



<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>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. V.28/15-64/Dem/2009

आदेश की तारीख/Date of Order: - 05.02.2019
जारी करने की तारीख/Date of Issue :- 05.02.2019

द्वारा पारित/Passed by:-

एम.एस. चौहान / *M. S. Chauhan*
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 03/ADC/2019/MS

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।

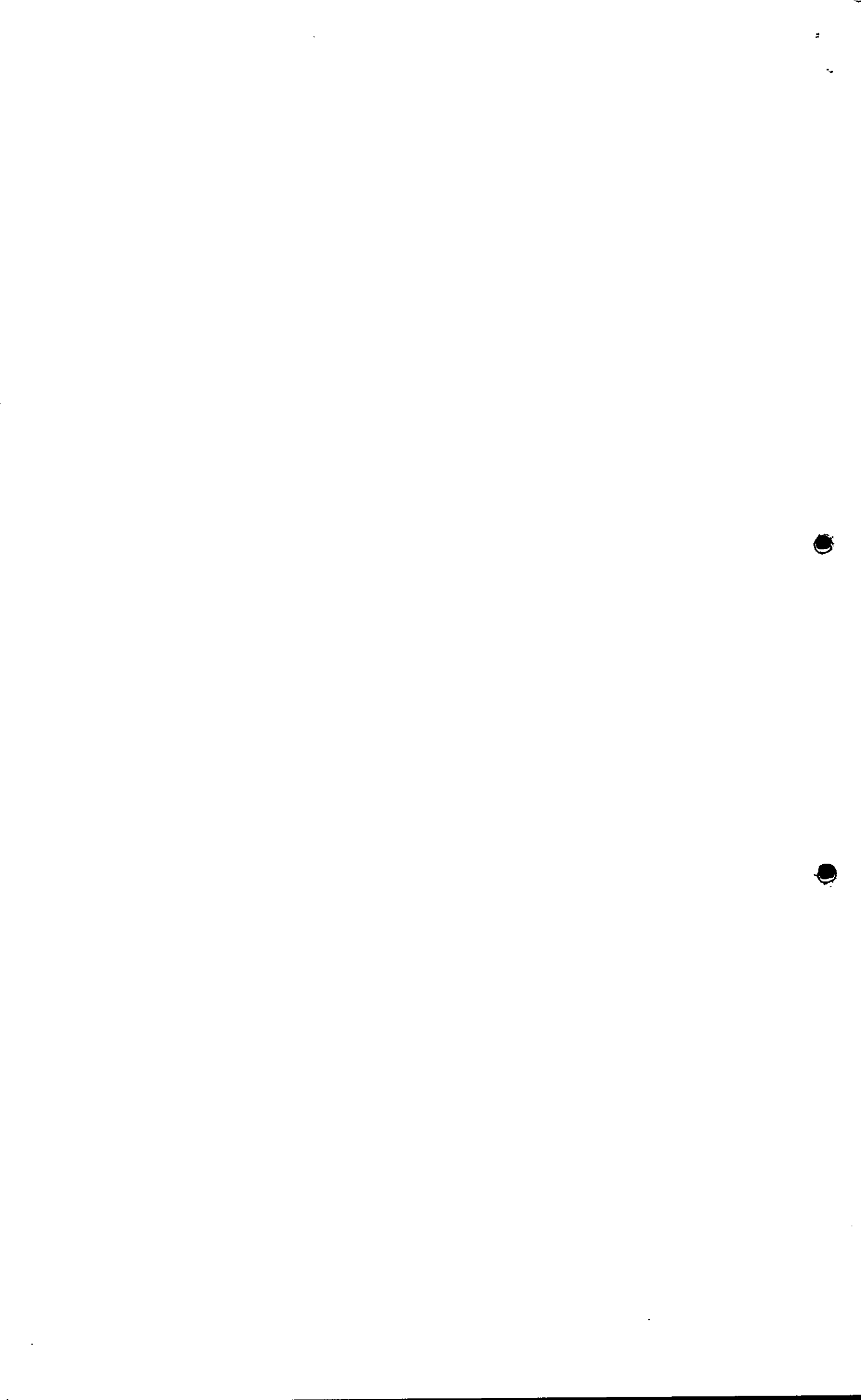
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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: -कारण वताओ सूचना/Show Cause Notice F.No. V.28/15-64/Dem/2009 dated 25.08.2009 issued to M/s Meghmani Organics Ltd., Village Chharodi, Ta- Sanand, Ahmedabad.



