



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



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टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN- 20210164SW0000000D0E)

क फाइल संख्या : File No : V2(39)01/EA-2/AHD-1/2015-16 / 167

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 62/2020-21

दिनांक Date : 29-12-2020 जारी करने की तारीख Date of Issue - 15/01/2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No 11/DC/2014-Ref dated 18.02.2015 issued by Assistant Commissioner of Central Excise, Div-IV, Ahmedabad-I.

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

**M/s Madhu Hydrocollides Private Limited, 308,Ratna Complex, Opp. Bank of Baroda, Maninagar, Ahmedabad-380008..**

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 issued under the Central Excise Act 1944, 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।



(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 मामले 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.

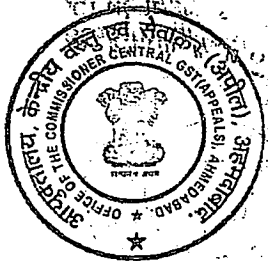
(1) केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act, 2017 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 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 filed 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.

- (20) 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)

(21)

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:

(xxv) amount determined under Section 11 D;

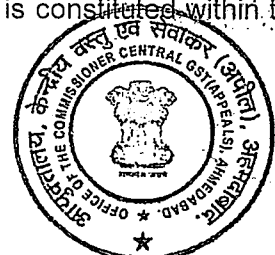
(xxvi) amount of erroneous Cenvat Credit taken;

(xxvii) 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to states) Act, 2017, may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



**ORDER-IN-APPEAL**

1. The CESTAT, West Zonal Bench, Ahmedabad has vide Order No. A/11104/2020 dated 04.06.2020 in the case of M/s. Madhu Hydrocolloides Pvt. Ltd., No.1, Dayal Estate, N.H.No. 8, Opposite Agriculture Market, Jetalpur-Bareja Road, Ahmedabad-382425 [present address at 308, Ratna Complex, Opposite Bank of Baroda, Maninagar, Ahmedabad-380008] remanded the matter to the Commissioner (Appeals) for passing a fresh order after taking their observation into consideration and after following the principles of natural justice.

2. Earlier, the Deputy Commissioner of Central Excise, Division-IV, erstwhile Ahmedabad-I Commissionerate (hereinafter referred to as the 'Department') had on 20.05.2015 filed an appeal before the Commissioner (Appeals) Central Excise, Ahmedabad in pursuance of the Review Order No. 01/2015 dated 14.05.2015 issued under F. No. IV/16-331/OIO/Ref-IV/2014-15 – RA passed by the Commissioner of Central Excise, erstwhile Ahmedabad-I (hereinafter referred to as 'the reviewing authority') under sub-section (2) of Section 35E of the Central Excise Act, 1944 against the Order-in-Original No. 11/DC/2014-Ref dated 18.02.2015 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Central Excise, Division-IV, erstwhile Ahmedabad-I Commissionerate (hereinafter referred to as the 'the adjudicating authority') in case of M/s. Madhu Hydrocolloides Pvt. Ltd., No.1, Dayal Estate, N.H.No. 8, Opp. Agriculture Market, Jetalpur-Bareja Road, Ahmedabad-382425 [present address at 308, Ratna Complex, Opp. Bank of Baroda, Maninagar, Ahmedabad-380008] (hereinafter referred to as 'the respondent').

2.1. The appeal dated 20.05.2015 filed by the department was allowed by the Commissioner (Appeal-I), erstwhile Central Excise, Ahmedabad (hereinafter referred to as 'the appellate authority-2') vide Order-in-Appeal No. AHM-EXCUS-001-APP-007-2016-17 dated 02.06.2016. Being aggrieved with the said OIA passed by the appellate authority-2, the respondent had filed an appeal before the CESTAT, Ahmedabad which has now been allowed by way of remand to the Commissioner (Appeals) vide CESTAT's Order No. A/11104/2020 dated 04.06.2020.

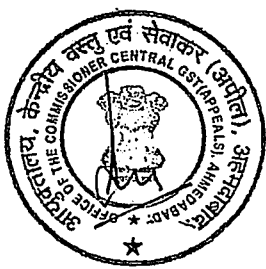


3. The background of the case, in brief, is that the respondent was engaged in the manufacture of Carboxy Methyl Cellulose- LVG falling under Chapter 39 and pre-gelatinized starch falling under Chapter 35 of Central Excise Tariff Act, 1985 and was holding registration no. AAECM 4684 RXM 001. The respondent 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 on payment of duty amounting to Rs. 72,02,137/- and made an application for refund of this amount to DGFT on 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 and hence the respondent had filed their refund claim to the respective divisional office on 16.09.2013. The Assistant Commissioner, erstwhile Central Excise, Division-IV, Ahmedabad-I (hereinafter referred to as 'the original adjudicating authority') vide Order-in-Original No. 181/Assistant Commissioner/2013-Rebate dated 25.02.2014 (hereinafter referred to as 'the original impugned order') rejected the refund claim on the grounds of limitation under Section 11B of Central Excise Act, 1944 as filed beyond a period of one year from relevant date.

