



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. V.39/15-43/OA/2014-Denovo

आदेश की तारीख/Date of Order: - 29.03.2019

जारी करने की तारीख/Date of Issue :- 31.03.2019

द्वारा पारित/Passed by:-

एम.एस. चौहान / M.S.Chauhan

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 11/ADC/2019/MSC

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

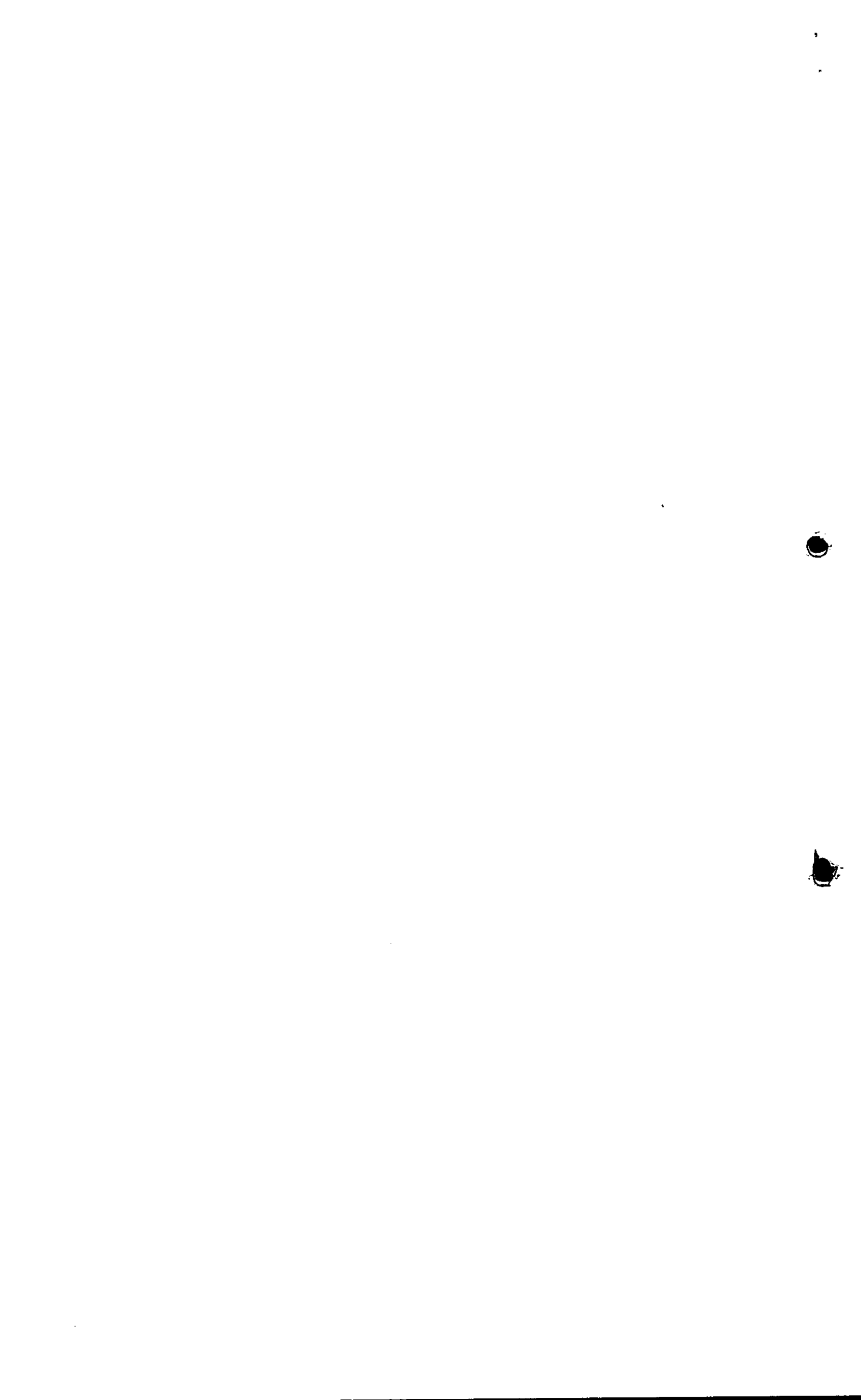
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- Denovo proceedings of कारण बताओ सूचना/Show Cause Notice F.No. V.39/15-43/OA/2014 dated 03.11.2014 issued to M/s Chamunda Plastics Pvt. Ltd., Plot no. B-15, Near Modern Bakery, Phase-II, GIDC, Naroda, Ahmedabad.



Brief facts of the case:-

M/s Chamunda Plastics Pvt. Ltd., Plot No. B-15, Near Modern Bakery, Phase-II, GIDC, Naroda, Ahmedabad (hereinafter referred to as "the assessee" or "the Unit-I") were engaged in the manufacture of plastic pipe fittings like EG Elbow, Tee, Reducer, Tank Nipple, End Cap, Flanges, Hose Nipple etc. falling under Tariff Sub-Heading No. 3917 and Industrial Ball Valve falling under Tariff sub heading no. 8481 of the first schedule of the Central Excise Tariff Act, 1985 (hereinafter referred to as "CETA,1985") and were registered with Central Excise, having ECC No. AAEC1973HEM001 and were availing credit of CENVAT paid on raw materials and capital goods.

2. M/s Chamunda Plastics Pvt. Ltd., Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad (hereinafter referred to as "the unit-II") applied for grant of Central Excise Registration on 02.04.2013 online in ACES and the assessee were granted Central Excise Registration under ECC No. AAEC1973HEM002 on 04.04.2013. In compliance to the authorization issued by the Deputy Commissioner, Central Excise, Division-I, Ahmedabad-II, the officers of Central Excise, AR-I, Division-I, Ahmedabad-II visited the factory premises of said unit-II on 12.04.2013 to conduct post-verification of the registered premises. During the course of post-verification, the Central Excise officers apparently noticed that the quantity of the finished goods viz. HDPE/PP Pipes falling under Chapter 39 of CETA, 1985, lying in the factory premises seemed to be disproportionately large as compared to the production capacity, machines installed and man-power working in the factory. They found the same to be suspicious and informed the Deputy Commissioner, Central Excise, Division-I, who deputed additional staff for the their assistance, in order to physically record detailed stock position of ready to dispatch goods lying in the factory premises.