Brief facts of the case:

M/s. Meghmani Organics Ltd., Village: Chharodi, Taluka. Sanand, Ahmedabad (hereinafter referred to as 'the said assessee') are engaged in the manufacture of excisable goods, viz. products of Chemical, Organic Chemicals and Pesticides, Insecticides etc., falling under the Chapter 28, 29 and 38 of Central Excise Tariff Act, 1985 respectively. They were holding Central Excise Registration No.AABCM0644EXM002. They were availing the facility of Cenvat Credit on inputs and input services under Cenvat Credit Rules, 2004 and clearing the excisable goods at full rate of duty under Self Assessment Procedure.

2. During the course of audit by CERA, it was noticed that the said assessee had availed Cenvat credit of Service Tax on general services amounting to Rs.70, 60,029/- (including Education Cess) in between March, 2006 to February, 2007, pertaining to the period from June, 2005 to January, 2007 on the basis of Inter Office Memo/Communication issued to the assessee by their Head Office/Corporate Office. However, it appeared that the Head Office of the said assessee had obtained "Input Service Distributor" (for short ISD) Registration on 02.03.2007 only. Therefore, the service tax credit so availed by the said assessee on the basis of Inter Office Memo/Communication issued by their Head Office prior to obtaining ISD Registration appeared to be irregular. The details of the Cenvat credit of Service Tax availed by the said assessee on general services on the basis of Inter Office Memo/Communication issued by their Head Office are as under:

Period	Cenvat credit availed			Credit taken in RG- 23A Pt-II vide Entry No. and date
	Service Tax (Rs.)	Edu.Cess (Rs.)	Total (Rs.)	
4/05 to 2/06	8,81,253/-	17,635/-	8,98,888/-	3455, dated 6.3.06
3/06	4,75,172/-	9,515/-	4,84,687/-	3706, dated 31.3.06
4/06 to 9/06	25,23,254/-	50,484/-	25,73,738/-	2259 & 2260 dated 31.10.06
10/06 & 11/06	16,16,149/-	32,351/-	16,48,500/-	2804 & 2805 dated 31.12.06
12/06	5,10,855/-	10,218/-	5,21,073/-	3111 & 3112, dated 6.2.07
1/07	9,16,808/-	16,335/-	9,33,143/-	3291 & 3292, dated 21.2.07
	69,23,491/-	1,36,538/-	70,60,029/-	

3. Rule 3 of the Service Tax Rules, 2005 (Registration of Special Category of Persons) inserted vide Notification No.27/2005-ST dated 7.6.2005, provides that the Input Service Distributor (ISD) shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be prescribed, by notification, by Board, for registration within a period of thirty days of the commencement of business or the 16th day of June, 2005, whichever is later. Thus, the Head Office can distribute the credit of service tax of input

services to their manufacturing units only after obtaining registration as Input Service Distributor (ISD).

4. From the above, it clearly appeared that registration is a condition precedent for the purpose of taking the credit by the Input Service Distributor. Thus, without obtaining the registration, the Input Service Distributor was not eligible for taking the credit and, therefore, distributing the credit thereof prior to obtaining such registration was illegal and not in accordance with the law.

