आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद 380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009

फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.No. V.38/15-45/OA/2015

आदेश की तारीख़ / Date of Order : 03.10.2019

जारी करने की तारीख़ / Date of Issue : 03.10.2019

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR –01/2019-20

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पीटल कम्पाउन्ड , अहमदाबाद -380016 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal 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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम

एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।(

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notice bearing No. **V.38/15-45/OA/2015** dated **27.04.2015** issued to **M/s. Meghmani Organics Limited**, Plot No. 402, 403, 404 & 452, Village Chharodi, Tal. Sanand, Dist. Ahmedabad.

Brief Facts of the case:

M/s. Meghmani Organics Limited, situated at Plot No. 402, 403, 404 & 452, Village Chharodi, Tal. Sanand, Dist. Ahmedabad (hereinafter referred to as "the assessee") is engaged in the manufacture of excisable goods i.e. Pesticides and intermediates falling under Chapter No. 38 of CETA, 1985 and availing benefit of Cenvat Credit on Inputs as well as Capital goods. They are having Central Excise registration under ECC No. AABCM0644EXM002.

2. Based on intelligence received and developed by the officers of Central Excise (Preventive) Ahmedabad-II, a search was conducted by the Central Excise officers at the factory premises of the assessee on 20.11.2013 and records/documents such as Daily stock account, sales invoices, ARE-1s, purchase invoice, cenvat credit account, etc. for the period from August-2011 to September-2013, were withdrawn. The investigation revealed that M/s. Meghmani Organics Ltd (M/s. MOL), Plot No. 402, 403, 404,452, Village: Chharodi, Taluka: Sanand, District: Ahmedabad, have indulged in evasion activities by way of simply affixing labels on the material procured from M/s. Meghmani Organics Ltd, Ankleshwar and cleared the same for export under claim of rebate under Rule 18 of Central Excise Rules 2002 and treated the goods as manufactured goods.

3. On verification and scrutiny of documents and records, it was found that the assessee had completely ceased their manufacturing activity since August 2011 on account of closure notice issued by Gujarat Pollution Control Board, Gandhinagar. After closure notice, they had stopped the production activities in their unit. However, they were showing purchase of finished product Cypermethrin Technical (Chapter Heading 3808 91 37) duly packed in M.S. drums on payment of Central Excise duty from their sister unit M/s. MOL, Ankleshwar. The goods were already finished goods and ready for marketing at the time of dispatching from Ankleshwar. At their Chharodi unit, the assessee had just pasted the labels showing details of product exported and name of manufacturer and they only painted (by screen painting) some details such as name of product, weight etc on M.S. drums. Except these activities, the Chharodi unit of the assessee, is not doing any other manufacturing activities, as the product is already finished and marketable at the time when the goods were received at the Chharodi unit. Moreover the activity of manufacturing had already been ceased in Chharodi unit and they were not indulged in any manufacturing activities at this premise. The goods were being stuffed at Chharodi factory and exported from this place just to take the benefit of export i.e, by way of showing it as manufactured goods in their factory. In fact, the product received by Chharodi unit was already marketable and no further activity had been undertaken by the assessee to make it marketable which constitute as *deemed manufacture in light of Chapter Note 9 to Chapter 38 of the Central Excise Tariff Act, 1985 and Section 2 (f)(iii) of the Central Excise Act, 1944.*

4. The definition of manufacture as stipulated under section 2(f) of the Central excise Act, 1944 and Chapter Note 9 to chapter 38 of the Central Excise Tariff Act, 1985 is reproduced below:-

(I) ***Section 2 (f) of the Central Excise Act, 1944.***

"Manufacture" includes any process,

(i) Incidental or ancillary to the completion of manufactured product

(ii) Which is specified in relation to any goods in the Section or Chapter of the [the First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting [manufacture; or]

(iii) Which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers

including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the customer,]

(2) *Chapter Note 9 to Chapter 38 of the Central excise Tariff Act, 1985:-*

In relation to products of heading 3808, addition of chemicals and other ingredients like: inter carriers or solvents, surface active, dispersing and stabilizing agents, emulsifiers, wetting and dispersing agents, deodorants, masking agent, attractants and feeding stimulants to pesticidal chemicals in concentrated form. [labeling or relabeling of containers intended for consumers or repacking] from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to " manufacture".

5. In the present case, Meghmani Organic Limited, Chharodi had not undertaken the activity of packing or repacking from bulk pack to retail packs to render the product marketable since they had cleared the product as such (duly packed in M.S.drums and cleared in the same condition) except merely pasting\affixing label and painting of product details on M.S.drums at the time of clearance from MOL Chharodi as shown below:-

- ZENTACYPERMETHRIN TECHNICO FMC
- MATERIAL SKU
- BATCH NO :
- DATE OF MANUFACTURE:
- DATE OF EXPIRY:
- GROSS WEIGHT:
- NET WEIGHT:
- UN NO:
- GLASS NO:
- DRUM NO:
- COUNTRY OF ORIGIN:

5.1 It was also observed that the only process or activity carried out in Meghmani Organic Limited, Chharodi was merely putting labels and painting on drums had no purpose in order to cover such activity *as deemed manufacture in light of chapter Note.* It is an evident that there is no labeling or relabeling or any other process done by the M/s. as mentioned in Chapter Note 9. It was found that merely putting labels on M. S. drums did not amount to manufacture as the same did not change the name or description of goods what they had received from Meghmani Organic Limited, Ankleshwar and to make the product marketable to the consumer (which is already marketable) as per Chapter Note 9 of Chapter 38 of the Central Excise Tariff Act, 1985. Merely painting the description of product, gross/net weight, drum No., country of origin, date of manufacturing and expiry date, batch No. etc. on the M.S.drums was not labeling and make the product marketable. The expression used in Chapter Note with regard to any process or activity should be such that it renders its marketability which the product did not possess earlier. In the present case the product do process the marketability, and the activity of merely pasting labels or painting on drums does not cover under the Chapter Note.

6. **It is also evident that Meghmani Organic Limited, Chharodi cannot make manufacturing activities due to "Closure Notice" issued by Environment Engineer, Gujarat pollution Control**

Board, Gandhinagar on dated 03.08.2011, who had issued the direction under Section 33 of the Water (Prevention and Control of Pollution) Act, 1974 as under:-

- **To prohibit them from the manufacturing of Pesticides (Technical) and Formation of Pesticides etc.**
- **To close the operation of industrial plant till the consent of the Board is obtained and adequate treatment plant is installed and efficiently operated.**
- **They shall also stop use of captive power/D.G. source etc.**
- **To direct the concerned authority to stop supply of electricity and water.**

In view of the above, it is found that the activity of merely pasting labels and painting of details of product exported on M.S.drums does not amount to manufacture in light of Section 2 (f) of the Central Excise Act, 1944 and Chapter Note 9 of the Chapter 38 of the first Schedule to the Central Excise Tariff Act, 1985. Since there is no manufacturing activity, the Credit availed by them is not admissible to the assessee, which is required to be recovered from them.

7. The statement of Shri V.R. Mori, General Manager (Commercial & Administration) was recorded on 20.11.13 wherein he interalia stated that:

(i) the production activity had been stopped since, Aug. 11 due to closure notice of GPCB;

(ii) that they were purchasing duty paid "Cypermethrin Technical" and availed CENVAT credit;

(iii) that on receipt of "Cypermethrin Technical" in their unit, they were doing weighment of the material, stenciling the screen, put the label/re-label on the MS drum of "Cypermethrin Technical" for the product marketable;

(iv) that they are not maintaining the batch register. However, the details received from MOL, Ankleshwar, the lot No., date of manufacture and date of expiry have been mentioned on the label affixed by them on MS drums meant for export;

(v) **that they were not given any new batch No./Lot Number on the said goods cleared meant for export from their unit, since, the said details have already been given by the said supplier by way of paper slip pasted on the drums and the said slips were removed by them and according to details mentioned on the said removed slips, they have given the details of the Lot numbers on the goods manually.**

8. A Statement of Shri Manukumar Vasrambhai Mori, the General Manager (Commerce/Administration of M/s. Meghmani Organics Limited, Plot No. 402, 403, 404 & 452, Village Chharodi, Tal. Sanand, Dist., Ahmedabad was recorded on 02.12.2014, under provisions of Section 14 of the Central Excise Act, 1944, under which he interalia stated as under:

(1) that the assessee is registered with the Central Excise having ECC No. AABCM0644EXM002, since 1995 and availing Cenvat Credit facility.

(2) he agreed with his earlier statement dated 20.11.2013 recorded under Section 14 of the Central Excise Act, 1944

(3) that Gujarat pollution Control Board had given the closure notice for manufacturing activities in respect of the said unit from August- 2011 and as such their Chharodi unit had stopped the manufacturing activities since then.