3.1. Being aggrieved with the original impugned order, the respondent had filed appeal before the Commissioner (Appeal-V), erstwhile Central Excise, Ahmedabad (hereinafter referred to as 'the appellate authority-1'), which was allowed with all consequential benefits to the respondent vide Order-in-Appeal No. AHM-EXCUS-001-APP-017-2014-15 dated 11.06.2014 on the grounds that "the relevant date, for filing refund claim should be considered from the date of direction of DGFT i.e. 09.09.2013 and accordingly, refund claim was well within the time limit and not barred by limitation as per Section 11B of Central Excise Act, 1944".

3.2. Subsequent to issuance of OIA dated 11.06.2014, the claim was admitted by the adjudicating authority as filed within time limit. However, on scrutiny, it was further observed that the claim was liable for rejection on certain grounds and therefore a Show Cause Notice was also issued on 13.10.2014 by the adjudicating authority, to the respondent to explain as to why:

- (i) "The claim being the duty paid on goods cleared to ONGC against Project Authority Certificate vide Notification No. 12/2012-Central Excise



(Sr.No.336), be termed as collected by "error/oversight" by the collecting agency, as provided in the Policy Circular No. 16 of DGFT dated 15.03.2013.

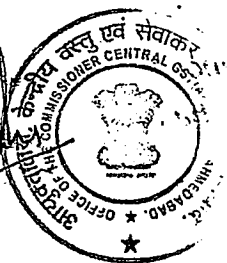
- (ii) The refund claim should not be denied under DGFT Notification No. 4 (RE-2013)/2009-14 dated 18.04.2013, which at para-3 clearly states that "when ab-initio exemption is available, benefit of TED refund will not be given".
- (iii) The refund claim should not be denied as they have been given the drawback on their supplies which appears as so from the letter of Foreign Trade Development Officer dated 07.03.2013, F.No. 08/40/081/0089/AM13 and 0840/083/009/AM13."

3.3. Moreover, being aggrieved with the Order-in-Appeal dated 11.06.2014 passed by the appellate authority-1, an appeal was preferred by the department before Hon'ble CESTAT, Ahmedabad on 11.09.2014 on the grounds reproduced below:

- (i) "As per Notification No. 12/2012-Central Excise, the goods cleared under ICB are exempted from Central Excise duty whereas the respondent had cleared the goods to ONGC on payment of duty on its own violation. When the final product is exempt from payment of duty, the manufacturer should not have paid the duty on such exempted goods.
- (ii) 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 Cenvat Credit availed on inputs or to pay an amount specified under said rule at the time of clearance of such exempt goods.
- (iii) The aspect of unjust enrichment also needs to be ascertained in terms of the provision of Section 11B and Section 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."

3.4. CESTAT, Ahmedabad vide its Final Order No. A/12126/2014 dated 01.12.2014 remanded the case back to the adjudicating authority observing as below:

"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".



3.5. Thereafter, in accordance with the Tribunal's Order dated 01.12.2014, the case was taken up by the adjudicating authority for adjudication on merits. The adjudicating authority passed the impugned order, sanctioning the refund of Rs. 72,02,137/- to the respondent after deciding the issues as reproduced below:

- (i) *"The respondent had initially filed the refund claims with DGFT for drawback and central excise duty paid on goods cleared to ONGC under international competitive bidding for which Central Excise duty was exempted vide Notification No. 12/2012-Central Excise (Sr. No. 336) and reason for filing the said claims was that till then they were clearing the goods to ONGC on payment of duty and getting refund of Terminal Excise duty from DGFT. However, DGFT vide order dated 7.03.2013 advised them to approach Central Excise Department for refund of duty as per the Policy Circular No. 16 (RE-2012/2009-14) dated 15.03.2013. Accordingly, denying the refund claim on the basis of a circular issued by DGFT after filling of refund claim will go against the spirit of natural justice and cannot be sustainable.*
- (ii) *Since, the exemption granted as per Sr. No. 336 of Notification No. 12/2012-Central Excise is a conditional exemption, mandatory non-payment and availment of exemption cannot be insisted upon, especially with a retrospective effect.*
- (iii) *The duty deposited by the claimant even though the supplies to ONGC against ICB was exempted cannot be termed as collected by "error/oversight" by the collecting agency, as mentioned in the DGFT Circular No. 16 (RE-2012/2009-14) dated 15.03.2013, but collected as a matter of practice.*
- (iv) *The clearances in case of the respondent are covered under the provisions of Rule 6 (6) (vii) of Cenvat Credit Rules, 2004 and hence, they are not required to reverse the credit of the duty availed on the inputs for manufacture and clearance of the goods supplied to ONGC against IBC.*
- (v) *As per the invoices issued to ONGC, CA Certificate and certificates issued by ONGC, it is concluded that the respondent has not passed on the burden of duty paid by them to ONGC and hence, this is not a case of unjust enrichment."*

