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.35/15-60/OA/2015

आदेश की तारीख़ / Date of Order : 27.10.2017

जारी करने की तारीख़ / Date of Issue : 27.10.2017

द्वारा पारित/Passed by -

श्री जे. ए. खान **SHRI J. A. KHAN**

आयुक्त **COMMISSIONER**

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR – 1 to 12/2017 - 18

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 सबोधित 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 हैंचार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही (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 मांग ड्राफ्ट के जरिए अदा की जाएगी तथा यह मांग 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 अनसार संलग्न किए गए आदेश की प्रति पर 1.00रूपैया 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

Sub : Proceedings initiated vide Show Cause Notice bearing F.No. V.35/15-30/OA/2010 dated 04.05.2010 and subsequent show cause notices issued to M/s. Anil Limited (Formerly known as M/s. Anil Products Ltd.), Bapunagar, Ahmedabad.

BRIEF FACTS OF THE CASE:

M/s. Anil Products Ltd., Anil Road, Bapunagar, Ahmedabad (herein after referred to as the assessee) are holding Central Excise Registration No. AABCA3154HXM002 for manufacture and clearance of finished products viz. "Plain Starch, Dextrose, Anhydrous Dextrose, Liquid Glucose, Sorbitol Solution and Modified Starch falling under Chapters 11, 17, 29 and 35 of the First Schedule to the Central Excise Tariff Act, 1985 (herein after referred to as the "CETA, 1985"). The assessee is also availing of the benefit of Cenvat credit as per the provisions of Cenvat Credit Rules, 2004 (herein after referred to as CCR, 2004).

2. The assessee is manufacturing excisable goods viz. Dextrose and Glucose, falling under Chapter 17, Sorbitol falling under Chapter 29 and Modified Starch falling under Chapter 35 of the CETA, 1985 and clearing the same on payment of appropriate amount of Central Excise duty leviable thereon. The assessee is also manufacturing and clearing MAIZE STARCH POWDER (Plain Starch), REDUGENT (Hydrol) and CORN EXTRACTIVES (Corn Steep Liquor) classifying the same under Chapters 11, 17 and 23 respectively of the CETA, 1985. The assessee had cleared the Plain Starch at nil rate of duty whereas Redugent (Hydrol) and Corn Extractives (CSL) under nil rate of duty as per Notification No. 3/2006-CE dated 1.3.2006, as amended. As regards Maize Starch Powder (plain starch), there is a classification dispute since the Revenue, on the strength of production process and test results intend to classify the said product as dutiable product i.e. Modified Starch under Chapter 35 of CETA, 1985. In respect of other two exempted products i.e. Redugent and CSL, Revenue is demanding 10% reversal on value of clearance under Rule 6(3)(b) / 6(3)(i) of Cenvat Credit Rule, 2004, on the grounds that (a) the assessee manufactured dutiable as well as exempted goods; (b) the assessee did not maintain separate accounts for receipt, consumption and inventory of common Cenvatable inputs meant for use in manufacture of dutiable and exempted goods; and (c) the assessee took CENVAT Credit on common inputs used in manufacture of dutiable as well as exempted goods.

3.1 As per Notification No. 39/2004-CE(NT) dated 25.11.2004 read with sub-rule 4 of Rule 9A of CCR, 2004, assessees who are manufacturing the goods specified in the said notification and have paid excise less than Rs. 1 Crore through PLA during the preceding financial year are exempted from filing the ER-5 and ER-6 returns. It appeared that though the assessee were manufacturing and clearing the excisable goods falling under chapters 11, 17, 29 and 35 of CETA, 1985 and were paying Excise duty more than Rs. 1 Crore per annum from PLA, they had not filed required ER-5 and ER-6 returns after issuance of the said notification. The assessee, in past many years, had paid duty of more than

Rupees One Crore and also manufactured and cleared products of Chapter 29 of CETA, 1985 and hence were required to file ER-6 monthly return u/r 9A(3)of CCR, 2004, which they did not file. However, on persuasion, the assessee, on 24.11.2008 sent their ER-6 return for the month of September-2008 and October-2008 by fax to Jurisdictional Range office, wherein under column 9B of table at Sr. No. 4 of ER-6 return, they did not report the description of finished products as prescribed. Further, instead of providing details required in prescribed table at Sr. No. 5 of ER-6 return, in respect of waste and scrap arising during the manufacture and clearance/ destruction thereof, the assessee made a single jumbled entry as "CSL, Maize Gluten, Redugent, Wet Husk, Maize Germ, Maize Grit" and specified quantity of 5401.125 MT for September, 2008 and quantity of 5289.931 MT for the month October, 2008 respectively. They also did not include the declaration and authorization portion specified at Sr. No.6 of ER-6 filed for the months of September, 2008 and October, 2008.