3. Accordingly, the physical stock of finished goods lying in ready to dispatch condition were taken by the Central Excise officers in presence of two independent panchas and Shri Chandrakant R. Patel, Director of the assessee unit and it was noticed that 13,535 Mtrs. Of HDPE pipes and 8,574 Mtrs. Of PP Pipes (Total 22,109 Mtrs. Of pipes) were lying in stock on 12.04.2013. On being asked by the Central Excise officers to produce documents and records maintained by them for accounting of raw materials received and issued for production and manufacturing of finished goods, Shri Chandrakant Patel informed that they had not maintained any such documents and records. Therefore, the Central Excise officers, with a reasonable belief that the said assessee had intentionally not accounted for the details of production of the said fully finished goods with an intention to evade payment of duty, by way of suppressing production of said finished goods and clearing the same clandestinely, therefore the same would be liable for confiscation under the provisions of Central Excise Act and Rules made thereunder, placed the said 22,109 Mtrs. Of "HDPE/PP Pipes" valued at Rs. 20,11,603/- (approximately, based on prices given by Shri Chandrakant Patel) under seizure. The duty involved on the said seized goods worked out to Rs. 2,48,634/- (Basic duty 12%: Rs. 2,41,392/- Ed. Cess 2% : Rs. 4,828/- S.H. Ed. Cess 1%: Rs. 2,414/-). The details mentioned in Annexure- "A-I" and Annexure- "A-II" to the Panchnama dated 12.04.2013, drawn at the said factory premises. The said finished goods placed under seizure as per Annexure- A-I and Annexure- A-II to the Panchnama dated 12.04.2013, were handed over to Shri Chandrakant Patel under proper Supratnama dated 12.04.2013 for safe custody, in the presence of the panchas. Further, during the physical stock of raw materials, total 8,750 kgs of various Granules and Master Batch were found in the factory premises.

4. Search of the factory premises of Unit-I was also conducted by Central Excise officers on 12.04.2013, in presence of two independent panchas and Shri Jayes Babulal Vyas, Accountant and drew panchnama. During search, the Central Excise officers had verified the stock of finished goods lying in the factory with those recorded in Daily stock Account, however no discrepancies were noticed. During the search, Shri Jayes Babulal Vyas, Accountant informed that they were manufacturing plastics fittings like EG Elbow, Tee, Reducer, Tank Nipple, End Cap, Flanges, Hose Nipple, PP Ball Valve etc. He also informed that the main inputs were HDPE and PP Granules. During the search, Shri Natvarbhai B. Patel, Managing Director of M/s

Chamunda Plastics Pvt. Ltd. also joined the proceedings and he informed that they had applied for a new registration as ECC No. AAEC1973HEM002 for their Unit-II. He also informed that the said Unit-II was engaged in the manufacture of HDPE & PP Pipes and that the inputs required to manufacture HDPE Pipes in Unit-II were separate i.e. virgin grade granules of HDPE and were not the inputs as used in Unit-I; that all records of Unit-II were maintained and updated in the unit. He further informed that all the production and clearance of HDPE/PP Pipes manufactured by Unit-II, though shown in ER-3 returns as manufactured and cleared from this unit, however HDPE/PP Pipes could not be manufactured and cleared from this unit as the machineries required to manufacture HDPE/PP pipes were not installed in this unit. He also informed that they had availed and utilized CENVAT Credit on the inputs that were purchased and used in the manufacture of HDPE/PP pipes cleared from Unit-II (Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad) and Central Excise duty on the clearances, though effected from Unit-II had been included in the Central Excise quarterly returns of this unit. During the physical stock verification, no stock of HDPE pipes or of virgin grade HDPE granules were found.

5. A statement dated 12.04.2013 of Shri Chandrakant Patel, Director of M/s Chamunda Plastics Pvt. Ltd., Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad was recorded under Section 14 of Central Excise Act, 1944 (hereinafter referred to as "CEA, 1944") wherein he confirmed that no documents and records were maintained for accounting of raw materials received and issued for production and finished goods, produced in the factory premises located at Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad; that they were operating one another unit named as M/s Chamunda Plastic Pvt. Ltd. at B-15, Phase-II, GIDC, Naroda, Ahmedabad and the said unit was registered under Central Excise under ECC No. AAEC1973HEM001; that since April 2012, they had shifted and started manufacturing of HDPE/PP pipes at Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad; that they themselves installed the required extruder machine and subsequently they had been undertaking manufacturing activity since April 2012; that they had never prepared any bills for the finished goods manufactured and cleared from Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad; that they had not paid any Central Excise duty for the goods cleared from Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad; that the HDPE pipes which had been shown in the ER-3 returns of unit at B/15, Phase-II, GIDC, Naroda, Ahmedabad as being manufactured and sold from the premises of B/15, Phase-II, GIDC, Naroda, Ahmedabad were manufactured and cleared from unit-II; that they had availed and utilized CENVAT Credit on the inputs that were purchased and used in the manufacture of HDPE/PP pipes cleared from Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad; that appropriate Central Excise duty on the clearances, though effected from Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad had been included in the Central Excise quarterly returns of unit at B/15, Phase-II, GIDC, Naroda, Ahmedabad and no invoices of clearance of HDPE/PP Pipes had been shown from unit-II.

6. 22,109 Mtrs. of different diameters and sizes of HDPE/PP Pipes (13,535 Mtrs. of HDPE Pipe and 8,574 Mtrs. of PP Pipe), valued to Rs. 20,11,603/- seized under Panchnama dated 12.04.2013 had been provisionally released by the Deputy Commissioner, Central Excise, Division-I vide letter F. No. V/05-07/Chamunda/13-14 dated 25.04.2013 on execution of B-11 Bond of Rs. 20,11,603/- backed by security of Rs. 5,03,000/- in the form of Fixed Deposit bearing no. 452116 dated 25.04.2013 of Bank of Baroda, Naroda, GIDC, Ahmedabad.

7. Show Cause Notice proposing confiscation of the said seized goods i.e. 22,109 Mtrs. of different diameters and sizes of HDPE/PP Pipes (13,535 Mtrs. of HDPE Pipe and 8,574 Mtrs. of PP Pipe), valued to Rs. 20,11,603/-; demanding Central Excise Duty of Rs. 2,48,634/- (Basic duty @ 12% : Rs. 2,41,392/- Ed. Cess @ 2%: Rs. 4,828/- SH.Ed. Cess @ 1% : Rs. 2,414/-), involved in the said seized goods; proposing penalty under Section 11AC of the CEA, 1944 and proposing penalty under Rule 25 of Central Excise Rules, 2002 (hereinafter referred to as "CER, 2002) was issued by the Deputy Commissioner, Central Excise, Division-I, Ahmedabad-II vide F. No. V/05-07/Chamunda/13-14 dated 17.9.2013.