3.6. Being aggrieved with the impugned order passed by the original adjudicating authority, an appeal was preferred by the department before the appellate authority-2 on 20.05.2015 on the grounds reproduced below:

- (i) *"As per Notification No. 12/2012-Central Excise, the goods cleared under ICB are exempted from Central Excise duty whereas the respondent had*

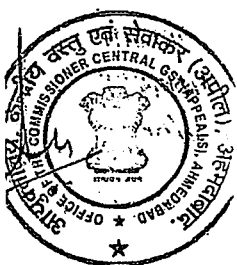


cleared the goods to ONGC on payment of duty on its own violation. When the final product is exempt from payment of duty, the manufacturer should not have paid the duty on such exempted goods.

- (ii) 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 Cenvat Credit availed on inputs or to pay an amount specified under said rule at the time of clearance of such exempt goods. The respondent 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. The judgement pronounced by Hon'ble High Court of Gujarat in the case of M/s. Arvind Ltd reported at 2014 (300) ELT 481 (Guj) is squarely applicable to the present case and accordingly, the claimant has to reverse the Cenvat Credit availed on the manufacture and clearance of the goods supplied to the ONGC vide Noti.No. 12/2012-CE."

3.7. The Commissioner (Appeal-I), erstwhile Central Excise, Ahmedabad ('the appellate authority-2') vide Order-in-Appeal No.AHM-EXCUS-001-APP-007-2016-17 dated 02.06.2016 allowed the appeal dated 20.05.2015 filed by the department and set aside the impugned order, on the following grounds:

- (i) The respondent had cleared the goods to ONGC on payment of duty on its own violation. When the final product is exempt from payment of duty, the manufacturer should not have paid the duty on such exempted goods.
- (ii) 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 Cenvat Credit availed on inputs or to pay an amount specified under said rule at the time of clearance of such exempt goods. The respondent has neither reversed the Cenvat Credit availed on inputs used in the manufacturing and clearance of the goods to the ONGC against ICB.
- (iii) The case law reported at 2014 (300) ELT 481 (Guj) pronounced by Hon'ble High Court of Gujarat in the case of M/s. Arvind Ltd cited by the revenue is squarely applicable to the present case.
- (iv) Also relied upon the decision of Madras High Court in the case of A.R.R Sales Agency Vs. Commissioner [2005 (318) ELT A170 (Mad)], wherein it is held 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."





3.8. Being aggrieved with the OIA passed by the appellate authority-2, the respondent had filed an appeal before the CESTAT, Ahmedabad, who vide Order No. A/11104/2020 dated 04.06.2020 allowed the appeal filed by the respondent by way of remand to the Commissioner (Appeals) observing as under:

*"We find that the appellant has raised very important issue that whether revenue is legally right in issuing the second time show cause notice in the same case. However, this vital issue was not answered by the Learned Commissioner (Appeals) in the impugned order. In our view, since the second show cause notice dated 13.10.2014 is the genesis of the present case, without dealing the issue of legality of issuance of said show cause notice the entire finding given by the Learned Commissioner (Appeals) is of no meaning. Therefore in our considered view the matter should go back to the Learned Commissioner (Appeals) for passing a fresh order taking into consideration of our above observation and after following the principles of natural justice."*

4. In the present remand proceedings, opportunity for personal hearing was granted on 29.10.2020 through video conferencing platform. Shri Saurabh Dixit, Advocate, appeared for personal hearing as a representative of the respondent. He re-iterated the additional submissions made vide their letter dated 29.10.2020. The contents of the submission made by the respondent are reproduced, in brief, as below:

