



सत्यमेव जयते

**आयुक्त ( अपील ) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
**Central GST, Appeal Commissionerate, Ahmedabad**  
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
 07926305065- टेलीफैक्स 07926305136



### स्पीड पोस्ट

- क फाइल संख्या : File No : V2(39)55/Ahd-South/2019-20/13563 To 13567
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-089-2019-20**  
 दिनांक Date : **10-01-2020** जारी करने की तारीख Date of Issue 20/4/2020  
 आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/14/Dem/2018-19** दिनांक: **28.03.2019** , issued by Deputy Commissioner, Div-V, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Urja Products Pvt.ltd**  
**Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 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 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 मामलों 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 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।

(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 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) 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 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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. 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 यथार्थिती 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 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथार्थिती 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 'नंबित 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. Urja Products Pvt Ltd, Plot No.423-425, GIDC, Telephone Exchange Lane, Odhav, Ahmedabad-382410 (henceforth referred as "appellant") has filed the present appeal against the Order-In-Original No.MP/14/Dem/2018-19 dated 28.03.2019 (henceforth referred as "impugned order") passed by the Deputy Commissioner, Central GST & CX, Division-IV, Ahmedabad-South (henceforth referred as "adjudicating authority").

2. The facts of the case, in brief, are that the audit of the record of the appellant, a manufacturer of PTFE Fibre Glass Fabric plain, FIFE Adhesive Fibre Glass Fabric and Glass Fibre Fabric shape falling under Sub Head No 398670 of Central Excise Tariff Act, 1985 was conducted by the officers of Central Tax Audit, Ahmedabad for the period March, 2016 to March, 2017 who further issued FAR No.658 dated 03.01.2018 base on which a show cause notice dated 23.02.2018 was issued. It was alleged that the appellant was manufacturing and clearing goods both on payment of duty as well as exemption under Notification No. 10/1997-CE dated 01.03.1997. They were not maintaining separate records for availing CENVAT credit on inputs. They were reversing an amount of 6% of value of exempted goods as per Rule 6(3) of Cenvat Credit Rules 2004. However, they have claimed this 6% amount reversed from their buyer which was separately mentioned in invoices. It was contended in the SCN that the appellant was supposed to include this amount recovered from buyers in the value of exempted goods and reverse 6% after such inclusion. As per the SCN, the amount so recovered was ₹ 5,09,784/- on which they were required to pay ₹ 30,587/- as per Rules. It was also proposed to charge interest under Rule 14 along with penalty under Rule 15(2) of Cenvat Credit Rules 2004. The adjudicating authority vide impugned order confirmed the said amount with interest and penalty.

3. Being aggrieved, the appellant preferred this appeal contesting *inter alia*, that the issues raised by the department are no longer *res integra* as they are *res judicata* and settled by clarifications and case laws; they cited various case laws and instructions stating that amount statutorily paid in term of CCR 2004 rule 6(3)(a)(i) can be recovered from the buyer of the goods and cannot be treated as tax



collected but not deposited; that Circular 96/85/2015-CX dated 07.12.2015 point B.23 clarifies that therein neither the assessee can be prevented from charging the amount of 6%/7% in lieu of amount paid under Rule 6 of Cenvat Credit Rules,2004 nor could said amount be made part of value as it was separately mentioned in the invoice over and above the cost of goods/service. Therefore, no amendment in Section 11D is warranted even if additional amount is charged from the customer and not deposited with the department.

3.2 It was further pleaded that harmonious reading of Section 4(1)(a) with Section 4(3)(d) transaction value may include the additional cost that the buyer is liable to pay but shall not include the amount of duty of excise sales tax or other taxes, if any, actually paid or payable on such goods; that Hon'ble Apex court in 2004 (156) ELT 369(SC) with reference to 'other taxes' statutorily required to be paid on the value of the goods charged to buyer then in term of Central Excise Act 1944 Section 4(1) (a), held that said value is not required to be added to assessable value; that as per CBEC Circular dated 16.05.2008, Instruction dated 07.12.2015 and reading of Section 4(1)(a) and current section 4(3)(d) of C.Ex.Act,1944 and interpretation by Apex court, it was crystal clear that (I) the amount paid to Government at 6% of the goods value is a tax and covered with the expression 'other taxes' (II) "Tax" if paid and added to value than it is a tax per se and not forming a part of value and cannot be included in the assessable value and has to be deducted from the total price to arrive at the assessable value for the purpose of levy of tax. (III) Such tax paid to Government at 6% of value and added to price of goods is not a tax collected and retained but instead is a tax collected and deposited with the government and can never be recovered from the seller and can never be added to he assessable value for determining tax amount that is payable; that demand of ₹ 30,587/- treating as 6% of transaction value of ₹ 5,09,748/- is not proper when transaction value in fact is ₹ 84,96,448/-; that the adjudicating authority failed to explain as to how the tax amount paid also form part of value; that invoices shows that no excise duty is charged instead a 6% amount in term of CCR Rules 6(3)(1).