8. A statement dated 01.08.2013 of Shri Natvarbhai B. Patel, Director of M/s Chamunda Plastics Pvt. Ltd. was recorded under Section 14 of the CEA, 1944, wherein he inter alia agreed with the contents of Panchnama dated 12.04.2013 drawn at Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad; he also agreed with the contest mentioned in the statement dated 12.04.2013 of Shri Chandrakant R. Patel, Director. He also deposed that they had installed 01 complete Extruder pipe plant at their own during the month of April/May 2012 for manufacture of HDPE/PP Pipes of various diameters and various length; that they had purchased the said extruder pipe plant from M/s Dev Bhumi Machine & Tools, Ahmedabad vide Invoice No, 10 dated 12.04.2012. He further deposed that HDPE/PP Granules and Master Batch were required for manufacturing of HDPE/PP Pipes; that in order to manufacture HDPE/PP Pipes, they require HDPE/PP Virgin Grade granules and Re-Processed granules in the ratio of almost 1:1 and few quantity of Master batch, say 1%; that they would produce the certificate of Chartered Engineer within 10-12 days with regard to consumption of virgin grade HDPE/PP Granules and re-processed granules in the ration of 1:1; that they had manufactured 57,635 Mtrs. of HDPE pipe and 17,504 Mtrs. of PP Pipe during the period from 01.10.2012 to 31.03.2013; that the date wise production of HDPE/PP pipes and consumption of HDPE/PP granules and Master batch for the period from 01.10.2012 to 31.03.2013 had been produced; that they had not maintained production slip; that the said quantity of HDPE/PP pipes manufactured at Unit-II i.e. M/s Chamunda Plastics Pvt. Ltd., Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad had been accounted for in Daily Stock Accounted in their other registered unit (Unit-I) situated at B-15, Phase-II, Near Modern Bakery, GIDC, Naroda, Ahmedabad; that after purchase of extruder pipe plant in the month of April-12 and installed the same during April/May 2012 and after increase of power load by Uttar Gujarat Vij. Co. Ltd. in the month of August-12, they had manufactured sample quantity to obtain ISI certificate and after getting the ISI certificate, they had started commercial production; that he did not remember the exact date of commercial production, but he would verify the records and would submit the details for the prior period viz. for the period from Augsut-12 onwards. He had further deposed that they had not maintained any separate record for receipt of raw materials at Unit-II, but all the raw materials for Unit-I and Unit-II were received at Unit-I only and the purchase invoices were also issued in the name and address of Unit-I only; that they had not maintained issue slips. However, on the basis of quantity produced at Unit-II during the period from 01.10.2012 to 31.03.2013, he stated that they had consumed 46,408 kg of virgin grade HDPE granules average valued to Rs. 46,26,924/-; 12,415 kg of virgin grade PP granules average valued to Rs. 14,08,143/- and equal quantity of re-processed granules and approx. 875 Kg of Master batch average valued to Rs. 1,07,950/- in the manufacturing of HDPE/PP Pipes. He had also produced the details of consumption of both HDPE/PP granules and Master batch consumed during the period from 01.10.2012 to 31.03.2013 and ensured that he would produce the details of consumption of raw materials for the past period and copy of purchase invoices within 2-3 days. He had also stated that all the raw materials have been received at Unit-I and from these, the required quantity of raw materials were sent to Unit-II in local loading tempo, without preparation of any documents and records. He had further stated that since the Unit-I was registered with Central Excise department, they had availed CENVAT Credit of duty paid HDPE/PP Granules and Master batch at Unit-I only and the required quantity of such raw materials were sent to Unit-II without reversal of CENVAT Credit, but in fact the duty paid goods on which CENVAT Credit had been availed was required to be consumed within factory of production as per CENVAT Credit Rules.

9. The said assessee vide their letter dated 01.08.2013 submitted the details of raw materials i.e. virgin grade HDPE granules, virgin grade PP granules and Master batch, on which CENVAT Credit has been availed by Unit-I but consumed at Unit-II for manufacture of HDPE/PP Pipes, during the period from October-2012 to March-2013. The said assessee also vide their letter dated 22.01.2014 stated that there was no production of HDPE/PP pipe during the month of September-2012, however they had submitted the details of raw materials consumed for manufacture of HDPE/PP Pipes for the period from July-12 to August-12 and from 01.04.2013 to 12.04.2013.

10. The assessee failed to submit certificate of Chartered Engineer with regard to consumption/utilization of re-processed granules in the manufacture of HDPE/PP Pipes manufactured at their unit-II. Further during the panchnama proceedings carried out at Unit-I on 12.4.2013, Shri Natvarbhai B. Patel, Director of the unit had categorically informed that the said unit-II was engaged in the manufacture of HDPE & PP pipes and that the inputs required to manufacture HDPE Pipes in Unit-II were separate i.e. virgin grade granules of HDPE and were not the inputs as used in Unit-I. Thus, it appeared that the assessee had consumed only virgin grade HDPE/PP granules in the manufacture of HDPE/PP Pipe. It also appeared that all the raw materials such as virgin grade HDPE/PP granules, Master batch and vacuum sizer required to manufacture HDPE/PP pipe had been received by their Unit-I and the invoices had been consigned to Unit-I only. Further after availment of credit of CENVAT on such quantity of raw materials, the assessee had cleared/transferred required quantity of raw materials to their Unit-II which was an un-registered premise, without reversal of proportionate credit of CENVAT as required under Rule 3(5) of CENVAT Credit Rules, 2004, as well as without preparation of any invoice. Further the assessee had not maintained any records regarding clearance/transfer of raw materials to their other premises. The assessee had never informed the department regarding the practice adopted by them and it was only during the post-facto verification of the newly registered premises (Unit-II), that the mal-practice adopted by the assessee came to light.

11. From the discussion held above, it appeared that M/s Chamunda Plastics Pvt. Ltd., Plot No. B-15, Near Modern Bakery, Phase-II, GIDC, Naroda, Ahmedabad had taken CENVAT Credit on duty paid raw materials received by them and cleared the required quantity of such duty paid raw materials on which CENVAT Credit had been taken to their another unit which was situated at Plot No. 908/5, Phase-IV, Gayatri Mandir Road, GIDC Naorda, Ahmedabad without accounting for in relevant records, without preparation of invoice and without reversal of proportionate amount of CENVAT Credit and thereby contravened the provisions of Rule 3 and Rule 9 of CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR, 2004").

12. It also appeared that, the assessee had never informed the department about the said activity and suppressed the material facts with intent to evade payment of Central Excise duty and at no point of time this facts had been brought to the notice of the Department. But, after passage of one year, it was only which the Central Excise officers visited the factory premises of Unit-II of post-verification on 12.04.2013, searched the premises of M/s Chamunda Plastics Pvt. Ltd., Plot No. 908/5, Phase-IV, Gayari Mandir Road, GIDC, Naroda, Ahmedabad that the evasion of duty by M/s Chamunda Plastics Pvt. Ltd., Plot No. B-15, Near Modern Bakery, Phase-II, GIDC, Naroda, Ahmedabad had come to light. All these acts of contravention on the part of the said unit appeared to have been committed with intent to evade payment of duty by suppressing the facts and therefore the said amount of irregularly availed CENVAT Credit appeared to be demanded and recovered from them under the provisions of Section 11A (1) of the CEA, 1944 by invoking the extended period of five years on account of suppression of facts and contravention of various provisions of CCR, 2004 as discussed hereinabove and suppressing facts with an intent to evade payment of Central Excise duty. It therefore appeared that the amount of CENVAT Credit irregularly availed by M/s Chamunda Plastics Pvt. Ltd., Plot No. B-15, Near Modern Bakery, Phase-II, GIDC, Naroda, Ahmedabad was required to be recovered from them by invoking provisions contained under Section 11 A(4) of CEA, 1944 read with Rule 14 of CCR, 2004 along with the amount of interest recoverable under Section 11AA of the CEA, 1944 read with Rule 14 of CCR, 2004. Further, the said unit had irregularly availed CENVAT Credit on duty paid inputs which had been cleared to their another unit without reversal of credit and without preparation of any invoice and thereby contravened the provisions of Rule 3 and Rule 9 of CCR, 2004 and suppressed the facts with intent to evade payment of duty, therefore rendered themselves liable for penal action under Section 11AC (1) (a) of the CEA, 1944 read with Rule 15 (2) of CCR, 2004.