- (i) *The Hon'ble CESTAT vide final order dated 01.12.2014 remanded the matter afresh by keeping all issues open to the adjudicating authority. The adjudicating authority was directed to examine all issues, other than limitation and decide the refund on merits. Upon such remand, a fresh SCN dated 13.10.2014 was issued to the appellant, raising various grounds. This SCN dated 13.10.2014 is legally unwarranted and not permissible since the issue was otherwise required to be decided in light of specific remand directions of Hon'ble CESTAT, instead of initiating a new cause of action/litigation by way of the said SCN.*
- (ii) *Two separate SCNs have been issued for the very same refund claim is not permissible in as much as the Revenue Authorities have to make up their mind as to which particular reason they want to deny refund on. The judgement of the Hon'ble Apex Court in the case of Carrier Aircon Ltd 2005 (184) ELT 113 (SC) has been relied upon for the same.*
- (iii) *Various appellate authorities have consistently held that the Revenue Authorities cannot make out a new case against respondent at the time of sanctioning consequential relief ordered by higher forum and the subject SCN issued contrary to such legal position therefore deserves to be dropped/vacated on this ground alone.*
- (iv) *It is the fact that the duty was never required to be paid since the goods are otherwise exempt, whether Rule 6 of the CCR, 2004 was followed or not, cannot be a reason to deny refund. At the most this can be a cause to raise further demand against the respondent under Rule 6 readwith Rule 14 of the CCR, 2004 demanding appropriate Cenvat Credit from them. However, under no circumstances, either exemption and/or*



*payment of duty can be called into question at all.*

- (v) *Specific findings in the OIO that there is no legal requirement to comply with the embargo of Rule 6 for reversal of credit even if exempted goods are cleared, to a project under ICB has been completely ignored by the first appellate authority.*

5. I have carefully gone through the facts of the case, grounds of appeal, and submission made in cross-objection in appeal by the Respondent vide letter dated 29.10.2020. It is observed that the issue to be decided in the remand proceedings is whether the second Show Cause Notice dated 13.10.2014 issued by the adjudicating authority in the case is legal or not.

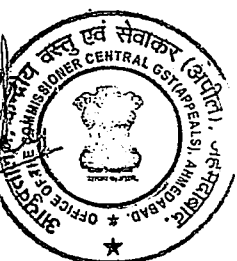
6. It is observed that the second SCN dated 13.10.2014 in the case was issued by the adjudicating authority after case was remanded to him by the Commissioner (Appeals) vide Order-in-Appeal dated 11.06.2014. It is a settled legal principle that the adjudicating authority becomes functus officio after passing of adjudication order and hence he could not issue another SCN on same issue. I find that the Hon'ble Supreme Court in the case of Carrier Aircon Ltd. Vs Commissioner of Central Excise, Delhi-III reported at 2005 (184) ELT 113 (SC) has held that:

*"the Commissioner of Central Excise could not have passed the order upon points not arising out of the decision or order of subordinate adjudicating authority and could not have relied upon new material. Several decisions have been relied upon in support of this view and the appeal of respondent was allowed. Being aggrieved, the Department has preferred these appeals before us. We are of the view that there is no substance in these appeals because the principle of law as enunciated by the Tribunal is correct....."*

Further, in KPIT Cummins Infosystems Ltd. Vs Commissioner of Central Excise, Bangalore reported at 2011 (22) STR 215 (Tri. Bangalore), the Hon'ble Tribunal has held similar view. The relevant para 8 is reproduced below:

*"8. As regards the appeal No. 707/2008 against the Order-in-Original No. 23/2008 dated 6-10-2008, we find that the adjudicating authority, i.e. Commissioner of Central Excise could not have issued another show-cause notice for enhancement of penalty in the self same issue, wherein adjudication order is issued. Once an adjudication order is passed on the subject matter, the issuance of another show-cause notice by the same authority for enhancement of penalty does not arise, and Revenue should have taken recourse to other options available in the statute. In view of this, we find that the impugned order No. 23/2008 dated 16-10-2008 is not in accordance with law and is not sustainable, hence the same is set aside."*

In view of the above judicial pronouncements, I find that the issuance of second SCN dated 11.06.2014 in the matter is not legally sustainable.



6.1 It is further observed that the adjudicating authority had issued the second SCN on 13.10.2014 to the respondent, as to why:

- (i) "The claim being the duty paid on goods cleared to ONGC against Project Authority Certificate vide Notification No. 12/2012-Central Excise (Sr.No.336), be termed as collected by "error/oversight" by the collecting agency, as provided in the Policy Circular No. 16 of DGFT dated 15.03.2013.
- (ii) The refund claim should not be denied under DGFT Notification No. 4 (RE-2013)/2009-14 dated 18.04.2013, which at para-3 clearly states that "when ab-initio exemption is available, benefit of TED refund will not be given".
- (iii) The refund claim should not be denied as they have been given the drawback on their supplies which appears as so from the letter of Foreign Trade Development Officer dated 07.03.2013, F.No. 08/40/081/0089/AM13 and 0840/083/009/AM13."