5. A statement of Shri Manukumar Vasrambhai Mori, of the said assessee was recorded on 26.06.2009 under Section 14 of the Central Excise Act, 1944 wherein he, inter-alia, stated that he is working in the capacity of General Manager (Admn) in the assessee-company since last 14 years and duly authorized to sign all the documents pertaining to Central Excise, Customs and Service Tax; that their company is engaged in the manufacture and sale of pesticides and intermediates for which they are holding Central Excise & Service Tax Registration and availing the facility of Cenvat credit under Cenvat Credit Rules, 2004 and also availing input service credit on various services; that as regards availment of cenvat credit of service tax on general services, he stated that they have availed the cenvat credit of Service Tax in between March,2006 to February,2007 on general services total amounting to Rs.70,60,029/- pertaining to the period April,2005 to January,2007 on the basis of Internal Office Memo/Communication dated 07.03.2006, 29.03.2006 & dated 13.02.2007 issued by their Head Office/Corporate Office prior to obtaining registration of Input Service Distributor; that he clarified that their Head Office/Corporate Office had obtained the Service Tax Registration bearing No.SD/AHD/ISD/148/2005 on 02.03.2007 as Input Service Distributor (ISD) and produced a copy of said Registration Certificate. On being asked he stated that they have already furnished a worksheet showing cenvat credit of service tax availed by them on general services amounting to Rs.69,80,185/- to the CERA Audit Party at the time of audit. However, on going through the said worksheet, it is seen that there is an arithmetical mistake in total calculation and also the period covered is from June, 2005 instead of April, 2005. Thus, the correct figures works out to Rs.70,60,029/- as shown in the worksheet duly produced and signed by him. He further clarified that before applying for Centralized Registration of Service Tax as ISD of their Group of Companies, their manufacturing unit, namely, M/s Meghamani Organics Ltd., Block No.403, 404, 452, 453 and 454, Village Chharodi, Tal. Sanand, Sanand, was having individual Service Tax Registration No. AABCM0644EST001 dated 12.12.2006 for Transport of Goods by Road (GTA) and Business Auxiliary Services, issued by the Superintendent of Service Tax, Division-II, Ahmedabad. That as regards availment of above input service credit, he stated that their manufacturing unit is located nearly 42 kms away from Ahmedabad in rural areas and all business transactions are being dealt with by their Head Office at Ahmedabad and as such they have bonafidely availed the input service credit on the basis of Inter office Memo issued by their Head Office at Ahmedabad; that the input services have been used in relation to manufacture of finished goods; that on being further asked, he stated that they have at no point of time intimated to the Central Excise jurisdictional Officers in respect of above credit availed by them as there is no need to do so, however, they have shown consolidated figures of input service credit taken in

the returns filed by them from time to time with the department.

6. On going through the documents i.e. Inter Office Memo/Communication, letters dated 07.03.2006, 29.03.2006 and 13.02.2007 enclosed therewith Service Tax Credit Reports pertaining to the period 01.04.2005 to 31.01.2007, on the basis of which, the said assessee has availed the Credit of Service Tax in respect of General Services, it is observed that the said Inter Office Memo/Communication does not contain the particulars viz. Name, address and Registration Number of the Service provider, SI. No. and date, Name & address of the Input Service Distributor, the name and address of the recipient to whom the Service Tax credit is distributed etc. but it contains the-name, such as, Meghmani Organics Limited only. Therefore, the Inter Office Memo/Communication letters cannot be considered as valid documents for the purpose of distributing the credit of Service Tax to the subject assessee. Also it appeared that they have taken belatedly credit of Service Tax, which otherwise is not admissible to them.

7. From the foregoing, it appeared that the said assessee had wrongly availed the service tax credit on the basis of Inter Office Memo/Communication issued by their Head Office prior to obtaining registration of "Input Service Distributor" by their Head Office. Thus, the Cenvat credit of Service Tax amounting to Rs.70, 60,029/- availed & utilized by them was irregular & inadmissible in as much as they had contravened the provisions of Rule 7 of Cenvat Credit Rules, 2004 and Rule 3 & 4 of Service Tax (Registration of Special Category of Persons) Rules, 2005. Therefore, the said Cenvat Credit of Service Tax wrongly taken by them, is liable to be recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944. Also interest, at applicable rate, is required to be charged and recovered under Section 11AB of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004. Further, as the fact of taking Cenvat Credit of Service Tax on the basis of inter office memo/communication issued by their Head Office prior to obtaining registration of "Input Service Distributor" was not disclosed to the department, it appeared that the said assessee had deliberately availed the Cenvat Credit of Service Tax by reason of suppression of facts and in contravention of Rule 7 and Rule 9 of the Cenvat Credit Rules, 2004 and Rule 3 & 4 of Service Tax (Registration of Special Category of Persons) Rules, 2005 with an intent to take Cenvat Credit which otherwise is not admissible to them and therefore, extended period of five years provided under proviso to sub section (1) of Section 11A of the Central Excise Act, 1944 was attracted in this case.