3.2 Some of the products specified under Sr. No.5 of ER-6 viz. Maize Gluten, Wet Husk, Maize Germ and Maize Grit never appeared in the ER-1 returns being regularly filed by the assessee and hence clarification regarding all products including 'waste and scrap' mentioned in ER-6 return was sought vide letter F.No. AR-IV/Anil-ER-6/09-10 dated 7.5.2009, wherein they were asked to provide copies of invoices of each product which they had cleared from the factory. Shri Sunil Seth, Vice President of M/s Anil Products Ltd. submitted their report vide their letter dated 9.5.09 received on 15.5.09, only after getting reminder letter F.No. AR-IV/Anil-ER-6/09-10 dated 12.5.09 from the department. The assessee's report dated 9.5.09 reads as under:-

SEP-08

Sr.	Product	8 Digit CETH	Qty. Mfd.	Qty. Cleared	Duty Paid	Sample Invoice No. & Date
1	CSL	2303 1000	70.820	72.820	Noti. 6/2002	Enclosed
2	MAIZE GLUTEN	23031000	433.655	433.655	Noti. 6/2002	Enclosed
3	REDUGENT	17039090	105.145	105.145	Noti. 6/2002	Enclosed
4	WET HUSK	23021010	4096.84	4096.840	Noti. 6/2002	Enclosed
5	MAIZE GERM	NON EXCISABLE	667.120	667.120	Noti. 6/2002	Enclosed
6	MAIZE GRIT	NON EXCISABLE	27.545	27.545	Noti. 6/2002	Enclosed

OCT-08

Sr.	Product	8 Digit CETH	Qty. Mfd.	Qty. Cleared	Duty Paid	Sample Invoice No. & Date
1	CSL	2303 1000	62.610	62.610	Noti. 6/2002	Enclosed
2	MAIZE GLUTEN	23031000	417.685	417.685	Noti. 6/2002	Enclosed
3	REDUGENT	17039090	110.270	110.270	Noti. 6/2002	Enclosed
4	WET HUSK	23021010	3919.93	3919.936	Noti. 6/2002	Enclosed
5	MAIZE GERM	NON EXCISABLE	746.310	746.310	Noti. 6/2002	Enclosed
6	MAIZE GRIT	NON EXCISABLE	32.820	32.820	Noti. 6/2002	Enclosed

3.3 From the above report, it became evident that they manufactured the following products –

(a) MAIZE GLUTEN at Sr. 2 and WET HUSK at Sr. 4: Even though cleared on invoices under Chapter Sub-heading 23031000 and 23021010 respectively, under exemption notification No. 6/2002-CE, but it appeared that they did not report them in their monthly ER-1 return.

(b) MAIZE GERM at Sr. 5 and MAIZE GRIT at Sr. 6: They issued invoices for clearance thereof, deemed them to be either non excisable or exempted under Notification No. 6/2002-CE, which is intended for excisable goods only. Moreover, in their letter dated 25.2.2010 and 23.3.2010, they stated that all these disputed goods are not intended to be manufactured, but, the said goods emerge during the course of manufacture and that they are waste or refuse which emerge in the manufacturing process of other dutiable products. But it appeared that they did not report them in their monthly ER-1 return.