13. On the basis of information provided by the said assessee regarding details of cenvatable raw materials used in the manufacture of HDPE/PP Pipe at Unit-II on which CENVAT Credit had been availed by Unit-I during the period from 01.07.2012 to 12.04.2013, the Annexure-A to

the SCN had been prepared and it appeared that the said assessee had wrongly availed CENVAT Credit of amount aggregate to Rs. 14,32,796/- (Basic duty Rs. 13,91,064/-+ Education Cess Rs. 27,821/-+ Secondary & Higher Secondary Education Cess Rs. 13,911/-) which was otherwise not admissible to the said assessee as the said quantity of raw materials were in fact not had been consumed within factory of production and had been cleared as such to their another unit without reversal of proportionate amount of CENVAT Credit as provided under Rule 3(5) of CCR, 2004 and without preparation of documents and records as provided under Rule 9 of CCR, 2004. Therefore, it appeared that CENVAT Credit of Rs. 14,32,796/- (Basic duty Rs. 13,91,064/-+ Education Cess Rs. 27,821/-+ Secondary & Higher Secondary Education Cess Rs. 13,911/-) involved on the said inputs cleared to their another unit, was required to be recovered from the assessee in terms of provisions contained under Rule 14 of CCR, 2004 read with Section 11A (4) of the CEA, 1944 along with amount of interest recoverable under Rule 14 of CCR, 2004 read with Section 11AA of the CEA, 1944. It also appeared that on the above grounds, by suppression of facts with intent to evade payment of duty, M/s Chamunda Plastics Pvt. Ltd., Plot No. B-15, Near Modern Bakery, Phase-II, GIDC, Naroda, Ahmedabad had rendered themselves liable for penalty under Rule 15 of the CCR, 2004 read with Section 11AC (1) (a) of CEA, 1944.

14. M/s Chamunda Plastics Pvt. Ltd., Plot No. B-15, Near Modern Bakery, Phase-II, GIDC, Naroda, Ahmedabad was therefore called upon to show cause to the Additional Commissioner, Central Excise, Ahmedabad-II vide Show Cause Notice F. No. V.39/15-43/OA/2014 dated 03.11.2014 as to why:-

- (i) The aggregate amount of irregularly availed CENVAT Credit of Rs. 14,32,796/- (Basic duty Rs. 13,91,064/-+ Education Cess Rs. 27,821/-+ Secondary & Higher Secondary Education Cess Rs. 13,911/-) should not be demanded/recovered by invoking extended period under Section 11A (4) of the Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004;
- (ii) The amount of interest towards wrong availment of CENVAT Credit should not be recovered under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004;
- (iii) Penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of the CENVAT Credit Rules, 2004 should not be imposed upon them.

15. The said SCN was adjudicated vide OIO No. 08/ADC/2015/DSN dated 01.09.2015 wherein the original adjudicating authority confirmed the demand along with interest; imposed equivalent penalty under Section 11AC of Central Excise Act, 1944 read with Rule 15 of the CENVAT Credit Rules, 2004.

16. Aggrieved by the above Order-in-Original, the said assessee preferred an appeal before Commissioner (A). The Commissioner (A) vide Order-In-Appeal No. AHM-EXCUS-002-APP-06-16-17 dated 30.11.2016 upheld the aforementioned Order-in- Original. Aggrieved by the said OIA, the said assessee filed an appeal before the Hon'ble CESTAT. The Hon'ble CESTAT vide order No. A/13033/2017 dated 09.10.2017 set aside the impugned order and the remanded the matter back to the adjudicating authority to re-consider the issue afresh after following the principles of natural justice.

Written Submission:-

17. The assessee submitted reply to the show cause notice by their letter dated 01-05-2015 wherein they, inter alia, submitted that there was no dispute that the inputs were received at unit-I and Cenvat credit thereon availed by unit-I and cleared/transferred to unit-II for the manufacture of HDPE/PP pipe, but it was not correct that this was a mal-practice adopted by them to evade duty. They further submitted that they had discharged duty on pipes manufactured at unit-II out of the raw material cleared/transferred from unit-I.

17.1. They also submitted that as per the Panchnama drawn on dated 12/04/2013 & statement dated 12/04/2013 of Shri Chandrakant Patel, Director of their company, it was discussed at Para 4 & 5 of the notice that the Central Excise duty involved in the goods manufactured and cleared by unit-II had been discharged by unit-I and the details thereof had been reflected in E.R- 3

returns filed by their Unit-I from time to time. The department had never disputed this fact at any time during the course of investigation or proceedings. Thus, there was every reason to believe that the department had accepted this fact that the appropriate Central Excise duty of the excisable goods manufactured and cleared by unit-II out of the raw materials cleared/transferred by Unit-I to Unit-II had been discharged by unit-I and the same had also been categorically admitted by Shri Natwarbhai B. Patel, Managing Director and Shri Chandrakant R. Patel, Director of their company in their statements recorded by the department. They referred to question 15 and answer given to it by Shri Natwarbhai. B. Patel, Managing Director during recording of his statement dated 01.08.2013.

17.2. It was also submitted by the assessee that this was nothing but a procedure of manufacture of goods on job work basis, and there was only a lacuna on their part i.e. not following job work procedure as laid down, which was a procedural in nature and no evasion of duty was involved nor was any irregularity in availing of Cenvat credit. It was also not correct that they had used only virgin grade HDPE/PP granules. It was further submitted that they had utilized reprocessed granules and virgin grade HDPE/PP granules having ratio 1:1. These facts had also been narrated in the statement dated 01/08/2013 of Shri Natwarbhai B. Patel, Director of their company and the department had conveniently overlooked this fact to quantify the amount of Cenvat Credit alleged to had been wrongly availed. They further submitted that the department had taken an average price of raw materials for working out the involvement of Cenvat Credit instead of taking into consideration the price mentioned in the documents and this exercise leads to believe that the demand of Cenvat Credit was based on assumptions / presumptions, hence not sustainable in the eye of law. It was also submitted that they were using re-processed and virgin HDPE/PP granules with ratio of 1:1 in the manufacture of HDPE/PP pipes and the department had conveniently overlooked the same to quantify the amount of Cenvat Credit and demanded duty treating the whole quantity of granules contained in the manufacture of pipes as virgin grade instead of the ratio of 1:1. It is further submitted that while going through the Annexure-A to the show cause notice, it could be seen that the department had taken average value of raw materials which was an evident that the show cause notice issued was on assumption and presumption.

