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 : टेलेफैक्स26305136 - 079 :

सत्यमेव जयते

NATION TAX MARKET

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)9/Ahd-South/2019-20 / 12147 TO 12151

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-038-2019-20**
दिनाँक Date : **30-08-2019** जारी करने की तारीख Date of Issue 09/09/2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri.**Gopi Nath**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AR-I/Late Filing/SCN-Huzlem/ER-1/2015-16** दिनाँक: **06.02.2019** issued by Superintendent, Div-IV, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Huzlem Dyechem Industries
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 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।

आयुक्त, केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD

(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.

आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवाकर, अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD

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 order arises on account of an appeal filed by M/s Huzlem Dyechme Industries, 242, Chhipa Kui, Nr. Prabhu Ice Factory, Danilimda, Ahmedabad (in short '*appellant*') against the letter No.AR-I/Late Filing/SCN-Huzlem/ER-1/2015-16 dated 06.02.2019 (in short '*impugned letter*') issued by the Superintendent, CGST & C.Ex, AR-I, Division- IV, Ahmedabad South (in short '*the central excise officer*').

2. Brief facts of the case are that the appellant, a Central Excise assessee engaged in the manufacturing of Synthetic Organic Colours falling under Chapter 32 of the Central Excise Tariff Act, 1985, had not filed the monthly ER-1 Returns for the period from March 2017 to June 2017 and therefore, the jurisdictional central excise officer had issued the impugned letter communicating that the appellant had not filed the ER-1 Returns for the above period in spite of several reminders and that in terms of Rule 12(6) of the Central Excise Rules, 2002 they were liable to pay an amount of Rs.80,000/- calculated @Rs.20,000/- per return. The appellant was requested to file the subject returns immediately without fail and also directed to pay the above mentioned penalty within 5 days of receipt of the letter. It was also informed to the appellant that if they failed to pay the above amount of penalty as directed, necessary action under Section 11 of the Central Excise Act (in short 'the Act') will be initiated for recover of the said government dues. The said amount of Rs.80,000/- seems to have been recovered by the central excise officer under the provisions of Section 11 of the Act subsequently on 01.03.2019.

3. Being aggrieved with the impugned letter by the central excise officer and subsequent recovery of the said penalty amount, the appellant has filed the present appeal. The appeal has been preferred on the grounds that :

i) Despite giving clarification regarding late filing of ER-1 return for the period March 2017 to June 2017, the said authority has imposed penalty of Rs.80,000/- which is not proper and legal;

ii) Without informing to appellant, the said authority has debited the amount from GST portal which is not proper and legal;

iii) Out of 4 ER-1 return, two returns are NIL and for that penalty amount considered as Rs.20,000/- each return is not proper and legal;

iv) The said authority without issue of any notice or without giving any hearing directly mentioned penalty amount and withdrew from GST portal which is against principal of Natural justice; and

v) The said authority has not passed any speaking order and therefore, confirming the amount of Rs.80,000/- on the basis of Rule 12(6)of the Central Excise Rules, 2002 without giving chance to explain the case is not proper and legal.

4. A hearing in the matter was held on 19.08.2019. Shri N.K. Oza, Advocate, appeared on behalf of the appellant and reiterated the submissions of appeal memo for consideration.

5. I have carefully gone through the facts of the case, appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the main issue to be decided in the appeal in hand is as to whether in the facts and

circumstances of the case, the appellant is liable to pay an amount of Rs.80,000/- in terms of Rule 12(6) of the Central Excise Rules, 2002 for not filing of their monthly ER-1 returns for the months from March 2017 to June 2017 or otherwise?

6. Before proceeding into the merits of the appeal, I would like to refer to the relevant sub-rules of Rule 12, relating to 'filing of monthly returns', of the Central Excise Rules, 2002 (in short 'the Rules') as the issue in the present appeal has arisen on account of the same. The sub-rules of Rule 12 relevant on the facts of the present case are sub-rule (1) and (6), relevant portions of which are as under:

RULE 12. Filing of return. — *(1) Every assessee shall submit to the Superintendent of Central Excise a monthly return in the form specified by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates :*

……

……

(6) Where any return [* * *] referred to in this rule is submitted by the assessee after due date as specified for every return or statements, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in submission of each such return or statement.]*

7. From the above sub-rules, it is clear that every assessee shall submit a monthly return in the form specified (ER-1 in the present case) within ten days after the close of the month to which the return relates and in case any such return is submitted after due date, then the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in filing. The use of the word "shall" in the above rules makes the following of procedure laid down therein as mandatory in nature and the said rules very clearly put the onus of submission of return on the assessee. It is pertinent to note that the provision of payment of an amount for the delay in submission of return has been inserted with effect from 01.03.2015 with a clear intention of ensuring prompt and timely submissions of returns by the assesses and to discourage the tendency of late filing of returns at own will. The intention behind the newly inserted provisions also needs to be understood in the backdrop of more trust placed on the assesses in the self assessment regime. In the self assessment regime, it is expected from the assessees that they, on their own, assess their duty/tax liability correctly and pay the same in time and submit the details thereof in a return form specified for the purpose within the due date stipulated for the same.