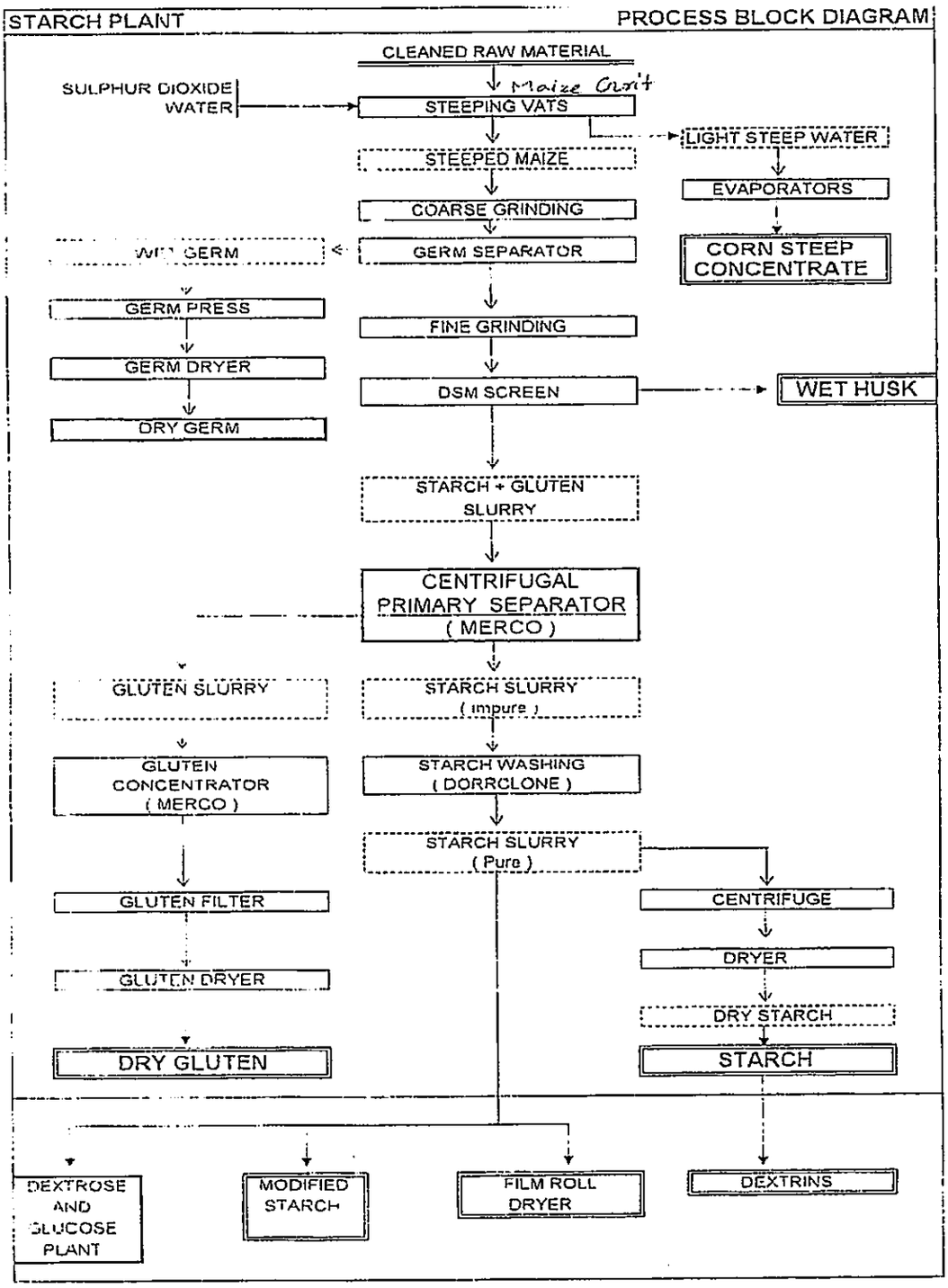
(c) CSL at Sr. 1 and REDUGENT at Sr. 3 are excisable products cleared under nil rate of duty under exemption notification and were shown by them in their monthly ER-1 return. Hence an amount equal to 10% of value of clearance was payable by them under rule 6 of Cenvat Credit Rules, 2004.

3.4 Since it is necessary to understand the Manufacturing process of starch and other products manufactured by the assessee, the same is discussed below:

Commercial Maize (Corn) is cleaned on maize cleaning machines to remove impurities and the cleaned maize grains are then put in Steeping Vats for 48 to 55 hours in warm water containing Sulphur Dioxide. This process softens the grain for grinding. Water residue from the Steeping Vat is removed. This water is called light steep water. The light steep water contains 7% solid particles. The light steep water is evaporated with the help of Steam to condense it to around 50%. The resultant product is Corn Extractive (Corn Steep