17.3. The assessee submitted that the quantification of Cenvat Credit amounting to Rs. 14, 32,796/- was not correct in as much as if the facts of the case were considered in light of the relevant provisions of Central Excise Act/Rules read with Cenvat Credit Rules, 2004, it was crystal clear fact that unit-II had discharged its functions as Job worker whereas Unit-I had played role as a principal manufacturer. In such position, the principal manufacturer had to follow the procedure as envisaged under Rule 3(5) of the CCR, 2004 read with Notification No. 214/1986- CE dated 1.3.1986. They stated that there was lacuna in following the procedure on their part, but the substantial requirement of law had been complied with. They further submitted that they had cleared/transferred the raw materials to unit-II for the purpose of manufacture of pipes on job work basis and they were under the impression that as the said unit was their own unit and they were going to pay duty at their unit-I, they had not prepare separate documents.

17.4. They further submit that nowhere it was alleged in the whole show cause notice that the HDPE/PP pipes manufactured by them at unit-II had not been received back at unit-I and cleared clandestinely without payment of Central Excise duty by any of their units i.e. Unit - I or Unit II. They stated that neither any evidence nor any allegation made in the impugned show cause notice that the HDPE/PP pipes had not been manufactured in unit-II; that the HDPE/PP pipes manufactured by them at unit-II had been clandestinely removed without payment of Central Excise duty.

17.5. The assessee submitted that during search of the premises of unit-I, neither variation in stock of raw materials was noticed nor any documents recovered which may lead to prove any intention on their part to evade payment of Central Excise duty. They stated that it was nowhere mentioned in the show cause notice that unit-II had purchased raw materials for the manufacture of HDPE/PP pipes.

17.6. They further submitted that the Cenvat Credit amounting to Rs. 14, 32,796/- had been rightly availed in view of the following provisions of Central Excise Act/Rules/Cenvat Credit Rules.

- i. The Cenvat Credit had been taken on the basis of valid duty paid documents as referred to in Rule 9 of the Cenvat Credit Rules, 2004. This fact had not been disputed by the department.
- ii. The Central Excise duty on the finished products manufactured by Unit-II out of the duty paid inputs transferred/cleared by unit-I had been discharged and this issue was also not under dispute.
- iii. Only the credit of the duties referred to in Rule 3 of the Cenvat Credit Rules, 2004 had been taken. No contrary evidence had been brought on record by the department to that effect.
- iv. The department had not brought on records any contrary evidence that the duty paid inputs were not used in the manufacturing of excisable goods which in turn had been cleared without payment of Central Excise duty.

17.7. They submitted that there was no dispute that the duty paid inputs viz. HDPE/PP Granules, Master batch, vacuum sizer etc. were received in their Unit I; that since there was no machinery to manufacture the finished products HDPE/PP pipes in their Unit I, the said inputs were sent to their unit II to carry out the process of manufacture of HDPE/PP pipes and the resultant products after job work i.e. HDPE/PP pipes were again brought to their Unit I and the same were entered in their daily stock register and then cleared from their Unit I on payment of duty under the cover of invoice issued by their Unit I. The said clearances had also been reflected in the ER 3 returns filed for the relevant period by their Unit. They further submitted that the duty paid inputs received by their Unit I were utilized for manufacture of dutiable final product HDPE/PP pipes by Unit-II which were cleared on payment of duty from Unit I. They further submitted that the whole transaction was manufacturing of goods on job work but inadvertently they had not followed the procedure for job work due to not having complete knowledge on procedural formalities to be followed on such job work.

17.8. They submitted that they had used the inputs in question in the manufacture of finished product and cleared the same on payment of duty. Hence, the Cenvat credit availed by them at unit -I was admissible to them. The accountings and Balance sheets were common for both the units; thus the department's allegation that they had suppressed the facts of production/clearance by Unit-I/II with intent to evade duty was not supported by or substantiated by any evidence of removal of final product PVC Pipes from their Unit-I/II.

They relied on the following judgment in support of their submission as above.

- i. *Commissioner of C.Ex, Ahmedabad-II v/s Bharat Foundry as reported in 2009 (246) ELT561(Tri. Ahmedabad).*
- ii. *C.G.Automotive Gears Ltd. Vs Cornmr.C.Ex. & Service Tax, Indore reported at 2014 (308) E.L.T. 546 (in. - Del.)*

17.9 They further submitted that penalty proposed under Section 11AC of CEA, 1944 read with Rule 15 of CCR, 2004 was not sustainable as the assessee never had any intention to evade Central Excise duty; that the Cenvat credit of inputs they had availed and utilized the same in payment of duty while clearing final product manufactured out of the same, the same was admissible to them, hence, they were not required to pay any interest under 11AB/AA of CEA, 1944. They further submitted that at Para 6 & 7 of the show cause notice, it had been mentioned that goods seized at unit II had been released provisionally on execution of B-11 bond and show cause notice had also been issued for the same by the Deputy Commissioner, Central Excise Division - I, Ahmedabad- II. They submitted that the seized goods were not able to confiscation and the separate OIO dated 29.1.2015 passed against them confirming the demand of duty thereon, confiscating the goods and allowing the same on redemption fine an penalty had not

been accepted by them and they had already preferred EA 1 Appeal on 10.4.2015 against the said OIO dated 29.1.2015.

Personal Hearing:-

18. The assessee was accorded an opportunity of personal hearing on 28.12.2018 and 22.01.2019. Shri N.K. Oza, Advocate, appeared on behalf of the assessee on 22.01.2019 and reiterated the written submissions made in the reply dated 01.05.2015 of the said SCN. He also requested for granting one week time for additional submission.

Additional Written Submission:-

19. Shri N. K. Oza, Advocate of the assessee submitted additional defence submission on 24.01.2019, wherein he has mentioned as under:-

1. As per para 13 of the SCN, the issue involved in SCN is that the cenvat credit of raw material used in the manufacture of HDPE/PP pipe at unit -II on which cenvat credit has been availed by Unit-.I during the period from 1/7/2012 to 12/4/2013 it appears that the noticee had wrongly availed cenvat credit of amount aggregate to Rs. 14,32,796/- which is otherwise not admissible to the noticee as the said quantity of raw material were in fact not have been consumed within factory of production and have been cleared as such to another unit i.e. unit No.-II without reversal of cenvat credit.
2. The noticee has two units and one unit i.e. Unit No. I is registered with C.Ex authority having ECC No. AAEECC1973HEM001 situated at Plot No. B-15, Nr. Modern Bakery, Phase-II, GIDC Naroda, Ahmedabad. In this unit, the noticee manufactures plastic fittings like EG Elbows, Tee reducer, Tank Nipple, end cap flanges, hose pipes, PP ball valve etc as per para 4 of the SCN.
3. The unit No. II situating at 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad and the manufacturing activity is HDPE/PP pipes and raw material for this finished goods are virgin grade granules of HDPE and are not the inputs as used in Unit No. I (As per para 4 of SCN). Further all records of unit no. II are maintained and updated in the Unit No. I. He further informed that all the production and clearance of HDPE/PP pipes manufactured by unit No. II at 908/5, Phase-IV, Gayatri Mandir Road, GIDC, Naroda, Ahmedabad though shown in ER-3 returns as manufactured and cleared from this unit i.e. Unit No. I. However, HDPE/PP pipes could not be manufactured and cleared from this unit as the machinery required manufacturing HDPE/PP pipes are not installed in this unit. He has also informed that they have availed and utilized cenvat credit on the inputs that were purchased and used in the manufacture of HDPE/PP pipes cleared from Unit No. II and C.Ex duty on the clearance though effected from Unit No.II have been included in the C.Ex quarterly return of this unit i.e. Unit No. I (this is as per para 4 of the SCN). This was confirmed by Jayes Babula Vyas in his statement dtd. 12/4/2013 and it is also confirmed by Director Shri Chandrakant Patel in his statement dtd. 12/4/2013 in para 5 of SCN.
4. As per para 8 of the SCN, Statement of Natvarbhai Patel Director of Noticee stated that in the middle of para " After purchase of extruder pipe plant in this month of April'2012 and installed the same during April/ May'2012 and after increase of power load by Uttar Gujarat Vij Co Ltd. in the month of August'2012, they have manufactured sample quantity to obtain ISI certificate and after getting ISI certificate they have started commercial production but further stated that all records were maintained in unit No.I for receipt and utilization of raw material for the manufacture of HDPE/PP Pipes (As per para 8) of SCN.
5. Further noticee had also submitted two letter dtd. 1/7/2013, 09/7/2013 to the Preventive deptt. mentioning the same facts as stated above.
6. The sum and substance of the case is that they have not raised challan under Rule 4(5)(a) of CCR,2004 for sending raw material from unit No.I to Unit No.II for

