned Tribunal on fact found that in this case duty levied on the raw material has actually been paid. Once it is found on fact and it is not challenged on the ground of any perversity, the exemption is applicable automatically. The learned Tribunal has relied on the decision of the Madras High Court in the case of Commissioner of Central Excise, Chennai-I v. CEGAT, Chennai - 2006 (202) E.L.T. 753 (Mad.) and recorded that the facts in that case and the present case are identical and therefore, the said decision is applicable to the present case.

Hence, we do not find any reason to interfere with the judgment and order of the learned Tribunal.

[b] However, I find that the High Court of Bombay in the case of Nestle India Limited [2012(275) ELT 49 (Bom)] decided a similar matter, by holding as follows:

5. Mr. Ferreira, learned Assistant Solicitor General for the appellant, submitted that the scheme of law is that if, excise duty is collected, a person at subsequent place is entitled to claim Modvat credit. According to Mr. Ferreira, learned Assistant Solicitor General, this can be so if, duty is validly collected at an earlier stage. In this case duty was not payable at all at the place outside Goa, since no duty can be levied on job work but only on manufacture and, therefore, the respondents are not entitled to claim any Modvat credit. Though this submission appears to be reasonable and in accordance with law, we find it not possible to entertain this submission in the facts of the present case since at no point of time the Revenue questioned the applicability of the excise duty at the place outside Goa. Those assessments have been allowed to became final and the goods have been removed from the jurisdiction of the Excise Officer at that place and brought to Goa. Now, in Goa it will not be permissible to allow the Revenue to raise the contention that the assessee in Goa cannot claim Modvat credit in Goa because duty need not be paid outside Goa.

6. As we have observed that the assessment is allowed to be final, it would not be legal and proper to allow the Revenue to raise the question on the basis of Modvat credit. Indeed, now the payment of excise duty must be treated as valid, therefore, the claim of Modvat credit must be treated as excise duty validly paid.

[emphasis supplied]

I find that the High Court of Bombay has held that no credit is admissible in case the goods that are not leviable to duty. The High Court allowed the credit in the above instance only because the assessment at the duty payment end had become final. The judgement upholds the rationale of the clarification, issued by the Board vide circular dated 14.1.2011. It is true however, that the assessing officer in-charge of the appellant, cannot sit in judgment as to whether the duty was payable or not on the goods supplied. Since, it is on record that the _duty payment by M/s. Castle Polymers, Ahmedabad, [the manufacturer of the inputs in the instant case] was objected to by the Department by issuing a notice, which was subsequently confirmed by the Principal Commissioner, ibid, following the judgement of the

Hon'ble High Court of Bombay, I hold that CENVAT credit in such cases cannot be allowed, therefore, I uphold the impugned OIO dated 30.11.2016 wherein the adjudicating authority has ordered recovery of the CENVAT credit along with interest and penalty.

9.1. During the course of personal hearing, the appellant has submitted copies of various case laws on which they wished to place their reliance. On going through the said case laws, I find that the case laws viz. MDS Switchgear Limited [2008(229) ELT 485 (SC)], Kerala State Electronic Corporation [1996(84) ELT 44 (Tri)], , Nahar Granities Limited [2014(305) ELT 9 (Guj)], M P Telelinks Limited [2004(178) ELT 167] and Hylite Cables [2007(212) ELT 284] stand distinguished since in the dispute at hand, as is already recorded by me in para 7, supra, the payment of duty at the supplier/manufacturer's end has been held to have been wrongly paid in contravention of the provisions of Section 5A(1A) of the CEA, 1944.

10. The appellant's contention is that the demand is barred by limitation. Section 11A(4) of the Central Excise Act,1944, lists five situations wherein extended period can be invoked. I find that the appellant had clearly failed to discharge the obligation cast under Rule 9(5) of the CENVAT Credit Rules, 2004, and had thereby availed the CENVAT credit in contravention of the CENVAT Credit Rules, 2004 and thereafter used it towards payment of Central Excise duty. Since the CENVAT credit was availed in contravention of the CENVAT Credit Rules, 2004 with an intent to evade payment of duty, by utilizing such credit towards payment of duty, I find this to be a fit case for invocation of extended period. Hence, the contention of the appellant that extended period cannot be invoked, lacks merit."

8. These findings in an exactly similar/same case, when the goods were supplied by the same supplier, would apply to the present dispute. Hence, in view of the foregoing, in view of my findings in the aforementioned OIA, the appeal filed by the appellant is rejected and the impugned OIO, is upheld.

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

9. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)

Date : .2.2018

Attested

(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.

To,

M/s. Shreyansh Synthoplast, A 1/331,
GIDC Industrial Estate,
Vatwa, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Tax, Division III, Ahmedabad South.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
5. Guard File.
6. P.A.