Liquor). For the manufacture of Starch and other products, steam is used at various stages. For producing the steam, they have boilers in the factory. Steam is supplied to different department through pipelines from the boiler section. For producing Steam, the assessee used INDION 850, and several other resins on which the assessee avails CENVAT credit. The assessee also avails CENVAT credit on Synthetic Filter Fabrics (CSH 59119090) and other Filter Fabrics (CSH54071015), which are being used in the manufacturing process for separating the liquid and grains. As per section 2(d) of the Central Excise Act, 1944 (herein after referred to as "CEA, 1944"), excisable goods means goods specified in the first schedule and second schedule to the Central Excise Tariff Act, 1985 as being subject to duty of excise. Thus, it appeared that MAIZE GLUTEN, WET HUSK, MAIZE GERM and MAIZE GRIT arising during the course of manufacture of Maize (Corn) Starch, claimed to be waste and residues, are also manufactured products of the assessee and fall under Chapter heading 2302 and 2303 of "CETA, 1985" and are subject to duty of excise. Any other items, whether named as waste or residues or scrap arising during the course of manufacturing of an excisable product, are also "Excisable Product" if they are clearly classifiable in the first schedule to the Central Excise Tariff Act, 1985 and have a distinct name, and use in the market. Thus, the products viz. MAIZE GLUTEN, WET HUSK, MAIZE GERM and MAIZE GRIT manufactured by the assessee, are excisable products falling under chapter heading 2302 and 2303 of CETA, 1985 , even though chargeable to Nil rate of duty.

Product	CETH	Rate of duty
Maize Gluten	23099020	Nil Tariff Rate
Wet Husk	23021010	Nil Tariff Rate
Maize Germ	23031000	Nil Tariff Rate
Maize Grit	23031000	Nil Tariff Rate



As mentioned earlier, the assessee used various raw materials and inputs for the manufacture of steam which is being used for the manufacture of their final products, both dutiable and exempted, and avails CENVAT credit of the duty paid thereon. As per Rule 6 of CCR, 2004, the CENVAT credit is not available / allowed on such quantity of inputs / raw materials which is used in the manufacture of exempted goods, including goods chargeable to nil rate of duty. As per Rule 6(2) ibid, where a manufacturer avails of CENVAT credit in respect of any inputs and manufacture such final products which are chargeable to duty, as well as exempted goods, then, the manufacturer is required to maintain separate account for receipt,

consumption and inventory of input meant for use in the manufacture of dutiable final products and quantity of input meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of input which is used in the manufacture of dutiable goods. If the manufacturer is not in a position to maintain separate accounts, then, the provisions of Rule 6(3) ibid is applicable, according to which, the assessee is required to pay an amount equal to 10% / 5% of the value of such exempted goods. During the course of manufacture of final products, the assessee produced steam in the factory premises which in-turn is used at various stages for the manufacture of starch and other products mentioned above. For the production of steam, the assessee used various chemicals and resins on which CENVAT credit was availed. Therefore, in terms of Rule 6 of CCR, 2004, when the assessee clears the MAIZE GLUTEN, WET HUSK, MAIZE GERM and MAIZE GRIT without payment of excise duty, they were required to pay an amount equal to the 10% / 5% of the value of such exempted goods. It is seen from the records i.e. ER-1 returns submitted by the assessee, that they have not paid an amount equal to 10% / 5% of the value of such exempted goods.

4. Hence, details in respect of the products manufactured and cleared by the assessee from the factory, which were not reported by them in their monthly ER-1 return, irrespective of their dutiability, was called for from the period 2004-05 onwards vide revenue's letter (1) F.No. AR-1V/Misc/Corr/2009 dated 31.10.09, (2) summons issued on 17.12.09 and 29.12.09 to Shri Sunil Seth, Vice President,M/s Anil Products Ltd.

5 The statement of Shri Sunil Seth, Vice President, M/s Anil Products Ltd, was recorded under Section 14 of CEA, 1944 on 5.1.2010, wherein he stated that he is Vice President of M/s Anil Products Ltd. since last two years and working for the last three years; that Mr. Suman looks after the work of excise since last one year; that their products Maize Gluten, Wet Husk, Maize Germ, Maize Grit, Corn Flour are their by-products which are exempted under Central Excise Law and hence they did not feel to be shown in their ER-1 monthly returns. He further stated that he would examine the issue showing of these products in their ER-1 return in legal terms; that except products no other products other than those indicated in their ER-7 and ER-1 returns are manufactured and cleared by them; that they will provide the details of clearance quantity and value data for the previous four years at the earliest; that to the best of his knowledge, captively consumed goods indicated in ER-1 under Notification No. 67/95-CE are used finally for the manufacture of dutiable goods.