(4) They were also exporting their final product under Bond as well as under claim for rebate.

(5) As regards the activities done in the above unit as Chharodi during August-2011 to June-2013, he interalia stated as under:

(a) The assessee received CYPERMETHRIN TECHNICAL, ZETA CYPERMETHRIN TECHNICAL,PERMETHRIN TECHNICAL FALLING UNDER CHAPTER HEADING 3808 from their Ankleshwar unit during August-2011 to June-2013

(b) The assessee received the goods on sale/purchase basis under central excise duty paid invoices.

(c) The materials CYPERMETHRIN TECHNICAL, ZETA CYPERMETHRIN TECHNICAL, PERMETHRIN TECHNICAL were bought from Ankleshwar unit in MS Drums by putting temporary removable labels in various trucks. All chemical processes were done by Ankleshwar Unit as per the process given by the assessee. After unloading the material, they were putting the sticker labels as approved by Brazilian agriculture department, indicating the registration number of Meghmani Organics Ltd., Chharodi as well as usage instruction with hazard precaution and material content , Hazardous Labels, Stencil the drums by paint, Putting Bung on Drums with their logo, Batch No, Mfg. Date., Expiry Date Order No. Etc. The cargo was inspected by surveyor for survey for proper follow up of instruction as per order. Thereafter the assessee were doing pallatisation/re-pallatisation in their unit at Meghmani Organics Ltd., Chharodi and load the container for further exportation.

(6) The goods were fully chemically processed by Ankleshwar unit and packed in M.S Drums. **But as per statutory provisions they (Ankleshwar unit) cannot sale the product to foreign customer as they were not having registration for export in Brazil i.e. final destination of the customer require for sale.**

(7) Batch no. was given by their Ankleshwar unit.

(8) The details of Batch No., Net Weight, Mfg. Date., mentioned on the packing of goods were received from their Ankleshwar Unit.

(9) As the material/the goods were received from Ankleshwar unit by the assessee on purchase basis, the same were accounted in RG 23 Pt.-I.

(10) Excise Invoice, Delivery Challan, Quality Control Report, L.R. Copy.,were accompanied with the goods received from their Ankleshwar Unit.

(11) Cenvat Credit was taken by the assessee on the goods received from their Ankleshwar Unit, under Cenvat Credit Rule 3 of Cenvat Credit Rules, 2004.

(12) The batch no.s were not given at Chharodi. They were showing the batch number of Ankleshwar unit.

(13) The above work were carried out by 8-10 labours including Forklift Driver. All the persons are on role as well as on monthly payment voucher payment basis.

(14) They were using the material sticker labels, screen stencil for painting the shipping marks on the drums, Bungs, Shrink Film for wrapping of drums, palates etc. The assessee was taking this material on record but they were not availing Cenvat Credit on the above.

(15) No Cenvat Credit was taken on the materials utilized for the activities done at Chharodi unit during the above period. However the assessee had taken the cenvat credit on the material purchase from their Ankleshwar unit.

(16) Regarding whether the details on the goods mentioned by the Ankleshwar Unit on the M.S.drums/packing of the goods, are changed at Chharodi unit, he stated that Ankleshwar unit was putting the details of material name, Net weight, and Batch number on the removable temporary label; and at the Chharodi unit, they were putting the party brand name label in Brazilian Language with

Agriculture registration number, Hazard Label, Screen Stencil by painting, Bung of Drum with MOL Logo, Shrink wrapping and palletizing the drums.

(17) Regarding, under which category and how, their manufacturing activities falls, out of three categories given in above Chapter note 9 of Chapter 38 of CETA, 1985, the assessee has stated that Labeling or relabeling of containers intended for consumers and the adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture. As the pesticides are strictly used as per the prevailing law in all over world, each country are giving specific approval (agriculture Dept.) for usage of pesticide and import of pesticide from approved source. The above products were approved by Brazilian Agriculture Department as approve source from Meghmani Organics Ltd. Block No. 401,403,404 & 452 Village: Chharodi, Tal.: Sanand, Dist. Ahmedabad,382170- INDIA as per the copy of registration certificate issued by Agriculture Ministry, Brazil. The copy of the above three products which are exported by Chharodi unit was submitted by them.

(18) Regarding whether the goods become marketable after doing the activities by their unit at Chharodi or it was already marketable at the time of receipt of the goods from their Ankleshwar Unit, he answered the goods do not become marketable after the activities at Chharodi unit. It is only marketed in Brazil after putting labels of Chharodi unit only. No one can sale the product without approval number as mentioned in label and approval by authority in Brazil. The approval are given only after study of haz. Data and verification of content as per the standard specification approved by the Government for the application on specific crops.

(19) Material was exported Under Bond as well as Claim for Rebate under Duty Draw Back Scheme.

(20) There is contract between the assessee and their customer abroad.

(21) The goods are exported to their customers abroad as per the contract and approved specification of the material.

(22) There is no such contract to export from Ankleshwar unit

(23) The goods are ultimately exported from Nhava sheva under self sealing procedure.

(24) When asked to give the specific reason as to why the goods were not exported from their Ankleshwar unit, when the goods already manufactured by them, packed in M S Drum and all other details meant for export was done by them and goods were already manufactured by them and were marketable as required by the customer at abroad; and the Port of export was near to Ankleshwar, he stated that Ankleshwar unit was not approved registration source for Export in Brazil hence they were not exporting directly from Ankleshwar Unit.

(25) On being asked the benefits to their unit to bring the finished goods from their Ankleshwar Unit when the transportation charges to be paid double and the transportation expenses could have been saved by exporting the finished goods from Ankleshwar Unit rather than bringing to their Chharodi unit, when there was technically no manufacturing activities required to be done, he stated that it is not legally allowed to export the goods directly from Ankleshwar.

9. Further statement of Shri Manukumar Vasrambhai Mori, the General Manager of the assessee was recorded on dated 06.04.2015, wherein he interalia stated that they have taken Cenvat Credit on purchase of Cypermethrin Technical, Zeta Cypermethrin Technical, Permethrin Technical from M/s Meghmani Organics limited, Ankleshwar for the period from August-2011 to June-2013 for Basic Excise duty of Rs. 9,38,73,935/-, Education Cess of Rs. 18,77,479/- and Higher Education Cess of Rs. 9,38,739/- a total duty amounting to Rs. **9,66,90,153/-** on value of purchase price of Rs.80,64,56,128/-.

10. The investigation and records of the case revealed that the activities done by M/s. Meghmani Organics Limited, Chharodi did not amount to manufacture in light of Section 2(f) of the Central Excise Act, 1944 read with Chapter Note 9 of Chapter 38 of the first schedule to the Central Excise Tariff Act,

1985 and therefore the credit availed by the assessee on duty paid Cypermethrin Technical -Z, Cypermethrin Tech and Premmethrin Tech were not admissible to them on the basis of following findings.

(a) M/s. Meghmani Organics Limited had completely ceased their manufacturing activity since August 2011 on account of Closure Notice issued by Gujarat Pollution Control Board, Gandhinagar. **After Closure Notice, they stopped the production activities in their unit.**

(b) They were purchasing finished product Cypermethrin Technical (Chapter Heading 3808 91 37) duly packed in M.S. drums on payment of Central Excise duty from their sister unit i.e. M/s. Meghmani Organics Limited, Ankleshwar. The goods were already finished goods and ready for marketing at the time of dispatching from Ankleshwar.

(c) At their Chharodi unit they had just pasted the labels showing details of product exported and name of manufacturer and they only painted (by screen painting) some details such as name of product, weight etc on M.S. drums. Except these activities, the Chharodi unit was not doing any other manufacturing activities, as the product was already finished and marketable when received in their factory. Moreover the activity of manufacturing had already been ceased in Chharodi unit and they were not doing any manufacturing activities there.

(d) In fact the product received by Chharodi unit was already marketable and no such activity had been under taken by them in order to make it marketable which constitute as *deemed manufacture in light of Chapter Note 9 to Chapter 38 of the Central Excise Tariff Act, 1985 and Section 2 (f)(iii) of the Central Excise Act, 1944.*

(e) The assessee did not undertake the activity of packing or repacking from bulk pack to retail packs to render the product marketable. Since they had cleared the product as such (duly packed in M.S.drums and cleared in the same condition) except mere pasting/affixing label and painting of product details on M.S.drums at the time of clearance from MOL Chharodi as shown below:-

- ZENTACYPERMETHRIN TECHNICO FMC
- MATERIAL SKU
- BATCH NO :
- DATE OF MANUFACTURE:
- DATE OF EXPIRY:
- GROSS WEIGHT:
- NET WEIGHT:
- UN NO:
- GLASS NO:
- DRUM NO:
- COUNTRY OF ORIGIN:

(f) It was found that merely putting labels on M S drums did not amount to manufacture as the same did not change the name or description of goods what they had received from M/s. Meghmani Organics

Limited, Ankleshwar and make the product marketable to the consumer (which is already marketable) as per Chapter Note 9 of Chapter 38 of the Central Excise Tariff Act, 1985.