8. As the said assessee had wrongly taken Cenvat Credit of Service Tax in contravention of Rule 7 and Rule 9 of the Cenvat Credit Rules, 2004 and Rule 3 & 4 of Service Tax (Registration of Special Category of Persons) Rules, 2005, the assessee have rendered themselves liable to penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

9. Accordingly, a Show Cause Notice dated 25.08.2009 was issued to them asking them to show cause as to why:-

- (i) Cenvat Credit of Service Tax amounting to Rs.70,60,029/- (Rupees Seventy Lakhs Sixty Thousand Twenty Nine only) (details as per Annexure-A to the Show Cause Notice) should not be denied and recovered from them under Rule 14 of Cenvat Credit

Rules 2004 read with proviso to sub-section (1) of Section 11A of the Central Excise Act, 1944;

- (ii) Interest at the appropriate rate should not be charged on the aforesaid amount of Rs.70,60,029/- under Section 11AB of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules; and
- (iii) Penalty under Rule 15(4) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 should not be imposed on them.

Written Submission:-

10. The said assessee vide their letter dated 23.11.2009 and 12.10.2018 submitted their defence submission. In their written submissions, it is contented that SCN has been issued on 25.08.2009 for the Cenvat Credit taken for the period from March-2006 to February-2007 i.e. beyond the period of one year from the date of credit taken, therefore, the demand is hit by law of limitation; that they have already shown the credit taken in their periodical return submitted to the department; that their unit was audited by Audit Party under EA-2000 in the year 2006-07, 2007-08, 2009-09 but the same point was not taken by audit party, therefore, there was no suppression; that they had applied for registration for Input Service Distributor in the year 2005 but the registration was issued to them in the year 2007.

10.1 He relied upon the following Case Laws in support of his contentions:-

- 1) 2009(240) ELT 728 (Tri. Ahmd.) in the matter of Commissioner of Central Excise Vapi V/s. Jindal Photo Ltd.
- 2) 2009(16) STR 418 (Tri. Ahmd.) in the matter of Commissioner of Customs & Central Excise, Vapi, V/s. DNH Spinners.
- 3) 2010 (20) STR 513(Tri.Del) in The CESTAT Principal Bench, New Delhi in the matter of Comm. Of Cus. & C. Excise, Indore V/s. Grasim Industries Ltd.
- 4) 2014 (34) STR 751 (Tribunal Del.) in the matter of Commissioner Of Central Excise, Chandigarh, V/s. Anand Nishikawa Co. Ltd.
- 5) 2015 (39) STR 861(Tribunal Del.) in the matter of Commissioner Of Central Excise, Jaipur, V/s. Balkrishna Ind. Ltd.
- 6) 2015 (38) STR 830 (Tribunal Mumbai) in the matter of Commissioner Of Central Excise, Mumbai- V, V/s. Mahindra & Mahindra Ltd.
- 7) 2014 (36) STR 815 (Tribunal Del.) in the matter of Commissioner Of Central Excise, Noida, V/s. Moser Baer India Ltd.
- 8) 2017(5) GSTL 302(Tri. Hyd) in the matter of Commr. Of C. Ex., Cus & ST., Hyderabad-1 V/s. Fenoplast Ltd.
- 9) 2013 (288) ELT 291(Tri. Ahmd.) Doshion Ltd. V/s. Comm. Of C. Ex. Ahmedabad.