manufacture of HDPE/PP Pipe and the duty was paid on this clearance and ER-3 return of Unit No. I. Further in said SCN, there is no ground that after making HDPE/PP Pipes from raw material transferred from Unit No. I to Unit II is cleared without payment of duty. For not following reason, Noticee relies on judgment reported in 2008 (231) ELT 667 & 2015 (326) ELT 697.

Discussion and Findings:-

20. I have carefully gone through the subject show cause notice, submission made by noticee in their written submission dated 03.08.2015 and 01.05.2015, additional written submission made on 24.01.2019, records of personal hearing, direction of Hon'ble CESTAT and other relevant documents/evidences available on record.
21. I find that the issue involved in the instant case is whether CENVAT Credit of PP Granules, HDPE Granules, Master Batch etc. availed and utilized by the Unit-I is admissible or otherwise, when the said inputs have in fact been used in Unit-II.
22. The undisputed facts in the present case are as under:-
- a. HDPE/PP Pipes were being manufactured only in Unit-II;
 - b. The inputs required to manufacture HDPE/PP Pipes viz. virgin grade granules of HDPE/PP were not being used as inputs in Unit-I;
 - c. CENVAT Credit of such inputs had been taken in Unit-I;
 - d. HDPE/PP pipes were manufactured and cleared from Unit-II for which they did not prepare any invoice/Bill from Unit-II and did not pay Central Excise duty from Unit-II.
23. The assessee has inter-alia submitted that the whole process in the issued involved in the captioned show cause notice is that the goods were manufactured on job work from their sister concerned unit i.e. Unit-II and they have failed to follow the procedure.
24. As the issue involved in the instant case pertains to two different units of same firm, I first of all examine the legal position of two or more different units of the same firm, from the view point of Central Excise law and procedure. I observe that as per the Central Excise Act, 1944 and Rules framed therein, different units of the same firm are required to obtain separate Registration and are separately assessed. Admissibility of any benefit, including CENVAT Credit, is determined separately in respect of each assessee, even though they pertain to same firm.
- 24.1 The legal position from the view point of Central Excise Law in respect of two divisions of same firm has been examined by the Hon'ble High Court of Gujarat in the case of *M/s Sintex Industries Ltd. [2013(287) E.L.T.261 (Guj.)]*. The facts of this case were that it was a company incorporated under the companies Act, 1956, which had, inter-alia, two divisions viz. Textile Division known as Bharat Vijay Mills, holding Central Excise Registration No. AADCS0858EXM005 and Plastic Division holding Central Excise Registration No. AADCS0858EXM004. Both the above units were located on the common ground surrounded by a common boundary wall and adjoining to each other. It was contended by assessee that factory premises of the Textile Division of the assessee and that of its Plastic Divisions being situated in the same compound bounded by a common boundary wall, the electricity supplied to the Plastic Division should be treated to have been supplied not to a different entity but within its own factory. It was also contended that merely because the Plastic Division is separately registered under the Central Excise Rules, such fact will not make it a different factory. However, Hon'ble court held that the appellant itself having described the factory of its Plastic Division as a separate place of business by applying for separate registration and having obtained such separate registration, it is stopped from contending that the said Plastic Division Factory is also within the factory of the present unit of the appellant simply because both the separately registered factories are situated within a common boundary wall.

24.2 In the instant case I find that not only Unit-I and Unit-II are located away from each other, but Unit-I and Unit-II also fall and being assessed to Central Excise duty under different jurisdictional Range Offices. These two separate units are required to obtain separate Central Excise Registration are being separately assessed and admissibility of any benefit, including CENVAT credit, is required to be determined separately in respect of each assessee. Thus, as per settled legal position, Unit-I and Unit-II in this case are separate assessee for the purpose of Central Excise.

25. In the above backdrop, the issue that arises for consideration is whether Unit-I could avail CENVAT Credit in respect of inputs which are not at all used for manufacture of finished goods at Unit-I but which are solely used for manufacture of the finished goods at Unit-II.

The relevant extract of the provisions of Rule 3(1) of CENVAT Credit Rules, 2004 is reproduced below:-

"RULE 3. CENVAT credit. — (1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of—

(a) the duty of excise specified in the Fourth Schedule to the Excise Act, as leviable under the said Act,

paid on-

any input received in the factory of manufacture of final product-----"

25.1. I observe that as per provisions of Rule 3(1) of CCR, 2004, a manufacturer or producer of final products is allowed to take CENVAT Credit of specified duties paid on any inputs or capital goods received in the factory of manufacturer of final product. The Hon'ble Apex Court, in the case of *Maruti Suzuki Ltd. [2009 (240) E.L.T. 641 (S.C.)]*, has inter-alia held that unless and until the input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input.

25.2. Applying the ratio of aforesaid judgment in the present case, I find that Unit-I is admittedly not the factory of manufacture of final product viz. HDPE/PP pipes and therefore, CENVAT Credit of inputs (HDPE/PP Granules, Master Batch etc.) used in manufacture of final products at Unit-II is not admissible to Unit-I. I, therefore hold that CENVAT Credit of inputs not used in or in relation to the manufacture of final product at Unit-I is not admissible to the assessee at Unit-I.

25.3. The assessee has contended that the whole process in the issue involved in the show cause notice is that they got goods manufactured on job work from their sister unit i.e. Unit-II, but they failed to follow the procedure.

The relevant extracts regarding Job work is reproduce below:-

Rule 6 of CENVAT Credit Rules, 2004:- Conditions for allowing CENVAT credit.