(g) Mere painting on M.S.drums the description of product, gross/net weight, drum No., country of origin, date of manufacturing and expiry date, batch No. etc. was not labeling. The expression used in Chapter Note with regard to any process or activity **should be such that it renders its marketability which the product did not possess earlier**. In this case the product does process the marketability, and the activity of merely pasting labels or painting on drums does not cover under the Chapter Note.

(h) In view of the above, it appeared that the activity of mere pasting labels and painting of details of product exported on M.S.drums does not amount to manufacture in light of Section 2 (f) of the Central Excise Act, 1944 read with Chapter Note 9 of the Chapter 38 of the first Schedule to the Central Excise Tariff Act, 1985. Since there is no manufacturing activity, the Credit availed by them was not admissible to M/s. Meghmani Organics Limited, Chharodi, which is required to be recovered from them.

(i) The statement of Shri V.R. Mori, General Manager (Commercial & Administration) recorded on 20.11.13 & 02.12.2014 wherein he accepted the facts that the production activity has been stopped since, Aug. 11 due to closure notice of GPCB; that they were purchasing duty paid "Cypermethrin Technical" and availed CENVAT credit; that on receipt of "Cypermethrin Technical" in their unit, they were doing weighment of the material, stenciling the screen, put the label/re-label on the MS drum of "Cypermethrin Technical" for the making product marketable; **that they were not maintaining the batch register, however, the details received from M/s. Meghmani Organics Limited,, Ankleshwar, the lot No., date of manufacture and date of expiry have been mentioned on the label affixed by them on MS drums meant for export; that they were not given any new batch No./Lot Number on the said goods cleared meant for export from their unit**, since, the said details have already been given by the said supplier by way of paper slips pasted on the drums and the said slips were removed by them and according to details mentioned on the said removed slips, they have given the details of the Lot numbers on the goods manually i.e. Cypermethrin Technical -Z, Cypermethrin Tech, Premmethrin Tech chemically processed by Ankleshwar unit and packed in M.S Drums.

(j) The statement of Shri V.R. Mori, General Manager (Commercial & Administration) recorded on 02.12.2014, wherein he accepted the facts that the goods were fully chemically processed by Ankleshwar unit and packed in MS Drums. But as per statutory provisions they cannot sell the product to foreign customer as they were not having registration for export in Brazil i.e. final destination of the customer. **Hence it appeared that Ankleshwar unit did not have the registration for export of goods to Brazil, and Chharodi unit had completely ceased their manufacturing activity since August 2011 on account of Closure Notice issued by Gujarat Pollution Control Board, Gandhinagar**. As such the assessee could not manufacture their products in Chharodi unit and they could not export their manufactured goods from Ankleshwar unit. So to make the goods seem manufactured at Chharodi unit, without the actual manufacturing activity being done, the assessee took to the recourse of merly **putting same labels of products as mentioned above and surreptitiously pass on this act as a manufacturing activitiy in terms of** *"deemed manufacture" in light of Chapter Note 9 to Chapter 38 of the Central Excise Tariff Act, 1985 and Section 2 (f)(iii) of the Central Excise Act, 1944.*

(k) From the above, it appeared that no manufacturing processes were being carried out at the Chharodi unit, except weighment and pasting/printing labels on the package of the said products. Hence, the excisable goods i.e. "Cypermethrin Technical" supplied by M/s. MOL, Ankleshwar were already in marketable condition and no such activity has been undertaken at the end of M/s. Meghmani Organics Limited, Chharodi to make it marketable. M/s. Meghmani Organics Limited, Chharodi did not undertake the activity of packing or repacking from bulk packs to retail packs; since, they had cleared the product as such (duly packed in MS drum and cleared it in the same condition) except affixing abel and painting of product detail on M.S. drums at the time of clearance.

(l) In view of the above, the process carried out by M/s. Meghmani Organics Limited, Chharodi does not amount to 'manufacture' and therefore the amount of Cenvat Credit taken and availed by them are irregular and required to be recovered.

11. During the period from August-2011 to June-2013, they had taken Cenvat Credit on purchase of Cypermethrin Technical, Zeta Cypermethrin Technical, Permethrin Technical from M/s Meghmani Organics limited, Ankleshwar for Basic Excise duty of Rs. 9,38,73,935/-, Education Cess of Rs. 18,77,479/- and Higher Education Cess of Rs. 9,38,739/-, a total duty amounting to Rs. **9,66,90,153/-** on value of purchase price/value of Rs.80,64,56,128/-. (Detailed as per Annexure-A to the S.C.N.).

12. Whereas in view of the above facts, it appeared that they had contravened the provision of Rules 3, 9, 14, and 15 of Cenvat Credit Rules, 2004 read with Section 11A of CEA, 1944 in as much as they have taken and availed Cenvat Credit **by suppressing the facts that they were given notice by Environment Engineer, Gujarat pollution Control Board, Gandhinagar on 03.08.2011 to prohibit them to manufacturing pesticides (Technical) and Formulation of Pesticides.** However, during the period from August-2011 to June-2013, they were only indulged in the activities of affixing label on the material procured from M/s. Meghmani Organics Ltd, Ankleshwar, treating the goods as manufactured goods and clearing the same for export under claim of rebate and under Bond under Rule 18 & 19 of the Central Excise Rules, 2002 and They were showing these activities as Manufacturing activities, but as per Chapter Note 9 of Chapter 38, the activities done by them did not fall under the category of manufacturing activities. They were affixing the labels and painting the details of products on M.S.Drum at the time of clearance, and **did not make any other change, to render the product marketable, as the product cleared from their Ankleshwar Unit was already marketable.** Hence the activities done at Chharodi unit does not amount to manufacture and Cenvat credit availed by the unit was irregular which had been utilized for payment of duty for export.

13. All the above acts of contravention on the part of the said assessee, appeared to have been committed by reasons of willful mis-statement, suppression of facts and contravention of various provisions of the said act and rules made there under with an intent to evade the payment of central excise duty by them as mentioned herein above. As such, the proviso to Section 11A of the Central Excise Act, 1944, was invoked for the extended period of five years on account of suppression of facts and contravention of various provisions of Central Excise Act, 1944 as discussed hereinabove and suppressing facts with an intention to take wrong availment of Cenvat Credit.

14. In view of the above, a Show Cause Notice was issued to the assessee, demanding total Cenvat Credit amounting to Rs. **9,66,90,153/,** on purchase of Cypermethrin Technical, Zeta Cypermethrin Technical, Permethrin Technical from M/s Meghmani Organics limited, Ankleshwar for the period from August-2011 to June-2013, under the Provisions of Section 11A of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004, which were taken and availed wrongly; Interest is also made

liable to be recovered under under Section 11AA of the Central Excise Act, 1944 on the above Wrong Cenvat Credit availed and utilized; and penalty is also proposed to be imposed on the assessee under Section 11AC (1) (a) of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004;

15. **Reply to the Show Cause Notice and written submissions made by the assessee:**

The assessee filed their written submissions to the show cause notice in reply, vide their letter dated 01.08.2015 and has submitted, interalia as under:

(i) There is no suppression of facts with any intent to evade payment of Central Excise duty nor any wrong availment of Cenvat credit inasmuch as, they have paid higher amount as Central Excise duty on the goods which were received from Ankleshwar factory when these goods, after subjecting them to various processes constituting "manufacture", were removed from their Chharodi factory and thus having paid additional amount of excise duty in cash on the goods removed from their factory after utilizing the entire above referred Cenvat credit of Rs.9,66,90,153/-.

(ii) That they have "labeled" the containers of the goods which is "manufacture" for these goods classified under Heading 3808 of the Tariff, and they have also treated the goods in question in such a manner that such treatment rendered the goods marketable to a specific class of buyers/consumers located in a specific country viz. Brazil

(iii) They have reiterated the facts of the case as mentioned above.

(iv) The Revenue officers in charge of the Chharodi factory have been fully aware about the above transactions and availment of Cenvat credit as well as payment of excise duty on the goods exported to Brazil have been accepted by these officers without any objection at the relevant time. Assessment of all these transactions stand finally concluded because none of the returns filed by them before the proper Central Excise officers in charge of Chharodi factory has ever been objected to by them.