6. The assessee were further reminded vide revenue's letter F.No. AR-1V/Misc/Corr./2009 dated 27.1.10 and 16.02.10 for submission of further details. The assessee, vide their letter dated 25.02.2010 submitted the data for the period 2009-10 only.

As such, they were again directed to furnish the data for the previous four financial years vide revenue's letter dated 04.03.2010. The assessee vide their letter dated 23.03.2010 has furnished the data for the last five years as per Annexure-A to the show cause notice dated 04.05.2010.

7. From the above, it appeared that (a) the assessee took CENVAT credit on common inputs involved in dutiable as well as exempted goods; (b) they did not maintain separate accounts for raw material used in the manufacture of dutiable and exempted goods as per Rule 6(2) of CCR, 2004. It has been further noticed that they had not paid 10% on the value of the products i.e. Maize Gluten, Wet Husk, Maize Germ & Maize Grit till date, on the pretext that such goods are non-excisable goods. The fact was that the assessee deliberately avoided giving any data pertaining to the above products in their ER-1 monthly returns with the sole intention of avoiding the payment of the amount as required to be paid under Rule 6(3) of the CCR, 2004.

8. The assessee was asked to submit the clearance data of the above products to the department. A Statement of Shri Sunil Sheth, Vice-President of the assessee, was again recorded on 05.01.2010, wherein he *inter alia* reiterated that the products Maize Gluten, Wet Husk, Maize Germ & Maize Grit are products which are exempted under Central Excise law and hence they did not feel that these products were required to be shown in the ER-I monthly returns.

9. It appeared that the assessee vide their letter dated 25.02.2010, submitted the data for the period 2009-10 only. Therefore, they were once again directed to submit the data for the previous five years, during which they had concealed the production and clearance and not indicated the same in the ER-1 monthly returns. The assessee, subsequently submitted the data for the previous period vide their letter dated 23.03.2010, received on 25.03.2010. The assessee continued to state that the said goods were waste or refuse emerging during the manufacturing process. However, Chapter 23 of the CETA, 1985, is specifically intended for various residues and wastes derived from vegetable materials used by food-preparing industries. Under the self-assessment procedure, it is the assessee who is required to declare all their products and classify them correctly and assess duty payable to the government. The assessee, therefore appeared to have suppressed the data regarding the production and clearance of the said products by camouflaging them as non-excisable goods, when they were well aware of the fact about the dutiability of the said products under Chapter 23 of the CETA, 1985.

10. From the above, it appeared that the assessee did not maintain separate accounts for raw material used in the manufacture of dutiable and exempted goods as per Rule 6(2) of CCR, 2004. It has been further noticed that they had not paid 10% of the total price of such exempted

goods i.e (i) Maize Gluten (ii) Wet Husk (iii) Maize Germ (iv) Maize Grit all falling under Chapter heading No. 2302 and 2303 of CETA, 1985. During the period April, 2005 to December, 2009, the assessee had cleared (i) 26732.14 M.T. of Maize Gluten valued at Rs. 50,26,50,100/-; (ii) 229775.40 M.T. of Wet Husk valued at Rs. 30,59,60,429/-; (iii) 31776.39 M.T. of Maize Germ valued at Rs. 61,02,15,830/-; and (iv) 2716.20 M.T. of Maize Grit valued at Rs. 35,47,944/-. (Total Amt. Rs. 1,42,23,74,303/-). Since, the assessee had not maintained separate accounts / inventory regarding receipt and consumption of inputs used in such goods, the assessee appeared to be liable to pay 10% on the value of such goods cleared from 01.04.2005 to 16.07.2009 & from 17.07.2009 to 31.12.2009, as per Rule 6(3)(b) of CCR, 2004, totaling to Rs 13,18,44,171/ **(Rs. 12,14,50,912/- @ 10% & Rs. 1,03,93,259/- (@5%) .**