(2) (a) The CENVAT credit on inputs shall be allowed even if any inputs as such or after being partially processed are sent to a job worker and from there subsequently sent to another job worker and likewise, for further processing, testing, repairing, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer taking the CENVAT credit that the inputs or the products produced therefrom are received back by the manufacturer, within one hundred and eighty days of their being sent from the factory :

Provided that -----

(3) The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the

manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for three financial years, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker."

25.3.1 In this regard, I also find that Shri Chandrakant R. Patel during the course of Panchnama dated 12.04.2013 carried out at Unit-II and in his statement recorded on 12.04.2013 specifically stated that no documents and records are being maintained for accounting of raw materials received and issued for production and finished goods produced in their factory located at Unit-II. Further, I find that Shri Natvarbhai B. Patel in his statement dated 01.08.2013 stated that all the raw materials have been received at Unit-I and from these, the required quantity of raw materials were sent to Unit-II in local loading tempo, without preparation of any documents and records.

25.3.2 I also find that the noticee has not submitted any documental evidence regarding the Job work and any reconciliation documents of the inputs and the finished goods at the time of personal hearing and in their additional written submission.

25.4. I find that when the law has prescribed elaborate procedure for sending inputs to a job worker for further processing, testing, repair, reconditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, not following any such procedure cannot be described as mere procedural irregularities. As the assessee has not followed any procedure prescribed under Central Excise Act, 1944 and Rules framed there under, it was not possible for the Central Excise department to exercise necessary checks to ensure whether the inputs on which CENVAT credit has been taken were used in or in relation to manufacture of final goods and whether final goods manufactured have been cleared on payment of appropriate Central Excise duty. Unit-II, where inputs were utilized and finished goods (HDPE/PP) were manufactured and from where finished goods were cleared, was not registered with Central Excise department and not correspondence/intimation in this regard has been given to the Central Excise Department.

24.5 In the case of *Indian Oil Corporation Ltd. [2012 (276) E.L.T. 145 (S.C.)]* and *Hari Chand Shri Gopal [2010 (260) E.L.T. 3(S.C.)]*, Hon'ble Supreme Court has held that in case where benefit of exemption notification was admissible subject to following certain procedure prescribed under Chapter-X of Central Excise Rules, 1944, including obtaining of Central Excise Registration under Rule 192 of CER, 1944, and where such procedure has not been complied with, benefit of exemption is not admissible.

25.6 In the case of *Modern Threads (i) Ltd. vs. Commissioner of Central Excise, Jaipur-II [2006(193) E.L.T. (tri-Del.)]*, Hon'ble CESTAT has inter-alia held as follows:-

"4. I have heard both and perused the records. From, the record, I find that the appellants are working under the Central Excise law and procedure, and have availed the Cenvat credit of the duty paid on inputs in their statutory records. It was the duty of the appellants to maintain the stocks in their own factory on which the credit has been availed. It is very clear from the Central Excise law that the duty paid inputs, on which credit has been availed, has to be used in the factory of manufacturer of the final product where they have been received. It was not done so in this case. Even if they wanted to keep the duty paid inputs in their own sister concern, there were provisions in the Central Excise Rules to do so. The appellants have not done so. In the absence of any such permission or correspondence, in my view, the appellants are ineligible for availment of that much amount of the duty as credit. In view of this, I hold that the appellants are not eligible for the credit of the duty on the inputs which were not found in the factory. -----"

25.7 I also find that CENVAT Credit can be transferred from one registered unit to another registered unit strictly under the provisions of CENVAT credit only under following situations:-

(a) Rule 10 of CCR, 2004- Transfer/Shifting of factory.

(b) Rule 10A of CCR, 2004- Transfer of Cenvat credit of additional duty leviable under Section 3(5) of Customs Tariff Act.

(c) Rule 12A of CCR, 2004- Cenvat credit available with one registered premises to other registered premises by Large Taxpayer unit.

Except the above referred situations specifically provided by CCR, 2004, CENVAT Credit in respect of one unit cannot be transferred to another unit. This view has been upheld and clarified in various decisions, as shown below:-

(a) *In the case of Sheil Industries [2011 (263) E.L.T. 436 (Tri- Ahmd.)]*

M/s Disha Industries and M/s Sheil Industries were two separate units engaged in the manufacture of excisable goods. The proprietor of both the units was the same person. M/s Disha Industries was closed down and all the capital goods and inputs were transferred to M/s Sheil Industries, by debiting the CENVAT Credit involved therein. An unutilized cenvat credit to the extent of Rs. 9,74,895/- available with M/s Disha Industries was also transferred by them to M/s Sheil Industries on the ground that as both the units are proprietary units with a common proprietor and as M/s Disha Industries when shifting to the new site of the factory of M/s Sheil Industries, the said unutilized cenvat credit would also get transferred. Hon'ble CESTAT in this case has inter-alia held that merely because both the proprietary units with one common proprietor cannot be held to be the reason for considering both the units as one and the same. As the provisions of Rule 10 of CCR, 2004 did not apply to the facts of the case and there being no other provision for transfer of unutilized cenvat credit, such transfer was held to be in contravention of the provisions of law.

(b) *In the case of Bellary steels & Alloys Ltd. [2010 (262) E.L.T. 609 (Tri-Bang.)]*

The assessee had two units. Unit-I was a holder of Central Excise Registration No. AAACB7491FXM002 for manufacturing of excisable goods falling under Chapter 72 of CETA, 1985. It had also unit-II under Central Excise Registration Certificate No. AAACB7491XM003 for manufacturing of same goods. But Unit-II which was an Integrated Steel Plant, became defunct and never commenced its production right from its inspection. In order to utilize the CENVAT Credit earned by Unit-II, the appelland company informed the Central Excise authorities that the unutilized credit earned by Unit-II would be utilized for payment of duty of excise on the goods cleared form Unit-I.

Hon'ble CESTAT in this case held that undisputedly two different factories which are dealt as Unit-I and Unit-II being registered under two distinct Nos. are different excisable entities. The events enumerated by Rule 10 of CENVAT Credit Rules, 2004 to the case of the present appelland.

25.8 Applying the ratio of aforesaid judgments in the present case, wherein no procedure has been followed and no records/documents have been prepared in respect of inputs sent from Unit-I to Unit-II and neither any invoice/Bill were prepared at Unit-II nor Central Excise duty was paid by Unit-II at the time of clearance of finished goods (HDPE/PP Pipes) from Unit-II, I find that the noticee contention of availment of CENVAT Credit on the inputs sent to Unit-II without any records/documents is not proper and I hold that Unit-I is ineligible for availment of that much amount of the duty as credit in the present case.

26. The second contention of the noticee is that Unit-I has paid Central Excise duty in respect of pipes manufactured and cleared from Unit-II.