(v) The availment of Cenvat credit of Rs.9,66,90,153/- is objected to, alleging that pasting labels and painting of details ot product exported on M.S. drums did not amount to "manufacture" in light of Section 2(f) of the Central Excise Act and Chapter Note-9 of Chapter 38 of the 1st Schedule to the Central Excise Tariff Act; and since there was no manufacturing activity at Chharodi factory, the credit availed by them, the Cenvat Credit availed by them was not admissible. It is also alleged that the goods manufactured and removed from their Ankleshwar factory were already marketable and that the expression used in the above Chapter Note with regard to any process or activity rendering the product marketable to the consumer was for any process or activity that rendered marketability which the product did not possess earlier.

(vi) Thus, the crux of the issue and allegations raised against them in this case is that the activities done by them at Chharodi did not amount to manufacture and therefore the Cenvat credit availed by them as regards duty paid on the pesticides in question was not admissible to them. Cenvat credit of Rs.9,66,90,153/- being the excise duty paid on these pesticides at their Ankleshwar factory, is therefore proposed to be denied and recovered.

(vii) The closure Notice issued by GPCB, Gandhinagar and consequent stopping of production activities in their Chharodi unit are not relevant to the issue involved in this case. May be, we have stopped "production" in its conventional manner in this factory, but the Parliament has

created a fiction of manufacture for goods of Heading 3808 of the Tariff, and the goods in question are admittedly classified under this heading and accordingly the issue is whether the processes and activities undertaken by them on such goods in their Chharodi factory constitute "manufacture" or not in view of such fiction. Therefore, Closure Notice issued by GPCB and its consequences are immaterial to the issue at hand.

(viii) The goods procured by them from the Ankleshwar factory were "finished goods" and they were "ready for marketing" is also irrelevant in the present case because, as aforesaid, the Parliament has created a fiction for the goods of Heading 3808 of the Tariff and therefore the issue under consideration is whether any of the processes or activities deemed as "manufacture" by the Parliament were undertaken by them on the finished goods which were ready for marketing or not. The condition in which the goods were removed from the Ankleshwar factory and the condition in which such goods were delivered at their Chharodi factory is therefore immaterial to the issue at hand.

(ix) The most important fact is that labels were pasted/affixed at Chharodi factory on the drums of the goods in question and these labels were approved by the concerned Government Authorities of Brazil. Such approval for the labels/stickers is issued by the concerned Brazilian Agencies only to a manufacturer-exporter of a foreign country who was approved for such exports, and therefore a registration number was also issued by such Agencies in favour of the concerned manufacturer-exporter. The labels affixed by them on the containers of the goods not only contained all the details required by the Brazilian Agencies but certain details were also affixed on the containers in Brazilian language, which was also a requirement of the Government of Brazil for allowing imports of pesticides and such products in their country. Without such labels and details on the goods, the import of such goods is not permitted in Brazil.

(x) The paper slips pasted on the drums when the goods were removed from their Ankleshwar factory did not contain such information and details as required by the concerned Agencies of Brazil. The details mentioned on such paper slips were not in Brazilian language also, and the goods in question could not have been exported to Brazil with such paper slips because they were not in the nature of "labels" approved by the concerned Brazilian agencies, and the details and information required for allowing import of goods like pesticides in Brazil were also not mentioned on such paper slips. In this view of the matter, the paper slips were not in the nature of "labels" necessary for rendering the goods marketable to the Brazilian buyers.

(xi) It is on record of this case that their Shri Manukumar Mori, the General Manager (Commerce/Administration) has clarified to the investigating officers in answer to question No.3 that we were putting sticker labels as approved by the Brazilian Agriculture Department, and also in answer to question No.15 that we were putting the party brand name label in Brazilian language with agriculture registration number, hazard label, screen stencil by printing, Bung of drum with MOL logo, Shrink wrapping and Palatising the drums.

(xii) The details of labels recorded on page Nos. 3 and 10 of the Show Cause Notice also establish that in all 11 different informations were detailed in the labels and that these details were not there on the drums when they were dispatched from their Ankleshwar factory. In this view of the matter, we emphasise that the labels pasted/affixed by them at their Chharodi factory contained the details which were necessary to render the goods marketable, and that such details were not available on the goods when they were removed from Ankleshwar factory, and also that in

addition to pasting/affixing such labels, we have also painted the product details on the M.S. drums in Brazilian language.

(xiii) The above referred clarifications may also be considered along with facts of the case briefly discussed by them in para 2 of this reply because only when this whole and complete factual scenario is taken into consideration that the issue and allegations levelled against them in this case could be examined in proper perspective, and a true answer could be arrived at as regards the allegations leveled by the Revenue.

(xiv) The entire controversy raised in this case revolves around Note-9 of Chapter 38 of the Tariff. Note No.9 of Chapter 38, in so far as it applies in the present case, is in three parts. Either an activity of labeling or re-labeling of containers shall amount to "manufacture", OR repacking from bulk to retail packs shall amount to "manufacture", OR the adoption of any other treatment to render the product marketable to the consumer shall amount to "manufacture". The expression to render the product marketable to consumer shall amount to "manufacture" is not a condition that has to be attached to the activity of labeling or relabeling of containers OR to the activity of repacking from bulk to retail packs. "Treatment to render the product marketable to the consumer" is a separate and independent activity which also constitutes "manufacture" under this note, whereas other two activities of labeling or re-labeling of containers intended for consumers OR repacking from bulk to retail packs are independent and separate activities constituting "manufacture".

(xv) The assessee has relied on a recent case of **Jindal Drugs Ltd.** V/s. Commissioner, Belapur, reported in **2015- TIOL-857-CESTAT-AAUM.,** wherein the Larger Bench of the Appellate Tribunal has held that the Note was in three parts, and anyone of the activities referred to in the Note, namely, (i) labeling or re-labeling, (ii) packing or re-packing from bulk to retail packing; and (iii) adoption of any other treatment to render the product marketable to the consumer being undertaken would be deemed to be manufacture, and the Note stands attracted. In this case of Jindal Drugs Ltd., Note No.3 of \ Chapter 18 of the Tariff has been considered, but the said note is similar in all respect to Note No.9 of Chapter 38 of the Tariff, which is under consideration in this case; and therefore the principle laid down by the Larger Bench of the Appellate Tribunal in this case of **Jindal Drugs Ltd.** is fully applicable in the present case also.

(xvi) In the case of M/s. **Jindal Drugs Ltd.,** a similar controversy was raised by the Revenue \ inasmuch as the manufacturer procured Coco Butter and Coco powder from their own factory located at Jammu, and after receiving such goods at their Taloja factory, two labels on two sides of packages of the goods received from their Jammu factory were affixed. The goods were exported on payment of duty and claiming rebate of duty paid on the exported goods, whereas Cenvat credit of duty paid on these goods at the time of clearance from Jammu was availed and utilized by the manufacturer. The same objection which is raised in the present case was raised by the Revenue in case of Jindal Drugs Ltd; that the goods, namely, Coco butter and Coco powder were fully finished goods and they were not only marketable but were also actually marketed in the country.Therefore there was no deemed manufacture of such goods by the manufacturer at their Taloja factory because merely putting up labels on the fully finished and marketable goods procured from Jammu was not "manufacture" under Note No.3 of Chapter 18 of the Tariff. Cenvat credit availed by the manufacturer and rebate clam for the export of goods were objected to in that case., but all the objections of the Revenue are over-ruled by the Larger Bench of the Appellate Tribunal while holding that labeling would amount of manufacture, and consequently

availment of Cenvat credit of duty paid at Jammu was in order.

(xvii) It is also an admitted fact that product details are painted also by the assessee on M.S drums and such details are also in Brazilian language, and such printing is also in the nature of "labeling" of containers and hence "manufacture" by virtue of Note No.9 of Chapter 38 of the Tariff. Therefore taking Cenvat credit of duties paid on the inputs and utilizing such Cenvat credit while discharging duty liability on the goods manufactured by the assessee at Chharodi factory is perfectly legal and valid.

(xviii) The goods in question have admittedly been exported to Brazil. A question that arises is whether the goods in question could have been exported to Brazil without putting up the labels that we have affixed/pasted at Chharodi factory or not. In other words, the question is whether the production in question could have been sold or marketed to the consumers in Brazil without the labels and painting of details on the drums or not.

(xix) In this regard, the assessee has drawn attention to the statutory requirements in Brazil for import of products like insecticides, pesticides etc. which are considered as "agricultural import" in Brazil. A report issued by the Global Agricultural Information Network contains assessments of commodity and trade issues made by USDA staff. For food and agricultural import regulations and standards for Brazil, the report outlines regulatory requirements for agricultural imports into Brazil, including import procedures.