3.3 Based on such pleading, the appellant raised the questions that (i) out of two amount ₹ 5,09,748/- and ₹ 84,96,448/- which amount is transaction value of goods cleared availing exemption ? (ii) ₹ 5,09,748/- i.e. 6% amount is it an amount (tax) payable or it is a tax if paid but not collected then does not form a part of value but if collected then form a part of value ? (III) If ₹ 90,06,232/- (i.e. 5,09,748/- plus 84,96,448/-) is transaction value then how is it that 6% demand is not on ₹ 90,06,232/- and limited to ₹ 5,09,748/- ? (IV) For the purpose of valuation, amount of excise duty, sales tax, other taxes paid or payable are or are not statutorily prevented from being added to price of goods and there is an administrative freedom to add to the price the amount of taxes to arrive at transaction value.

4. Personal hearing was held on 17.12.2019. Shri SV Modi, consultant, & Ms. Pooja Shah, CA, appeared on behalf of the appellant and reiterated the submissions of appeal memo and requested to allow the appeal.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, oral and written submissions made at the time of personal hearing. The issue requiring determination is whether in term of compliance of Rule 6(3) of Cenvat Credit Rules 2004, the appellant was liable to pay an amount confirmed under impugned order? It would be appropriate to reproduce below said Rule 6(3) of Cenvat Credit Rules 2004 substituted by Noti.No.23/2016-CE (NT) dated 01.04.2016 for ease of reference:

**RULE 6. [Obligation of a manufacturer or producer of final products and a [provider of output service]].** — [(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :

**Provided that .....**

**Explanation 1. ...**

**Explanation 3. ....**

**Explanation 4. ....**

(3) (a)

A manufacturer who manufactures two classes of goods, namely :-



non-exempted goods removed;

(ii) exempted goods removed;

or

(b) a provider of output service who provides two classes of services, namely :-

- (i) non-exempted services;
- (ii) exempted services,

shall follow any one of the following options applicable to him, namely

:-

- (i) pay an amount equal to six *per cent.* of value of the exempted goods and seven *per cent.* of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]
- (ii) pay an amount as determined under sub-rule (3A) :

[*Explanation I.* - "Value" for the purpose of sub-rules (3) and (3A), —

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

6. I observe that the appellant has opted to pay 6% of value of exempted goods as provided above and said part is not in dispute in present appeal. It was mandatory for the appellant to pay an amount @6% of value of exempted goods for fulfilling the statutory obligation provided under Rule 6(3) Cenvat Credit Rules 2004. The issue is based on the method adopted by the appellant by which they are charging from the customer such part of amount which were paid by them for discharging their obligation in term of Rule 6(3) of Cenvat Credit Rules 2004. Therefore, the crux of the issue is that whether the said amount separately charged from the customer by the appellant form part of value of goods exempted by way of Noti No. 10/1997-CE dated 01.03.1997 or not. On perusal of invoice, I observe that along with value as mutually agreed between the appellant and customer, an amount equivalent to those paid by the appellant in term of Rule 6(3) of Cenvat Credit Rules 2004, were also shown separately in the invoices and recovered. Copy of one of such invoice is as below:



**URJA PRODUCTS PVT. LTD.**  
 774448 SILENT TELEPHONE DISHUBS, 10th FLOOR,  
 10th FLOOR, SILENT TELEPHONE DISHUBS,  
 TELUKUTTAI, COIMBATORE, KARNATAKA, INDIA

DUPLICATE FOR ASSESSEE

9

**RETAIL INVOICE CUM DELIVERY CHALLAN**

Invoice No. : 10113324      Date : 16-02-2017  
 Date and Time of Issue : 10-02-2017 10:04 Hrs  
 Date and Time of Receipt : 10-02-2017 17:00 Hrs  
 Order No. : VSAGM/ITP/192010104117  
 Date : 26-07-2016  
 Total Billing No. : 34205447  
 Tax & Date of Validation of order : 30th  
 Name & Address of Buyer (if Not Consignee)  
 Name & Address of Consignee  
**VIKRAM SARABHAI SPACE CENTRE (UN) CIVI**  
**GOVT OF INDIA, DEPARTMENT OF SPACE, PURCHASE UNIT - IV**  
**MT VALIYAMALA,**  
**THIRUVANANTHAPURAM-684 116, KERALA**  
 Consignee's I.S. No.  
 Consignee's D.D. No.  
 Consignee's ECG No.