11. Shri Sunil Seth, Vice President of M/s Anil Products Ltd., dealt in the present matter, in respect of recent returns, reports, statements and correspondences with the revenue. Even though evident in their letter dated 9.5.2009, he further went on supporting the wrong plea regarding non-excisability of said products in his statement dated 5.1.10 letter date 25.2.2010 and 23.2.2010. Not only this, he invariably delayed the supply of data regarding clearance of these products for the period from revenue's first request letter dated 31.10.09 upto the actual supply of data on 25.03.2010, i.e. making delay of 5 months. The said delay of five months has made period loss and also revenue loss since extended period of five years lapsed on that account. Considering the total demand amount of Rs. 13,18,44,171/- involved in the matter, proportionate loss to the revenue for lapse of 5 months amounts to Rs. 1,09,87,014/-. Hence, it appeared that Shri Sunil Seth, Vice President of M/s Anil Products Ltd. had rendered himself liable for penal action under rule 26 of CER, 2002.

12. Therefore, M/s. Anil Products Ltd. was issued show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010 by Commissioner, Central Excise, Ahmedabad II, to show cause as to why -

(i) The amount of Rs. 12,14,50,912/-, being an amount equal to 10% of the price of exempted goods cleared during the period from April-2005 to 16.07.2009, and Rs. 1,03,93,259/-, being an amount equal to 5% of the price of exempted goods cleared during the period from 17.07.2009 to December'09, which was not paid by them as required under Rule 6 (3) (b) / 6(3)(i) of the Cenvat Credit Rules, 2004, should not be recovered from them under Rule 14 of Cenvat Credit Rules, 2004, read with Section 11 A of the Central Excise Act, 1944, by invoking the extended period;

(ii) Penalty should not be imposed upon them under Rule 15 (2) of Cenvat Credit Rules, 2004, read with provisions of Section 11 AC of Central .Excise Act, 1944:

(iii) Interest at the prescribed rate should not be charged / recovered from them under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 AB of the Central Excise Act, 1944.

13. Shri Sunil Seth, Vice President of M/s Anil Products Limited, was also called upon to show cause as to why penalty should not be imposed upon him under rules 26 of Central Excise Rules, 2002.

14. The above show cause notice covering the period from April, 2005 to December, 2009 was issued for exempted products Maize Gluten, Wet Husk, Maize Germ and Maize Grit on the grounds mentioned in the show cause notice. In respect of other exempted products viz. Redugent (Hydrol), Corn Extractive (Corn Steep Liquor) and Bio Feed (Feed Anil), show cause notices up to the period December, 2009 were issued and adjudicated by the jurisdictional Assistant Commissioner, which were further litigated upto Hon'ble Supreme Court.

15. For subsequent periods i.e. from January, 2010, following show cause notices have been issued to the assessee, covering all these exempted products viz. Redugent (Hydrol), Corn Extractive (Corn Steep Liquor) and Bio Feed (Feed Anil), Maize Gluten, Wet Husk, Maize Germ and Maize Grit.

Sr. No.	Show Cause Notice F.No. and Date	Period Involved	Amount (Rs.)	SCN issuing authority
1.	V.35/15-71/Dem/2010 dated 12.01.2011	January, 2010 to July, 2010	1,19,07,468/-	Commissioner
2.	V.23/15-35/OA/2011 dated 02.09.2011	August, 2010 to March, 2011	1,46,58,462/-	Commissioner
3.	V.35/15-18/OA/2012 dated 04.05.2012	April, 2011 to September, 2011	98,30,324/-	Commissioner
4.	V.35/15-82/OA/2012 dated 1.11.2012	October, 2011 to March, 2012	1,44,58,304/-	Commissioner
5.	V.35/15-36/OA/2013	April, 2012 to	2,34,82,422/-	Commissioner

	dated 16.04.2013	October, 2012		
6.	V.24/15-115/OA/2013 dated 25.10.2013	November, 2012 to June, 2013	2,74,85,090/-	Commissioner
7	V.35/15-73/OA/2014 dated 24.07.2014	July, 2013 to March, 2014	3,02,79,782/-	Commissioner
8.	V.35/15-135/OA/2014 dated 27.04.2015	April, 2014 to September, 2014	2,19,75,286/-	Commissioner
9.	V.35/15-60/OA/2015 dated 30.09.2015	October, 2014 to March, 2015	2,16,00,346/-	Commissioner
10.	V.35/15-05/OA/2016 dated 19.04.2016	April,2015 to September, 2015	1,88,51,418/-	Commissioner
11.	V.35/15-58/OA/2016 dated 23.09.2016	October, 2015 to March, 2016	1,83,10,445/-	Commissioner