(xx) In accordance with these requirements, their factory located at Chharodi is registered with the above referred Agencies of Brazil; certificate of registration for exporting the pesticides in question is issued in their favour by the Ministry of Agriculture and approval of the labels of the goods in question has also been granted by the above referred Brazilian agencies. It was in accordance with the above regulations of the Brazilian Government that they have affixed the labels on the drums of the pesticides in question at their Chharodi factory, and it was in compliance with the requirements and regulations for imports of goods like pesticides laid down by the Brazilian Government that the goods in question were allowed to be exported to Brazil. In other words, the products in question were "marketable" in Brazil only when they carried the labels in question, and the labels contained the details and information as required by the Brazilian Regulatory agencies. Thus the activity of affixing and pasting labels on the drums for exporting the products to Brazil would constitute "manufacture", and such activity undoubtedly rendered the product marketable to the consumers in Brazil and therefore also such treatment would constitute "manufacture".

(xxi) The pesticides produced at their Ankleshwar factory were having different marketability because they were not marketable in Brazil in that form. After the labels were affixed on the goods at their Chharodi factory and required information was painted thereon in Brazilian language, the goods acquired marketability which they did not possess earlier.

(xxii) The assessee has also relied on the judgment passed by the Hon'ble Supreme Court in case of Air Liquid North India Pvt. Ltd. reported in **2011 (271) ELT 321 (SC)** wherein the Hon'ble Supreme Court has held that even though gases like Helium were marketable and marketed before the activities undertaken by the assessee, Helium gas was having different marketability, which it did not possess earlier because the treatment given by the assessee to Helium gas imparted a distinct marketability to the product.

(xxiii) The approval of the labels and registration of a manufacturer for exporting goods like pesticides to Brazil is specifically with reference to "a plant" or "a factory", because a specific plant or a specific factory located at a particular address alone is registered and approved by the Brazilian agencies, and it is not that a manufacturer is granted approval or registration irrespective of the specific location of a particular plant or factory belonging to him. In this case also, the above referred registration and also the approval of labels show that they are specifically for the plant/factory located at 402, 403, 404, 452, Post: Chharodi, Taluka: Sanand, District: Ahmedabad-382170-India. The name of their company with this address is specifically mentioned at Clause 6.2 of the registration certificate issued in year 2008. In the approved labels also, name of their company with the above referred address of the plant/factory is specifically mentioned. In view of specific and stringent regulatory requirements of the Brazilian Government, the pesticides in question were allowed to be exported to Brazil only from this particular plant of their company. If the pesticide products were exported from any other factory, may be belonging to their company only, then also the goods would not be allowed to be imported to Brazil.

(xxiv) It was because of this specific situation that they had to remove the pesticide products for export to Brazil from their Chharodi factory because only the factory at Chharodi has been approved and granted registration by the Brazilian agencies. The goods produced at their Ankleshwar factory were therefore transferred here, and since the labels as approved by the above Brazilian Government agencies were affixed at their Chharodi factory.

(xxv) The Cenvat credit so taken by them stands cancelled because it was utilized for paying excise duty on the goods removed from their Chharodi factory, and the situation is revenue neutral. It is even otherwise a settled legal position that Cenvat credit should be allowed to an assessee even though the activities or processes undertaken by him on the duty paid materials did not constitute "manufacture' if the assessee had actually paid excise duty on the resultant products, and the duties so paid was more than the credit taken by him.

(xxvi) They have relied on the following judgments:

(1) The Hon'ble Punjab & Haryana High Court in case of Commissioner V/s. Rane NSK Steering Systems Ltd. **2007 (218) ELT 354 (P&H)**

(2) Ajinkya Enterprises V/s. Commissioner, Pune- III reported in **2013 (288) ELT 247**

(3) Decision of the Appellate Tribunal, Ahmedabad,in the case of **Vardhaman Stamping Pvt. Ltd.**

(4) Stumpp Scheule & Somappa Ltd. reported in **2005 (191) ELT 1085**

(5) Technoweld Industries reported in **2003 (155) ELT 209 (SC)**

(6) Commissioner V/s M.P. Telelinks Ltd. - **2004 (178) ELT 167**

(7) Heat Shrink Technologies Ltd. - **2007 (220) ELT 437**

(8) Commissioner V/s Nagappa Springs Pvt. Ltd. - **2009 (238) ELT 489**

The principle that emerges from all these decisions is that cenvat credit of duty paid materials cannot be denied if the assessee was paving duty on the products which were cleared by the assessee.

(xxvii) All the transactions of availment of Cenvat credit and clearance of goods on payment of duty have been duly recorded in their statutory registers and Central excise records and they have

complied with the Central Excise procedure fully, and therefore there is no contravention of any of the provisions of the Act and Rules made thereunder. Therefore there is no question of any intention to evade payment of duty also. Wrong availment of Cenvat credit is also an invalid and incorrect allegation against them because there is no reason for them to have availed the above referred Cenvat credit if they had not been under a genuine and bonafide impression that they were entitled to avail such credit, because there was no benefit to them in availing this Cenvat credit. The assessee has relied on the following judgment/decisions.

(1) Hon'ble Supreme Court in the landmark cases of Padmini Products reported in **1989 (43) ELT 195 (SC)** and Chemphar Drugs & Liniments reported in **1989 (40) ELT 276 (SC).**

(2) Continental Foundation Jt. Venture V/s CCE, Chandigarh reported in **2007 (216) ELT 177 (SC)**

(3) Messrs Jaiprakash Industries Ltd. reported in **2002 (146) ELT 481 (SC)**

(xxviii) There being no contravention by way of suppression of facts with intent to evade payment duty on their part, the invocation of extended period of limitation against them is illegal and unjustified in the facts of this case.

(xxix) The proposal for imposition of penalty under Section 11 AC(1)(a) of the Central Excise Act, 1944 read with Rule 15 of the Cenvat Credit Rules, 2004 also deserves to be vacated as there is no justification in demand of duty levelled against them in this case. There is no cogent and reliable evidence in support of the charges levelled in the show cause notice and therefore, no penalty would be justified on the basis of charges so levelled, merely on assumptions and presumptions. Penalty is quasi-criminal in nature and therefore, it cannot be imposed on mere assumptions and presumptions or hearsay. Neither the facts of the case justify or warrant imposition of any penalty, nor a specific allegation is made in the show cause notice for imposing penalty on them.

(xxx) The proposal to charge interest under Section 11AA of the Central Excise Act is also without any authority in law inasmuch as the provision of section 11 AA is not attracted in the instant case. Section 11 AA provides for interest in addition to duty where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded with an intent to evade payment duty. In the instant case, there is no short levy or short payment or non-levy or non-payment of any excise duty. Therefore, the proposal to charge interest under Section 11 AA of the Act is also not maintainable in the present case.

16. **Record of Personal Hearing:**

Personal hearing for the SCN was held on 04.09.2019. Shri Amal. P. Dave, Advocate appeared on behalf of the assessee and reiterated the submissions made by them in their replies made earlier.

DISCUSSION AND FINDINGS:

17. In the instant case the SCN No. V.38/15-45/OA/2015 dated 27.04.2015 was issued to the assessee seeking recovery of inadmissible CENVAT credit to the tune of Rs. 9,66,90,153/-. M/s Meghmani Organics Limited, Sanand, has in reply to the said SCN has relied upon the decision of CESTAT,Mumbai, in the case of M/s Jindal Drugs Ltd. v/s Commissioner of Central Excise, Belapur, wherein the tribunal held that the process of labelling per-se would amount to manufacture and consequently availment of Cenvat credit of duty paid at Jammu was in order.

17.1 However, appeal has been filed by the department in the Hon'ble Supreme Court vide SLP Civil Appeal No 1121 of 2016 against the decision of Tribunal in the case of M/s Jindal Drugs Ltd. Since, the departmental appeal is pending in the case in the case of M/s Jindal Drugs Ltd., the aforesaid Show Cause Notice was transferred to call book under Category-I in view of circular no. 1028/16/2016-CX dated 26.04.2016.

17.2 Meanwhile the assessee had filed SCA no 5960 of 2018 in Hon'ble High Court of Gujarat. The High Court vide its order dated 02.08.2018 in SCA 5960/2018, has disposed off the petition with a direction that the respondent shall proceed further with the adjudication of SCN dated 27.04.2015. As the Department has accepted the order, the case was retrieved from call book on 17.10.2018 and taken up for adjudication. It is pertinent to note that the Hon'ble High Court has only the directed the department to proceed further with the adjudication of the Show Cause Notice, without giving any directions on the merits of the case.