26.1 In this regard, I find that one registered unit cannot pay Central Excise duty on behalf of other unit. In the case of *Salora International Ltd. [2008 (227) E.L.T. 470 (Tri-Del.)]*, the Hon'ble CESTAT directed the applicants to deposit a sum of Rs. 3 Crores for hearing of the appeal. Applicants submitted that an amount of Rs. 2.5 Crores had been deposited and the remaining amount stood deposited from the CENVAT Credit from another unit. Hon'ble CESTAT put a specific query to the applicants, whether the unit which had cleared the goods could utilize the credit of another unit for payment of duty. The answer of the applicant was in

negative. In these circumstances, as the demand was made from one unit but the payment was made from CENVAT Credit account of another unit, it could not be accepted as compliance. Therefore, appeal was dismissed for non-compliance to the provisions of section 35F of Central Excise Act. Special Leave to Appeal (Civil) filed against the order of CESTAT was dismissed by Hon'ble Supreme Court, with liberty to the assessee to apply to the Tribunal for extension of time, if so advised. [2010 (255) E.L.T. A48(S.C.)].

27. As regards the submission of the assessee that demand has been made by considering whole quantity of granules contained in manufacture of pipes as Virgin Grade instead of ration of 1:1, I find that though Shri Natvarbhai B. Patel, Director, in his statement dated 01.08.2013 stated that in order to manufacture HDPE/PP Pipes, they require HDPE/PP Virgin Grade Granules and Re-processed Granules in the ratio of almost 1:1 and they would produce the certificate of Chartered Engineer within 10-12 days with regard to consumption of Virgin Grade Granules and Re-processed granules, no such certificate of Chartered Engineer has ever been submitted either during the course of investigation or during adjudication proceedings. Further, the assessee has also not submitted any documentary or other evidence in support of their contention that Virgin Grade Granules and Re-processed Granules are used in the ration of 1:1 in manufacture of HDPE/PP pipes. Therefore, amount of CENVAT Credit wrongly availed by Unit-I, worked out on the basis of information provided by the assessee, by considering entire quantity of Granules used in manufacture of HDPE/PP pipes as Virgin Grade Granules and taking average price of PP Granules and HDPE Granules, is found to be appropriate.

28. I have also gone through the decision of Hon'ble CESTAT, relied upon by the assessee. I find that in the case of Bharat Foundry [2009 (246) E.L.T. 561 (Tri.- Ahmd.)] and GG Automotive Gears Ltd. [201 (308) E.L.T. 546 (Tri- Del.)], Hon'ble CESTAT held that benefit of Notification No. 214/1986-CE is not deniable merely because principal manufacturer/supplier of raw material has not submitted undertaking. However, as already discussed, in the present case, inputs have admittedly not been used at Unit-I but CENVAT Credit on such inputs has been taken and utilized by Unit-I. Therefore, the decisions relied upon by the assessee are not found to be applicable in the facts of the present case.

29. From the forgoing, I find that Unit-I has contravened the provisions of Rule 3 and Rule 9 of CCR, 2004 in as much as it has irregularly availed CENVAT Credit of duty paid on inputs which have been cleared to their another unit without reversal of credit and without preparation of any invoice. Further, the Unit-I has also contravened the provisions of Rule 9(5) of CCR, 2004 which provides that the manufacturer of final product is required to maintain proper records for the receipt, disposal, consumption and inventory of the input in which the relevant information regarding the value, duty paid, cenvat credit taken and utilized, the person from who the input have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT Credit shall lie upon the manufacturer taking such credit.

30. I also find that the assessee has suppressed the material facts from the department and contravened the provisions of CCR, 2004 with intent to irregularly avail Cenvat Credit and thereby evade payment of Central Excise duty. Had the Central Excise department not carried out investigation as discussed above, the irregular availment of Cenvat credit would have remained undetected. The assessee has irregularly availed CENVAT Credit of inputs in Unit-I, even though the inputs were not used in manufacture of finished goods in Unit-I. I find that ignorance of law or bona fide belief cannot be an excuse. With the introduction of self-removal procedure and self assessment of excise duty, a higher responsibility has been cast on the assessee to comply with all the requirements prescribed under the statute. The department cannot, nor are they expected to, find out on their own in all cases what each assessee is doing and whether discharging the correct duty liability. I, therefore hold that Unit-I has irregularly availed CENVAT Credit by reason of suppression of facts and contravention of provisions of CCR, 2004 with intent to evade payment of duty and therefore extended period of five years, instead of normal period of one year, as provided under sub-section (4) of Section 11A of CEA, 1944, read with Rule 14 of CCR, 2004, is correctly invoked in the present case. Accordingly, demand of irregularly availed CENVAT Credit of Rs. 14,32,796/- is liable to be confirmed under Section

11A(10) of CEA, 1944 read with Rule 14 of CCR, 2004 and the assessee is liable to pay the said amount.

31. The assessee is also liable to pay interest at appropriate rate on the aforesaid amount of CENVAT Credit taken and utilized wrongly, as provided under Section 11AA of CEA, 1944 read with Rule 14 of CCR, 2004.


32. I find that the assessee has contravened the provisions of CCR, 2004, as discussed above, and hence they are liable to penalty as provided under Section 11AC of CEA, 1944 read with Rule 15 of CCR, 2004.

33. In view of above discussion and findings, I pass the following order:-

ORDER

- (i) I confirm the demand of CENVAT Credit of Rs. 14,32,796/- (Cenvat Rs. 13,91,064/-+ Education Cess Rs. 27,821/-+ Secondary & Higher Education Cess Rs. 13,911/-) under Section 11A(10) of Central Excise Act, 1944 read with Rule 14 of CENVAT Credit Rules, 2004 and order to recover it from M/s Chamunda Plastics Pvt. Ltd.
- (ii) I order to recover interest at the prescribed rate on the amount of demand of CENVAT Credit confirmed at para (i) above, from M/s Chamunda Plastics Pvt. Ltd., under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944.
- (iii) I impose penalty of Rs. 14,32,796/- (Rs. Fourteen Lakhs Thirty Two Thousands Seven Hundred and Ninety Six only) on M/s Chamunda Plastics Pvt. Ltd. under the provisions of Section 11AC (1) (a) of Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004.
- (iv) If M/s Chamunda Plastics Pvt. Ltd. pays the amount of demand of CENVAT Credit confirmed with interest within thirty days from the date of communication of this order, the amount of penalty shall be twenty five percent of the amount of demand of CENVAT Credit confirmed in terms of Section 11AC(1)(c) of Central Excise Act, 1944. The benefit of reduced penalty shall be available if the amount of reduced penalty is also paid within the aforesaid period of thirty days.

34. Denovo proceedings in reference to Order bearing No. A/13033/2017 dated 09.10.2017 issued by the Hon'ble CESTAT, Ahmedabad are disposed of in the above terms.


(Mahavir Singh Chauhan)
Additional Commissioner
CGST, Ahmedabad North

F. No. V.39/15-43/OA/2014-Denovo

Date- 29.03.2019

By Registered AD Post/Speed Post/Hand Delivery

To
M/s Chamunda Plastics Pvt. Ltd.,
Plot no. B-15, Near Modern Bakery,
Phase-II, GIDC, Naroda, Ahmedabad

Copy to:-

- (1) The Principal Commissioner, CGST, Ahmedabad North
- (2) The Dy/Asst. Commissioner, CGST, Division-I, Ahmedabad North
- (3) The Superintendent, CGST, AR-II, Division-I, Ahmedabad North
- (4) Guard File.