WRITTEN SUBMISSIONS :-

16. In reply to show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010, the assessee vide letter dated 04.11.2010 denied all the allegations, contentions and averments and in particular denied that they had contravened the provisions of the CCR, 2004 and they were liable for any penal action. They submitted that

- it has been alleged in the show cause notice that they had manufactured dutiable as well as exempted product and had not maintained separate account and that they had taken CENVAT credit on the common inputs used in the manufacture of dutiable as well as exempted finished products;
- on going through the provisions of the said Rule 6(3) of the CCR, 2004, it was observed that an amount of 10% was required to be reversed only if some common inputs, on which CENVAT credit had been taken, were used in the manufacture of dutiable and exempted final product and that no separate account for receipt, inventory and consumption of such inputs had been maintained by the manufacturer. Thus, in order to attract the mischief of the said Rule 6(3) of the CCR, 2004, the first and foremost condition which the department was under obligation to prove and bring on record that there were common inputs on which CENVAT credit was taken, and which were used in the manufacture of dutiable and exempted final products.
- The subject notice nowhere remotely mentioned the details of common inputs on which CENVAT credit was taken and such inputs were used in the manufacture of dutiable final products and exempted products and having failed to put on record the details of common inputs was legally not sustainable and the same deserved to be withdrawn.

- They were alleged to have taken credit of the Resin which were used in boiler and had also availed CENVAT credit on Synthetic Filter Fabric used in the process for separating liquid and grains. These facts revealed that they had taken CENVAT credit on the inputs viz. Resin and Synthetic Filter Fabrics, which were not directly used in the manufacture of dutiable and exempted final products. As per the provisions of Rule 6 of the CCR, 2004, what was required was that there should be common inputs used in the manufacture of dutiable as well as exempted final products.
- The show cause notice did not reveal the dutiable as well as final products and the common inputs. The resins were used in boiler which in turn was used for generation of steam, which was a utility. The Synthetic Filter Fabrics were used for filtering the liquid and solid during the course of manufacture and therefore it could not be considered as a common input used in dutiable as well as exempted product.
- They referred to Section 73 of the Finance Act, 2010 and submitted a statement showing the total amount of CENVAT credit taken by them from 2005-06 onwards on Resin and Synthetic Filter Fabrics, a worksheet showing the total sale for the year, sale of excisable goods, sale of non excisable goods and the amount earned in trading activity and submitted that they had debited the amount of inputs proportionately attributable to the value of non excisable goods and the value earned from trading activity, along with interest of 24% p.a.
- In view of the above reversal, they submitted that the action as proposed in the subject show cause notice do not survive.
- They requested that it may be considered as an application, as provided under Section 73 of the Finance Act, 2010.

17. In reply to show cause notice F.No. V.35/15-71/DEM/2010 dated 12.01.2011, the advocate of the assessee, vide letter dated 05.03.2011 *inter – alia* submitted that:

- in the present case, certain facts are not disputed and that the goods cleared from the assessee's premises are basically in the nature of waste arising during the manufacture of starch, dextrose / glucose.
- the aforesaid goods are produced during the course of manufacture as by-product or waste. Maize Grit is nothing but dusty and brittle particles of maize which are not required or fit for production purposes. Hence the same are sieved and separated at the initial stage of manufacture.
- Maize is an agricultural produce and no Cenvat on any raw material is taken before the stage of removal of maize grit from assessee's premises. Hence, demand on the Maize Grit would amount charging duty on agricultural produce itself. Hence, the demand is not only wrong in law but also unsustainable as the clearances are in no manner

clearances of a manufactured goods or article.