18. I have carefully gone through the records of the case, written submissions made by the said assessee in their defence reply to the show cause notice as well as the submissions made during the course of personal hearing and the records/ documents produced by them. I find that the main issue to be decided in this case is whether affixing only the labels amounts to manufacture or not.

19. I find that the assessee had completely ceased their manufacturing activity since August 2011 on account of closure notice issued by Gujarat Pollution Control Board, Gandhinagar. After the closure notice, they had stopped the production activities in their unit. The assessee had purchased finished products duly packed in M.S. drums on payment of Central Excise duty from their sister unit at Ankleshwar. The goods were already finished goods and ready for marketing at the time of dispatching from Ankleshwar. At their Chharodi unit, the assessee had pasted labels showing details of product exported and name of manufacturer and they only painted (by screen painting) some details such as name of product, weight etc on M.S. drums. Except these activities, the Chharodi unit of the assessee, is not engaged in any other manufacturing activities. During the period from August-2011 to June-2013, they were only indulged in the activities of affixing label on the material procured from M/s. Meghmani Organics Ltd, Ankleshwar, treating the goods as manufactured goods and clearing the same for export under claim of rebate and under Bond under Rule 18 & 19 of the Central Excise Rules, 2002. The contention of the Show Cause Notice is that the process of affixing labels does not amount to manufacture and therefore the amount of Cenvat Credit amounting to **Rs.9,38,73,935/-** availed and utilised by the assessee during the period from **August-2011 to June-2013**, is required to be recovered from the assessee, along with interest and appropriate penalties.

20. The charges leveled against the assessee in the Show Cause Notice is that the assessee has wrongly availed and utilised Cenvat credit of Rs.9,66,90,153/- in as much as pasting of labels and painting of details of product exported on M.S. drums did not amount to "manufacture" in light of Section 2(f) of the Central Excise Act and Chapter Note-9 of Chapter 38 of the 1st Schedule to the Central Excise Tariff Act; and since there was no manufacturing activity at Chharodi factory, the credit availed by them was not admissible. It is also alleged that the goods manufactured and removed from their Ankleshwar unit were already marketable and that the expression used in the above Chapter Note with regard to any process or activity rendering the product marketable to the consumer was for any process or activity that rendered marketability which the product did not possess earlier.

21. I find that the issue under dispute is whether the activities done by them, i.e. affixing labels, will

fall under the category of manufacturing activities, as per Chapter Note 9 of Chapter 38 and whether the activity of merely affixing labels amounts to manufacture, as per the contention of the assessee.

22. The definition of manufacture as stipulated under section 2(f) of the Central excise Act, 1944 and Chapter Note 9 to chapter 38 of the Central Excise Tariff Act, 1985 is reproduced below:-

(1) *Section 2 (f) of the Central Excise Act, 1944.*

"Manufacture" includes any process,

(iv) Incidental or ancillary to the completion of manufactured product

(v) Which is specified in relation to any goods in the Section or Chapter of the [the First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting [manufacture; or]

(vi) Which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the customer,]

(2) *Chapter Note 9 to Chapter 38 of the Central excise Tariff Act, 1985:-*

In relation to products of heading 3808, addition of chemicals and other ingredients like: inter carriers or solvents, surface active, dispersing and stabilizing agents, emulsifiers, wetting and dispersing agents, deodorants, masking agent, attractants and feeding stimulants to pesticidal chemicals in concentrated form. [labeling or relabeling of containers intended for consumers or repacking] from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to "manufacture".

23. The issue under consideration in this case revolves around interpretation of Note 9 to Chapter 38, as the assessee has claimed that by application of this note, their activity of affixing labels, should be deemed to be manufacture, and thereby have availed and utilised Cenvat Credit amounting to Rs. **Rs.9,38,73,935/-** during the period from **August-2011 to June-2013.**

24. The above note notifies that in relation to products of Chapter 38, labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

25. The contention of the assessee is that the activity, as per the condition of the Chapter note,renders the product marketable. However, the fictional definition under the above note,manufacture invariably includes not only "labeling" but also "repacking" as understood from the words "*[labeling or relabeling of containers intended for consumers or repacking] from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to "manufacture".* **It is a fact that the the assessee has not repacked its goods from bulk to retail packs and they have not undertaken any treatment on the materials they have purchased from their sister unit in Ankleshwar.**

26. I find that the marketability of the product was not in question before the appellant put the names of the buyer and seller on its container. Even in the absence of labelling on the drums, the goods purchased by the assessee from their sister unit in Ankleshwar were marketable. The goods had the complete characteristics to be sold, at the time of being purchased itself, in as much as the goods could be sold in the same form, without under-going any other treatment or process; or without labeling or without repacking them into retail packs. Thus the contention of the assessee that goods were rendered marketable only on account of labelling cannot be sustained.

27. I find that the assessee has relied on the decision of the Larger Bench of the Appellate Tribunal in the case of **Jindal Drugs Ltd.** V/s. Commissioner, Belapur, reported in **2015- TIOL-857-CESTAT-AAUM.**, wherein it was held that the Note was in three parts, and anyone of the activities referred to in the Note, namely, (i) labeling or re-labeling, (ii) packing or re-packing from bulk to retail packing; and (iii) adoption of any other treatment to render the product marketable to the consumer being undertaken would be deemed to be manufacture, and the Note stands attracted. In this case of Jindal Drugs Ltd., Note No.3 of \ Chapter 18 of the Tariff has been considered, but the said note is similar in all respect to Note No.9 of Chapter 38 of the Tariff, which is under consideration in this case; and therefore the principle laid down by the Larger Bench of the Appellate Tribunal in the case of **Jindal Drugs Ltd.** is fully applicable in the present case also.

28. Here, in this case, I find that the above decision has been contested by the Department and an appeal has been filed by the Department before the Supreme Court, on the following grounds, interalia, as under:

(a) The brief facts of the case are that M/s Jindal Drugs Ltd, Taloja had claimed that it is engaged in the manufacture & export of 'Cocoa Butter' falling under Tariff Heading 1804.00.00 of the Central Excise Tariff Act, 1985.

(b) It has another unit located at Jammu & Kashmir(hereinafter referred to as the J.K. Unit). The assessee receives duty paid 'Cocoa Butter' from its J.K. Unit in corrugated boxes of 25 Kgs. each. Each of the Boxes received from the J.K. Unit is having a printed label affixed on it indicating, inter-alia, description of the goods. However, the appellant affixes two more labels, namely, label- 'A' & label-B' on two blank sides of the boxes, more or less with the same information which is already existing on the label of the boxes affixed by the J.K. unit.

(c) The assessee also imports "Cocoa Butter" from China and Malaysia in 25 kg. boxes. It is claimed by the assessee that all the boxes of imported "Cocoa Butter" are replaced by locally purchased boxes and printed labels are affixed on them as in the case of "Cocoa Butter" received from the J.K. Unit. The assessee takes Cenvat credit of Central Excise duty in respect of the "Cocoa Butter" received from the J.K. Unit and of CVD and SAD in respect of the imported "Cocoa Butter".

(d) After affixation of the labels on the boxes, most of the quantity of "Cocoa Butter" is exported under claim for rebate and a negligible quantity of "Cocoa Butter" is cleared for home consumption on payment of Central Excise duty. Duty payment is made by utilizing the Cenvat credit taken.

(e) According to the assessee, labeling or re-labelling on the boxes of "Cocoa Butter" amounts to manufacture in terms of Chapter Note 3 of Chapter 18 of Central Excise Tariff, whereas according to the Department, "Cocoa Butter" is manufactured by the J.K.Unit and it is already marketable. Therefore, addition of two more labels on the boxes does not enhance its marketability. In short, no 'manufacture' has taken place at Taloja.

(f) 'Labeling' in common trade parlance means display of information about a product on its container, packing, or the product itself. Needless to say that such labeling has already been done by the J.K.Unit. Therefore, it was un-necessary to put two more additional labels on the same packages i.e. on the corrugated boxes. However, this was done with a motive to get undue benefit, i.e. irregular Cenvat Credit on the one hand and rebate of duty on the other hand. This has not been properly appreciated by the majority order resulting in miscarriage of justice.

(g) It is needless to say that it is also not a case of re-labeling which means applying a new label on the package where the identity of the old label is lost. However, this is not the case here. The old labels stay in their places without losing their identity. Hence the activity undertaken by the assessee cannot also be considered as 're-labelling' amounting to manufacture in terms of Chapter Note 3 to Chapter 18 of the Central Excise Tariff Act, 1985. Consequently, the duty of credit taken by the assessee was irregular and use of the said credit towards payments of duty on the 'Cocoa Butter' cleared for export was also irregular.