8. In the case under consideration, I find that it is not in dispute that the appellant assessee has not filed the monthly ER-1 returns for the four months of March 2017 to June 2017 in the time limit stipulated by Rule 12(1) of the Rules. In fact, it is very clear from the impugned letter that the appellant has not submitted the subject returns even till the date of the said letter viz. 06.02.2019. Further, the appellant also nowhere in their submissions has stated that they have submitted the subject returns even subsequently. Thus, it is clearly

stand established that the appellant has failed to comply with the provisions of Rule 12 (1) of the Rules. When provisions of Rule 12(1) of the Rules are violated, then penal provisions envisaged vide Rule 12(6) of the said Rules gets attracted and the appellant is mandatorily required to pay the amount as specified under Rule 12(6) ibid for their act of contravention of Rule 12 (1) ibid.

9. Further, I find that the central excise officer in the present case vide his impugned letter dated 06.02.2019 has categorically brought to notice of the appellant that they had not filed the ER-1 returns for the period from March 2017 to June 2017 in spite of several reminders which they were required to submit within 10 days of the close of the month to which the return relates and that their failure to submit the subject returns within the stipulated due date made them liable for mandatory payment of an amount prescribed under Rule 12(6) of the Rules which in their case is the maximum amount of Rs.20,000/- prescribed per return and so they were mandatorily required to pay an amount of Rs.80,000/- in terms of the Rule ibid for the four ER-1 returns for the period from March 2017 to June 2017. It was also informed by the central excise officer that the above sum payable by them is to be paid within 5 days from the receipt of the said letter failing which necessary action for recovery of the same will be initiated under Section 11 of the Act.

10. Regarding the contention of the appellant that the central excise officer has imposed penalty despite giving clarification, I find that that the said contention is not legally correct as the provisions of Rule 12(6) of the Rules are mandatory in nature and the amount specified therein as payable becomes payable when the act of late filing occurs and there is no question of any imposition the same. The said amount payable therein is more in the nature of a late fee than a penalty. It becomes payable when the return is not submitted by the due date and the amount so payable depends on the number of days of delay which in any case should not exceed the maximum prescribed rate of Rs.20,000/- per return. Regarding the contention of the appellant that they had given a clarification for late filing of subject ER-1 returns, I find that as per records the appellant has not filed the subject returns at least till the date of impugned letter dated 06.02.2019. Whether they have filed the said returns subsequently thereafter is not forthcoming even from their own submissions. They seem to be relying upon their letter dated 28.12.2018 in this regard wherein they had informed to the central excise officer that they were in receipt of his letter dated 30.10.2018 on 13.11.2018 and that since 14.11.2018 they were in constant touch with the department and have provided all the details for filing the pending monthly returns but they have always been given the reason that the concerned site is not working and so requested to inform them when the site seems to work so that the returns can be uploaded by the officer bearer responsible to upload the same as the data is already been given by them. Vide the said letter, the appellant tried to impress upon the fact that they were in constant touch with the department since 14.11.2018, soon on receipt of the letter dated 30.10.2018 from the department and they could not file the returns due to site problems. However, it is not forthcoming how this contention helps them in justifying their act of not filing the ER-1 returns for the period from March 2017 to June 2017 till the receipt of communication dated

30.10.2018 from the department, which actually is a pretty long period of almost one and half year when the return of March 2017 became due for submission. It is not the case of appellant that the system or site for filing of returns was not functional for such a long period of time since April 2017. Their contention is only that the site was reported as not working since November, 2018. As discussed earlier in the foregoing paras, in the self assessment regime, the onus is on the assessee to ensure that statutory requirements of taxation are duly complied with by them in the manner prescribed and therefore, in the present case, it is for the appellant to ensure that the ER-1 returns for the period under dispute are filed by them within the due date specified for the same. The Central Board of Excise & Customs, in its Circular No.956/17/2011-CX. dated 28.09.2011 issued on the subject of '*Procedure for electronic filing of Central Excise and Service Tax returns and for electronic payment of excise duty and service tax*' has highlighted the responsibility of the Assessee in the case of E-filing of returns, as under:

V. E-filing of Returns

(a), (b),……(i)

(i) Responsibility of the Assessee

1. It is the legal responsibility of the assessees, who are required to file returns, to file it within the due date as prescribed under law. It may, however, be noted that merely uploading the returns will not be considered as returns having been filed with the department. A return will be considered as filed, when the same is successfully accepted by the application as "Filed" and the relevant date for determining the date of filing of return will be the date of uploading of such successfully "filed" returns. In case a return is "rejected" by the application, the date of uploading of the rejected return will not be considered as the date of filing, rather the date of uploading of the successfully "filed", return (after the assessee carries out necessary corrections and uploads it again) will be considered as the actual date of filing.