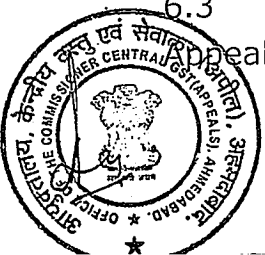
I find that the adjudicating authority has in the impugned order negated all the above points and sanctioned refund to the respondent.

6.2 Further it is observed that the department had preferred an appeal before the appellate authority-2 on 20.05.2015 against the impugned order passed by the adjudicating authority, on the grounds reproduced briefly below:

- The respondent has paid the duty on its own violation which is otherwise exempted in terms of Notification No. 12/2012-Central Excise.
- The respondent 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. The judgement pronounced by Hon'ble High Court of Gujarat in the case of M/s. Arvind Ltd reported at 2014 (300) ELT 481 (Guj) is also relied upon in support of the said contention.

I find that the department has not taken any of the issues on which second show cause notice dated 13.10.2014 was issued, as grounds of appeal while filing this appeal against the impugned order passed by the adjudicating authority. Further, I also find that the respondent has never raised the issue of maintainability of second show cause notice before the appellate authority-2 during the process of consideration of the appeal filed by the department. Hence, the fact of issuance of second SCN dated 13.10.2014 is not relevant for the appeal proceedings in as much as the adjudicating authority has given findings in favour of the respondent and department has not considered the discrepancies communicated through said SCN in filing appeal.

6.3 Further, it is observed that the appellate authority-2 vide Order-in-Appeal dated 02.06.2016 placing reliance on the decision of Hon'ble High

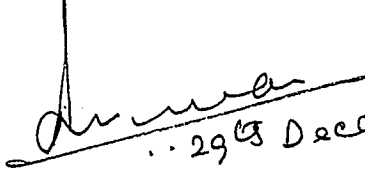


Court of Gujarat in case of M/s. Arvind Ltd. [2014 (300) ELT 481 (Guj)] and the decision of Madras High Court in case of A.R.R Sales Agency Vs. Commissioner [2015 (318) ELT A170 (Mad.)] decided the case and while recording his findings, he considered only on the issues as per the grounds of appeal filed by the department.

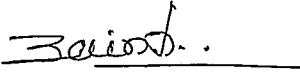
7. In view of the discussions made above, I find that the second show cause notice dated 13.10.2014 issued by the adjudicating authority is not in accordance with law and hence, not legally sustainable.

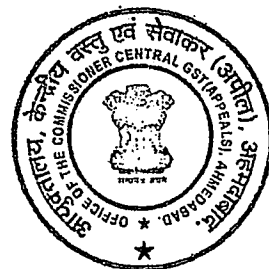
7.1 However, as per the facts available on record in the present appeal, I find that the issue of legality of the second show cause notice dated 13.10.2014 was not under consideration before the appellate authority-2 and does not have any bearings on the findings arrived by him in his Order-in-Appeal dated 02.06.2016 which was based purely on issues raised by the department in the appeal filed by them. Accordingly, I do not find it proper to interfere in the findings of the appellate authority-2 in his Order-in-Appeal dated 02.06.2016.

8. In view of the above, the appeal filed by the department on 20.05.2015 is allowed and accordingly the Order-in-Original No. 11/DC/2014-Ref dated 18.02.2015 (*the impugned order*) passed by the Deputy Commissioner of Central Excise, Division-IV, erstwhile Ahmedabad-I Commissionerate (*the adjudicating authority*) is set aside.

  
.. 29<sup>th</sup> December, 2015  
(Akhilesh Kumar)  
Commissioner (Appeals)

Attested

  
(M.P. Sisodiya)  
Superintendent (Appeals)  
CGST, Ahmedabad



By Regd. Post A. D

The Deputy Commissioner  
Central Excise, Division-IV,  
Ahmedabad-I (erstwhile)

APPELLANT

M/s. Madhu Hydrocolloids Pvt. Ltd,  
308, Ratna Complex,  
Opp. Bank of Baroda,  
Maninagar, Ahmedabad-380008

RESPONDENT

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Ahmedabad-South.
3. The Deputy Commissioner of Central Excise, Division-IV, erstwhile Ahmedabad-I Commissionerate.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File





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