10.2 They further mentioned that credit taken by them is available to them, the proposal of recovery thereof with interest is not sustainable; that this is a question of interpretation of statute and not evasion of duty; that the proposal for imposition of penalty in the show cause notice is

and not evasion of duty; that the proposal for imposition of penalty in the show cause notice is also not sustainable in view of case law as reported in 2009 (13) STR 178 (Tri.-Ahmd.); that even otherwise penalty is not imposable in view of the Tribunal decision in the case of M/s. Rajhans Metal Pvt. Ltd. 2007 (8) S.T.R. 498 (Tri. - Ahmd.) wherein it is held that penalty is not imposable as issue involves interpretation; He further stated that penalty is a quasi-criminal matter and therefore, it could be resorted to only in cases where malafide intention or guilty conscious of an assessee was established; that since it is required to be established that action of an assessee was deliberate in the matter of penalty, this measure is to be resorted to sparingly; that in the facts of the present case where no suggestion or allegation of any malafide intention to evade payment of duty is even made out against the assessee, there is no justification in the imposition of penalty; that the matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the assessee was guilty to conduct contumacious or dishonest and the error committed by the assessee was not bonafide but was with knowledge that the assessee was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief; even a token penalty would not be justified. He further stated that the action for imposition of penalty is also bad in law *inasmuch* as there is no violation of any nature committed by them; that they have not acted dishonestly or contumaciously and therefore, even a token penalty would not be justified; that there is also no specific reason or ground spelt out, thus, penalty could not be imposed on hearsay or presumptions. He further relied on the judgment reported at 1991 (55) E.L.T. 433 (S.C.) *IN THE SUPREME COURT OF INDIA* in the matter of *UNION OF INDIA Versus KAMLAKSHI FINANCE CORPORATION LTD.* wherein it is held that "*Strictures passed by Bombay High Court against two Assistant Collectors (for flouting of Collector Appeals' order on classification based on a Tribunal judgment against which department had gone in appeal to Supreme Court) upheld by Supreme Court - Department directed to pay utmost regard to judicial discipline and give effect to orders of higher appellate authorities which are binding on them*" and contented that in the light of ratio of the above fact and decisions they have rightly taken the credit and the same is not required to be recovered as proposed in the Show Cause Notice. Hence the Service Tax credit availed may be allowed and the Show Cause Notice is to be vacated in the interest of justice.

Personal Hearing :-

11. The assessee was afforded an opportunity of personal hearing on 11.12.2018, 21.12.2018 and 10.01.2019. Shri M. V. Mori representative of the assessee appeared before me for hearing on 10.01.2019. He reiterated the contents of written submission dated 23.11.2009 and additional submission dated .12.10.2018 submitted before previous adjudicating authority and also requested to drop the SCN.

Discussion & Findings:-

12. I have carefully gone through the facts of the case, submissions made by the assessee in their written submissions.

13. The short issue to be decided in this case is

(1) Whether the HQ office of the party M/s Meghmani Organics Ltd , not registered with the department as Input Service Distributor under the provisions as envisaged under Notification No. 26/2005-Service tax , dated 7.6.2005 issued in terms of sub-section (2) of Section 69 of the Finance Act, 1994, is eligible to issue any document to pass on the credit to their manufacturing unit and whether on the basis of these documents cenvat credit be allowed?

(2) Whether a manufacturer is eligible to avail and utilize cenvat credit on the basis of the documents which are not prescribed under the provisions of Rule 9 of the Cenvat Credit Rules, 2004?

(3) Whether cenvat credit be allowed on the basis of documents which do not contain the statutory information as per the provisions of Rule 4A of the Service Tax Rules, 1994?