Sl. No.	Description & Specification of Goods	Package QTY	Total QTY	Unit	Ass. Value Per Unit Rs.	Total Price Of Goods in Rs.
	Balance B/T From Page 4					4,44,252.46
	TOTAL 13 ROLL = 2537 MTR EXCISE DUTY EXEMPTED UNDER NO.10/971/4/95 C.E. II (M-1) AS AMENDED BY NO.11/NO.16/2007 C.E. DT.01.03.2007 AND BY AMT PAYABLE UNDER RULE 6(3)(I) OF CCR/2004 RG 29A PART II ENTRY NO 270 DT.10/02/17 PAGE NO 48					14,662.00
	By Agent: BALACHANDRAN RV					2,44,369.46
	IR Date : 16-02-2017 Dispatch Form : AHMEDABAD TO THIRUVANANTHAPURAM Vehicle Reg No. Transporter Name : BY VIL LOGISTICS Total Duty payable Rs. - 0.00 & 00 Paise Entry No.      Date					15,109,731.00
	Payment Terms :					2,71,983.00
	Total Invoice Amount (In Words): Two Lakh Seventy One Thousand Nine Hundred Eighty					NET AMOUNT

For, URJA PRODUCTS PVT. LTD.

As can be seen from the above invoice, ₹ 14,662/- i.e. 6% amount of value of exempted goods (₹ 2,44,369.46) is shown separately which also stands recovered by the appellant from M/s. Vikram Sarabhai Space Centre, Thiruvananthapuram.

7. It is further argued by the appellant that amount statutorily paid in term of CCR 2004 rule 6(3)(a)(i) can be recovered from the buyer of the goods and can be treated as tax collected but not deposited. It is pleaded by the appellant referring point B.23 of Circular 96/85/2015-CX dated 07.12.2015, that neither the assessee can be prevented from charging the amount of 6%/7% in lieu of amount paid under Rule 6 of Cenvat Credit Rules, 2004 nor could said amount be made part of value as it was separately mentioned in the invoice over and above the cost of goods/service. Relevant part of said circular is reproduced below for ease of reference:

**B.23 - Coimbatore Zone - Cenvat Credit - Applicability of Section 11D of Central Excise Act, 1944 and amendment thereof where the amount of 6% is charged from the buyer but not deposited with the department.**

**Issue :**

Board Circular No. 870/8/2008-CX., dated 16-5-2008 [2008 (226) E.L.T. (T3)] clarifies that the amount paid under Rule 6(3) of the





Cenvat Credit Rules, 2004 can be recovered by the manufacturer from the buyers. If the assessee is allowed to recover the amount from the buyers, then the very purpose of payment of 6% under, the Cenvat Credit Rules, 2004, is defeated. Since the final product is exempted, it is logical to consider that the assessee availed the credit of input taxes embedded in inputs and is recovering the same from the buyer, when he charges this amount separately on the invoice. It is thus akin to recovery of duty. The present Section 11D of Central Excise Act, 1944, does not provide for recovery of such amounts, so it is felt that the assessee who recover such amounts are unjustly enriching themselves. It is suggested that suitable amendments may be made to Section 11 D of Central Excise Act, 1944 so that such amounts can be recovered.

#### **Discussion & Decision**

The conference after discussion concluded that **neither the assessee can be prevented from charging the amount of 6%/7% in lieu of amount paid under Rule 6 of the Cenvat Credit Rules, 2004, nor can the said amount could be made part of value**, as it was being separately mentioned in the invoice over and above the cost of the goods/services. Further, no credit of this amount is available to the buyer of the goods. The transaction is essentially a commercial one between the buyer and seller and no amount is recovered by seller representing or showing it as Central Excise duty. Therefore, department cannot be said to be aggrieved by the transaction. No amendment in section 11D of the Central Excise Act, 1944, to recover such amount is warranted, even if this additional amount is charged from the customer and not deposited with the department.

8. It is apparent from the clarification on issued by the Board that neither the assessee can be prevented from charging the amount of 6%/7% in lieu of amount paid under Rule 6 of the Cenvat Credit Rules, 2004, nor can the said amount could be made part of value, as it was being separately mentioned in the invoice over and above the cost of the goods/services. It has been categorically clarified that even if such additional amount is charged from customers and not deposited with the department, no demand would be made under Section 11D of the Central Excise Act, 1944. Thus, the issue in hand of such separately charged amount under the invoice for valuation purpose is decided as above. Therefore, I observe that said amount charged separately cannot become part of exempted value. Accordingly, the impugned order confirming the SCN is not legally sustainable and deserves to be set aside.

9. I also find that various judgements quoted by the appellant also cover the subject in its favour. Hence, the order of adjudicating authority is not legally sustainable on merits as well as by judicial pronouncement.

10. In view of the observations above, I accept the appeal filed by the appellant and quash the impugned order.



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

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

*Akhil Kumar*  
10<sup>th</sup> January, 2020..

(Akhil Kumar)  
Commissioner, CGST (Appeals)  
Date:

Attested

*D.A. Parmar*

(D.A. Parmar)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,  
M/s. Urja Products Pvt Ltd,  
Plot No.423-425 GIDC, Telephone Exchange Lane,  
Odhav, Ahmedabad-382410

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-South.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-South.
4. The Asstt./Deputy Commissioner, CGST Division-V, Ahmedabad-South.
- ✓ 5. Guard File.
6. P.A. File