2. In case the assessee experiences any difficulty in transacting in ACES such as filing of return, the assessees may lodge a complaint with the ACES Service Desk or the department by e-mail and/or by telephone, details of which are given below and obtain a ticket no. as an acknowledgement from the department. However, mere lodging of complaints with the ACES service desk will not be a valid ground to justify late filing of returns. If the difficulty is not on account of problems at the assessee's end, and can be clearly attributed to the department's IT infrastructure such as problems in accessing Central Board of Excise and Customs' ACES application due to server, network or application being down, proportionate time will be deducted from the date of uploading of successfully "filed" returns to ascertain the actual date and time of filing of the return. Since the department maintains logs of such technical failures, in case of any dispute, the decision of the department will be final.

From the above, it is clear that it is the legal responsibility of the assessees, who are required to file returns, to file it within the due date and in case they face any kind of difficulty in filing of returns, they should either take up the matter with ACES Service Desk or intimate the department. In the instant case, there is nothing on records available to suggest that the appellant had actually made efforts to file the subject returns within the due dates but they could not do so and that the problems they faced in filing were taken up with

concerned authorities necessary solution. There is no record of any complaint being lodged with ACES Service Desk or intimating the problems faced in filing returns with the department by the appellant. Therefore, I hold that the clarification submitted by the appellant does not justify their case of not filing of subject returns within the stipulated period.

11. With regard to the contention that they have not been issued with a notice and given a hearing, I find that this is not a case where a formal notice and hearing is required as the provisions of rule 12(6) of the Rules is obligatory in nature and the impugned letter dated 06.02.2019 issued by the central excise officer very well suffice the purpose of a notice and intimation so far as proposed action for recovery of sum due is concerned. I also find that the situation also does not call for a specific speaking Order on the issue owing to the same reason of obligatory nature of provisions of rule 12(6) discussed above. The other contention that out of the four returns, two returns are nil and hence the amount of Rs.20,000/- imposed on the same is not proper and legal, it is to be stated that the provisions of Rule 12(6) of the Rules do not specify different/separate treatment for a NIL return and it provides for an amount to be payable mandatorily in the event of a return being filed beyond the due date. Further, even a NIL return is also required to be submitted/filed by an assessee. Therefore, the appellant's contentions in this regard are not acceptable.

12. It seems that the appellant rather than justifying their act of non-filing / late filing of subject returns, is more aggrieved with the act of recovery of the amount payable by them under Rule 12(6) of the Rules by the central excise officer. In this regard, I have to observe that when an amount under Rule 12(6) ibid becomes mandatorily payable by the appellant, the said amount becomes a sum due to the government and the officer is well within his jurisdiction to effect recovery of the same in terms of Section 11 of the Act. I find that as per records the recovery of the sum due has been effected by the proper officer empowered to do so viz. the Assistant Commissioner by way of obtaining a pay order for the said sum from the bank where the appellant maintained an account and not by way of debiting from the GST portal as contended by the appellant. Further, in the present case, the appellant was liable for payment of the amount in terms of Rule 12(6) of the Rules from the day they defaulted in submitting the subject returns and as such the amount payable by them under the said Rule was due from them since long as the returns were pertaining to the period from March 2017 to June 2017. It is because of their failure to pay the said amount that the recovery of the same came to effected by the proper officer. Even though the onus was on the appellant to comply with statutory requirements and to pay the amount payable by them on their own, the appellant was requested to pay up the amount due vide letters 28.01.2019 and 06.02.2019 of the central excise officer. In both these letters it was also informed that in the event of their failure to pay up the amount payable by them under Rule 12(6) of the Rules, action of recovery of the same will be initiated under Section 11 of the Act. This clearly shows that the appellant was informed of the recovery action being initiated. Under

the circumstances, I find no error in the action for recovery of the amount due by the proper officer in the present case being within the provisions of Section 11 of the Act.

13. In view thereof, I do not find any merit in the contentions of the appellant and accordingly the appeal is rejected.

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.

(Gopi Nath) 30/08/19
Commissioner (Appeals)

Attested:
09/09/2019
(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s Huzlem Dyechme Industries,
242, Chhipa Kui, Nr. Prabhu Ice Factory,
Danilimda,
Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax , Ahmedabad Zone..
2. The Commissioner, CGST, Ahmedabad South.
3. The Deputy Commissioner, CGST Division-IV, Ahmedabad South.
4. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad South.
5. Guard file.
6. P.A. File