(h) The real issue involved in this case is whether there is any need for putting two more additional labels on the package of 'Cocoa Butter' which is already labeled. It is this additional labeling which according to the Department does not amount to manufacture nor does it enhance the marketability of the product.

(i) It is claimed by the assessee that in the case of imported Cocoa Butter all boxes of imported Cocoa Butter are removed and are replaced by the boxes with printed matter as described above in the case of material received from J & K. After this same labeling process mentioned above is undertaken in respect of imported goods also" (underlining supplied). In fact this claim was made in the statement of Shri. Ramakrishna Dubey. Be that as it may, from Para 4 of the Show cause notice, it cannot be said that the Show cause notice has accepted that the assessee had changed the cartons of the imported Cocoa Butter and exported the same after labelling. This apart, variation in weight of imported & exported Cocoa Butter and seizure of 4 cartons from the factory premises of the assessee do not conclusively establish that the assessee had changed the cartons of imported Cocoa Butter by new cartons and exported the same after labeling, particularly when the assessee had not maintained any account of receipt of packing material or utilization of the same (Para 44 of Commissioner's findings). Therefore, it is not correct to say that it is proved beyond reasonable doubt that the assessee had repacked the imported Cocoa Butter in new cartons and then exported after labeling.

(j) It is submitted that Para 2(h) of the Notification No. 19/2004-CE (NT) provides that in case of export of goods which are manufactured by a manufacturer availing any of the notifications mentioned therein (in the present case Notification Nos. 56/2002- CE(NT) or 57/2002-CE(NT), the rebate shall not be admissible under this notification.

(k) The appellant was well aware of the provisions of the Excise Rules. It is, therefore, quite apparent that in order to get over the bar placed on Para 2(h) of the notification, the appellant resorted to so called activity of 'labelling/re-labelling' on the boxes of the impugned goods so as to contend that the activity of labelling/relabelling amounts to manufacture and hence it has rightly availed of the Cenvat credit and rightly claimed the rebate of duty paid on the export goods by utilizing the credit through Cenvat A/c. In fact, the so-called activity of labelling/re-labelling was carried out with an intention to get the maximum undue benefit viz. Cenvat credit on the one hand and rebate of duty on the other hand, It is, therefore, a fit case for invoking the extended period of limitation.

29. Further, I hereby rely on the judgment passed by the **Hon'ble Supreme Court** in the case of M/s. Amritlal Chemaux Ltd., reported in 2015 (321) E.L.T.5 (S.C.), wherein, it was held as under:

Manufacture - Repacking and/or labelling - Chapter Notes 11 and 3 of Chapters 29 and 32 respectively of Central Excise Tariff - Stipulating that "labelling or relabelling of containers and repacking from bulk to retail packs or adoption of any other treatment to render product marketable to consumer, shall amount to manufacture" - *HELD :* Notes have used both 'or' as well as 'and' - By using two expressions, intention of legislature is that label or relabelling of containers would amount to manufacture only if other condition, viz., repacking from bulk to retail pack was

also satisfied - It was more so as second process stipulated "adoption of any other treatment" with intention to render it marketable, showed that for first part, both conditions have to be satisfied - Hence, 'and' has to be read disjunctively, and not conjunctively - It was not sufficient that only one of processes, viz., labelling or relabelling of containers or repacking from bulk to retail packs, would be treated as manufacture. *[paras 2, 3]*

Manufacture - Repacking and/or labelling - For supply to industrial consumers on wholesale basis, not into retail packing - It does not satisfy both conditions stipulated in Chapter Notes 11 and 3 of Chapters 29 and 32 of Central Excise Tariff, respectively, and hence, it does not amount to manufacture *[para 4]*

The relevant paras of the judgment are as under:

[Order]. - There are three products involved in the present appeal and the question is as to whether the process undertaken by the respondent-assessee in these products amounted to manufacture or not. The products are various dyes & dye bases, napthols & fast bases, and chrome pigments. They fall in Chapter 29 and Chapter 32 of the Central Excise Tariff Act, 1985 (hereinafter referred to as 'Act') respectively. It is not in dispute that the assessee is not the manufacturer of these products. It buys the same from a manufacturer in bulk quantities in bulk packing. Thereafter, some process is undertaken thereupon, as noted hereinafter and that has given rise to the dispute as to whether such a process amounts to manufacture or not. The process is of repacking and/or labelling. It is thus, an admitted case that the assessee is not a manufacturer in traditional sense. However, by virtue of Chapter Note 11 of Chapter 29 and Chapter Note 3 of Chapter 32 of the Act, which gives extended meaning to 'manufacture' by creating a fiction....." The two chapter notes, viz., Chapter Note 11 of Chapter 29 and Chapter Note 3 of Chapter 32 are identically worded and read as under :-

Chapter Note 11 of Chapter 29 :

"In relation to products of this chapter, labelling or re-labelling of containers and re-packing from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture."

Chapter Note 3 of Chapter 32 :

"In relation to products of heading No. 32-06, labelling or re-labelling of containers and re-packing from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture."

2. "..... It is clear from the plain language of the aforesaid Chapter Notes which use both the expression 'or' as well as 'and' at different places. Thus, by using the two expressions, the intention of the legislature is manifest that insofar as the process of label or relabelling of containers is concerned, it would amount to manufacture only if the other condition, viz., repacking from bulk to retail pack is also satisfied. The aforesaid view gains credence from other fact, i.e., where the second process is treated as manufacture, viz., "adoption of any other treatment to render the product marketable to the consumer", the expression 'any other treatment' and that too, with intention to render it marketable clearly shows that insofar first part is concerned, both the conditions have to be satisfied.

4. Insofar as the napthols & fast bases is concerned, even from the order of the Commissioner, it becomes clear that though there was repacking and even relabeling, the repacking of bulk was not into retail packing as the goods after repacking were supplied to industrial consumers on wholesale basis. It is specifically stated so by the assessee which fact is not denied by the Commissioner. Therefore, both the

conditions mentioned in the Chapter Notes are not satisfied.

5. Insofar as the chrome pigments are concerned, the assessee only obliterated the name which was appearing on containers and the name of the assessee along with the logo is stenciled on such container that may amount to relabelling. However, the process of repacking was not undertaken at all by the assessee. Thus, here also both the eligibility conditions which are to be fulfilled have not been satisfied.

6. We, thus, do not find any merit in this appeal which is accordingly dismissed.

30. I further rely on the decision of CESTAT,Mumbai, in the case of M/s. Taxchem, reported in 2003 (151) ELT 610 (Tri.-Mumbai.), wherein the Tribunal has held as under:

Labelling - Manufacture - Painting on the drums/container name of the goods, the name of the consignor and of the consignee whether amount to labelling - Labelling requires furnishing information as to the name of the product its contents, its price, etc. - Mere putting of the name and address on the container of the goods of the consignee and consignor does not amount to labelling - Section 2(f) of Central Excise Act, 1944. [para 8]

Labelling and relabelling under chapter notes of Central Excise Tariff - Marketability - Labelling or relabelling activity on container containing the goods falling under Chapter 34, 35 or 38 of Central Excise Tariff Act, 1985 not render the goods marketable - Person buying these goods other than wholesale purchaser would not generally arise with occasional exception. - The position perhaps would be different in the case of goods such as cosmetics, pharmaceutical products etc. falling under Chapter 30 or 33 ibid. The intention behind the notes in these chapters appears to render liable to duty those processes which result in the product being sold to the consumer mentioned. Thus putting cosmetics into attractive jar meant for retail use and placing on it a label containing a brand name enhanced the value of the cosmetic in measurement. In fact in many of these products, it is the container or label worth more than the cost of the contents. But, goods in the case are largely used by a factory or other such industry and the question of taxing value addition arising from a more attractive or appealing presentation in the form of packaging or labelling would not arise. The goods continues to be sold in the same class of customers as it would be prior to being labelled or replaced etc. The question of the product being rendered marketable consequent on such label therefore will not arise. [para 9]

<u>The relevant paras of the Order are as under:</u>

[Order per : Gowri Shankar, Member (T)]. - The question for consideration in this appeal revolves around interpretation of Note 6 to Chapter 34, Note 3 to Chapter 35 and Note 5 to Chapter 38 of the Tariff. Each of the notes which are identically worded reads thus - "In relation to products of this Chapter, labelling or relabelling of containers and repacking from bulk Backs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture"."

2. In the order impugned in this appeal, the Commissioner has held that by application of these notes, the activities undertaken by the appellant before us, must be deemed to be manufacture, and demanded duty and imposed penalty on the appellant.