14. I find that the then Commissioner, Central Excise, Ahmedabad-II vide letter dated 23.02.2010 had contested the Revenue Para 1 of LAR No.305/09-10, issued by CERA, based on which the present Show Cause Notice has been issued to the assessee. The contention of the then Commissioner was that the procedure adjusted by the assessee is not against the law and hence, by applying the ratio of CESTAT decision in the case of Commissioner of Customs & C.Ex, Vapi Vs. DNH Spinners reported at 2009 (16) STR 418 (Tri-Ahmd), credit cannot be denied on technical grounds i.e. that the documents are not in the name of the assessee factory but issued in the name of the Head Office situated elsewhere; and where there is no dispute about the input service been received by the assessee, there should be no denial of substantive benefit on procedural grounds. There are a plethora of other judgments by various Courts holding that modvat is not deniable when documents are in the name of the Head Office instead of the unit , but goods were received in the unit.

15. I also find that Audit Committee Meeting was held on 6.12.2013 for the discussion and settlement of CERA/CRA audit paras with the officers of the Principal Director of Audit (Central), Ahmedabad and as per the Minutes of the Meeting of the said Audit Committee Meeting, it was informed that the Revenue Para 1 of said LAR No.305/09-10 has been closed on 29.3.2012.

16. I also find that the then Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II Commissionerate, under whose jurisdiction the said assessee was falling at the relevant time, vide his letter dated 25.08.2015 has also verified that Cenvat Credit is admissible to the party.

17. I also rely on the judgment of the Hon'ble High Court of Allahabad in *Central Excise Appeal No. 704 of 2012 in the case of Commissioner, Customs & Central Excise, Ghaziabad vs*

Shri Ram Piston & Rings wherein interalia the Hon'ble Court has decided that the head office of the party, not registered with the department under the provisions as envisaged under Notification No. 26/2005-Service tax dated 07.06.2005 issued in terms of sub section (2) of Section 69 of the Finance Act, 1994 is eligible to issue any document to pass on the credit to their manufacturing unit and on the basis of these documents CENVAT credit should be allowed.

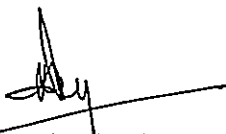
17.1 The Joint Commissioner of Central Excise, Ghaziabad Commissionerate vide letter F. No. I (10)/Legal/GZB/SRPRL/14/12 dated 23.01.2019 has informed that order dated 22.11.2017 of the Hon'ble Court in Central Excise Appeal No. 704/2012 has been accepted by the competent authority.

18. I find that the ratio of judgment of CESTAT in the case of *Commissioner of Customs & C.Ex, Vapi Vs. DNH Spinners reported at 2009 (16) STR 418 (Tri-Ahmd)*, and ratio of Judgment of the Hon'ble High Court of Allahabad in *Central Excise Appeal No. 704 of 2012 in the case of Commissioner, Customs & Central Excise, Ghaziabad vs Shri Ram Piston & Rings* are squarely applicable in the present case as there is otherwise no dispute about the input services received by the assessee, therefore, substantive benefit cannot be denied on the procedural grounds like credit availed before ISD registration was taken. Also, in view of closure of Revenue Para 1 of LAR No. 305/09-10 by CERA and the then Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II Commissionerate's verification report that Cenvat Credit is admissible to the party, I find no merit in the demand in the Show Cause Notice and I hold that the same is not tenable.

In view of the above, I pass the following order:

ORDER

19. The Show Cause Notice F.No.V.28/15-64/Dem/2009, dated 25.8.2009 is hereby vacated.


(Mahavir Singh Chauhan)
Additional Commissioner,
Central GST & CX,
Ahmedabad-North.

By Regd. Post AD./Hand Delivery

F.No: V.28/15-64/Dem/2009

Date: 05.02.2019

To,

M/s Meghmani Organics Ltd,
Village: Chharodi,
Ta: Sanand, Dist. Ahmedabad.

Copy to :

1. The Commissioner of CGST & C. Excise, Ahmedabad-North (Attention RRA Section)
2. The Deputy/Assistant Commissioner of CGST & CX , Div-IV,
Ahmedabad North
3. The Superintendent, CGST & CX, AR-I, Division-IV, Ahmedabad North.
- ✓ 4. Guard File.