3. The appellant is a trader in textile chemicals. Paragraphs 2 and 3 of the Commissioner's order narrate the activities of the appellant, which are under consideration before us, as follows :

"2. M/s. TC procures the orders from the customers through their marketing staff specifying the quantity, product and also the mode of packing. The prices are fixed by negotiation and the orders are received either verbally or in writing. Subsequently, M/s. TC place their orders with the manufacturers or dealers directly, by specifying the product, packing and quantity. While placing orders with the manufacturers or dealers, M/s. TC assign manufacturers/dealers, serial numbers which have to be mentioned on the packing (i.e. carboys/drums). M/s. TC also give instructions to these manufacturers/dealers that, apart from these numbers, no further information like name of the product, barrel numbers, manufacturer's name, tare weight and net weight, etc. should be written on the carboy/drum except the given code number.

3. On the receipt of the goods in their godown, the details of the same are entered in the purchase register maintained in their godown and a product code assigned internally for their own use in respect of each particular product which is received under the trade name of the supplier. The goods received are subjected to quantity control test and thereafter the carboys/drums are checked and sealed with lead seals. Before the goods are supplied to their customers, M/s. TC affix their name on the said carboys/ drums. In their invoices M/s. TC mention their trade name given to the particular product along with the assigned code number. M/s. TC are also putting stencils of their Company's name i.e. consignor - M/s. Taxchem. In some cases name of the consignee is also stencilled."

4. The question to be answered, therefore, is whether the activities of painting on the drums containing the textile chemicals in question, the name of the consignor (the appellant) and of the consignee constitutes any of the activities specified in the notes.

5. Among the various arguments that the counsel for the appellant raises, we will consider two. ***These are that merely printing on the drums the name and address of the consignor (appellant) and the consignee does not itself amount to labelling imparting information as to the nature of the product, its technical or other characteristics and none of these has been done. The second contention is that the activity in order to attract the note must be one which renders the product marketable. The marketability of the product was not in question before the appellant put the names of the buyer and seller on its container. Even in the absence of these names on the drums containing the chemicals which were marketable. Subsequent to the department's objection being taken, too the appellant had ceased painting the name on the drum and still sold the goods.***

13. [Order per : G.N. Srinivasan, Member (J)]. – ".....When we look into the artificial definition, namely the manufacture which includes not only labelling but also repacking...." When such is the situation, one cannot lose the sight of the fact that if the activity of the manufacture as reflected in the show cause notice is silent about packing or repacking, the impugned order is wrong in law. The show cause notice does not mention about the repacking. When we are looking into the activity of manufacture, all the ingredients in a strict way have to be brought out in the show cause notice and met in the impugned order. Without the proper exercise being undertaken, the authority cannot levy duty. In view of the above, I agree with the order proposed by my learned brother.

31. Further, I rely on the judgment passed by the Hon'ble Supreme Court, in the appeal filed by the Department against the above mentioned decision of CESTAT, reported in 2006 (202) E.L.T. A21 (S.C.)], wherein, it was held as under:

"Manufacture — Labelling — Putting name and address of consignor and consignee

on containers does not amount to manufacture."

While dismissing the appeal, the Supreme Court passed the following order :

".....The Appellate Tribunal in the impugned order had held that mere putting of the name and address of the consignor and consignee on the containers does not amount to manufacture and such process in respect of goods falling under Chapters 34, 35 and 38 of Central Excise Tariff does not render the goods marketable."

32. Thus, I find that the above decisions/judgements laws applicable to the present case. From the above discussion, I conclude that **it is clear from the plain language of the aforesaid Chapter Note that both the expression 'or' as well as 'and' have been used at different places. Thus, by using the two expressions, the it is crystal clear that insofar as the process of labelling of containers is concerned, it would amount to manufacture only if the other condition, viz., repacking from bulk to retail pack is also satisfied. The aforesaid view gains credence from other fact, i.e., where the second process is treated as manufacture, viz., "adoption of any other treatment to render the product marketable to the consumer", the expression 'any other treatment' and that too, with intention to render it marketable clearly shows that insofar first part is concerned, both the conditions have to be satisfied. I find that the assessee has neither repacked the goods from bulk to retail packs nor have they carried out any process or treatment on the goods purchased from their Ankleshwar unit. Thus I hold that in this case, the process of labeling undertaken by the assessee cannot be termed as "manufacture" or deemed manufacture in terms of Chapter** *Note 9 to Chapter 38 of the Central excise Tariff Act, 1985.* **I therefore hold that the Cenvat Credit amounting to Rs.9,38,73,935/-, taken and utilised by the assessee is not admissible to them and the same is required to be recovered from them** under the Provisions of Section 11A of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.

33. Lastly, it is pertinent to note that the assessee had completely ceased their manufacturing activity since August 2011 on account of closure notice issued by Gujarat Pollution Control Board, Gandhinagar. After closure notice, they had stopped the production activities in their unit, however, they carried out the activities of labeling and further export of goods from their premises, in a way disregarding the Closure Notice issued by the Gujarat Pollution Control Board. At the time when the above activities were being conducted by the assessee, from the records of the case, it is evident that the Closure Notice had not been revoked at the relevant of the period and that the assessee had no permission to carry out its manufacturing activities. The Government of Gujarat constituted the GPCB (Gujarat Pollution Control Board) on 15.10.1974 as per provisions under the Water (Prevention and Control of Pollution) Act, 1974, with a view to protect the environment, prevent and control the pollution of water in the State of Gujarat. **The Board has been entrusted with the Central Acts and relevant Rules for pollution control as notified thereof from time to time.** Thereby I chose to differ from the view of the assessee that the closure Notice issued by GPCB, Gandhinagar and consequent stopping of production activities in their Chharodi unit are not relevant to the issue involved in this case; and that this fact should not be taken lightly.

34. The assessee was well aware of the provisions of Central Excise Act, 1944. The 'input' in the context of the Cenvat Credit Rules, 2004 means the raw materials used in the factory of the manufacturer of the final product. Here in this case, the assessee has not manufactured any goods, nor have fulfilled the conditions of Chapter Note 9 to Chapter 38 of the Central Excise Tariff Act, 1985, to be able to distinguish their activity as "deemed manufacture". It is quite apparent that the assessee has resorted to claim their activity of merely labeling as deemed manufacture, with an intention to wrongly avail and utilize the inadmissible Cenvat Credit. In fact, the so called activity of labeling was carried out on one

hand and simultaneously rebate of duty was taken on the other hand. Thus I find that the action on part of the assessee clearly shows that there is a 'wilful' intention to avail ineligible Cenvat Credit and utilise the same for payment of duty. Thus this is a fit case for invoking extended period. Therefore I hold the wrongly availed and utilised Cenvat Credit is liable to be recovered from the assessee.

35. From the above discussion, it is clear that the Cenvat Credit has been wrongly availed and utilised by the assessee and therefore, I order that Interest be recovered under Section 11AA of the Central Excise Act, 1944 on the same.The above act of the assessee has also made them liable to penalty under Section 11AC (1) (a) of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004.

Accordingly, I pass the following order:

ORDER

(i) I confirm the demand of Cenvat Credit amounting to Rs. 9,66,90,153/- (Rupees Nine Crore Sixty Six Lakh Ninety Thousand One Hundred and Fifty Three Only), wrongly availed and utilized by the assessee during the period from August 2011 to June 2013, and order the same to be recovered under the provisions of Section 11 A of Central Excise Act, 1944, read with Rule 14 of the Cenvat Credit Rules, 2004.

(ii) I order the recovery of interest at the applicable rate on the amount mentioned in (i) above, under Section 11 AA of the Central Excise Act, 1944.

(iii) I impose penalty amounting to Rs. 9,66,90,153/- (Rupees Nine Crore Sixty Six Lakh Ninety Thousand One Hundred and Fifty Three Only) on the assessee, under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11 AC(1) (a) of the Central Excise Act, 1944 read with Rule 15 of the Cenvat Credit Rules, 2004. However, I give the option of benefit of reduced penalty @ 25% of the penalty if the entire amount is paid along with interest and the reduced penalty so determined, is paid within 30 days from the receipt of the this order.

Show Cause Notice No. V.38/15-45/OA/2015, dated 27.04.2015, is hereby disposed off.

(Dr. BALBIR SINGH)
COMMISSIONER
CENTRAL GST & C.EX.
AHMEDABAD NORTH.

F. No.:V.38/15-45/OA/2015 Dated:03.10.2019

To
M/s. Meghmani Organics Limited,
Plot No. 402, 403, 404 & 452,
Village Chharodi,
Tal. Sanand,
Dist. Ahmedabad

Copy to:
1. The Principal Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner CGST, Division-III, Ahmedabad- North.
3. The Superintendent, CGST, AR -II, Division-III, Ahmedabad- North.
4. Guard File