- Similarly Wet Husk and Maize Germ, CSL, Glutton and Feed Anil are produced out of maize during manufacture of Starch in which no excisable goods are added or mixed for any purpose.
- Maize grain is put in warm Sulphurous water and then after the requisite process of washing, grinding, crushing and separating centrifuging with High Speed and other machinery, the aforesaid waste products are separated from the Maize grain.
- In the SCN itself, in the list of common inputs used, there is no reference of any inputs which are directly used for the aforesaid processes in assessee's factory. Hence, there is no input directly used in the manufacture of aforesaid waste product on which Cenvat credit is availed.
- With reference to warm water used in the steeping vats and further manufacture, it is submitted that entire Cenvat credit availed on resins or HCL etc. used in boiler is reversed with interest well before issue of the show cause notice or not taken at all in certain cases in the context of other proceedings on the same subject. Hence, it is submitted that no Cenvat credit is deemed to have been availed on any goods which are used in Boiler also. Hence, steam water supplied also does not contain any Cenvatable raw-material.
- Corn Steep Liquor also is nothing but water residue, remaining after softening of maize grain. As no Cenvatable raw-material is used during the production of aforesaid waste products, no Cenvat credit can be held to be availed on such products. It is also submitted that when no Cenvatable raw material is used, in the manufacture of aforesaid goods, provisions of rule 6(3) are also not attracted pertaining to maintenance of separate records. Hence, the demand is unjustified and unsustainable.
- As per Rule 2(k) of the Cenvat Credit Rules, input means all goods used for generation of electricity or steam used in or in relation to manufacture of final product or for any other purpose, within the factory of production. As per rule 2(k) also, if any input is used for electricity or steam, within the factory of production, the credit on the same is permissible even if the same is used for any other purpose, besides for the purpose of manufacture of final product. Hence, as per aforesaid rule also, if any input is used in the boiler, the credit need not be reversed as the same is used for generation of electricity or steam within the factory of production. The aforesaid view is further supported by the decision of the Honourable Apex Court in the case of M/s. GNFC reported at 2008 (229) ELT 9 (SC). They submitted that the demand of 5% on the clearances of aforesaid waste product merely on the ground that some Cenvatable raw material may have been used in the boiler for generation of steam is bad in law and requires to be dropped.

- Besides the aforesaid waste product, Redugent is produced during the course of manufacture of Dextrose Monohydrate. Redugent is nothing but waste which remains in the process of manufacture of Dextrose Monohydrate (DMH). The same has no regular market and not produced. All the active ingredients of DMH are extracted during the course of manufacture of DMH upto the extent possible and the crude left thereafter in which no extraction is possible is removed as waste. Hence, it is submitted that the Redugent is nothing but waste generated during the course of manufacture and hence, it cannot be said that any input/ raw material is used for manufacture of aforesaid waste. It is also not possible to ascertain the quantity of raw-material which may have been used in the Redugent. It is impossible to trace the exact input of cenvatable in terms of quantity. However, by way of abundant caution, the assessee have worked out raw material content used in the manufacture of Redugent and have reversed the proportionate Cenvat credit. Hence also, demand of 5% on the clearances of Redugent cannot be sustained.
- It is also denied that HDPE bags and sacks on which Cenvat credit is availed is used for packing of aforesaid waste product. It was specifically informed to the department by letter dated 09.09.2010, that the clearances of aforesaid waste product are done after packing in old Hessian Bags (Bora) or in used HDPE bags or in buyer's bags or in hand-cart or bullock-cart. Hence also, it is submitted that no Cenvatable raw-material is used for clearance of aforesaid waste products.
- Rule 6(3) is applicable only when two or more separate final products are manufactured in the factory of manufacture by using common raw-material and either one of them attracts duty or one of them is exempted or attracting NIL rate of duty. This provision is not at all applicable when any waste or by-product which emerge during the course of manufacture of final product. Erstwhile Rule 57(D) specifically dealt with aforesaid situation wherein credit was considered as permissible even if waste or by-product is manufactured or produced during the course of manufacture and provisions of erstwhile Rule 57CC were clearly considered not applicable in the aforesaid condition. Rule 6(3) is *pari-materia* with erstwhile rule 57CC. It is consistent view of higher authorities that when waste or by-product is produced during the course of manufacture, then provisions of rule 57CC are not applicable. In this regard, reliance is also placed on the decision of Honorable Bombay High Court in the case of M/s. Rallis (India) Limited [2010 (233) ELT 301], wherein the same view is upheld.
- The demand of 5% on the clearances of exempted waste or by-product is not sustainable and requires to be dropped in the interest of justice.
- They also referred to Board's Circular issued from F.No. B-4/7/2000-TRU dated 3.04.2000 where in para 5 of the said circular, it is clarified that despite the new

rules coming into force, there is no intention to disallow Cenvat credit on inputs contained in waste, refuse or by-product or an intermediate product irrespective of whether or not it is exempted. The said paragraph is required to be read in its true context. Needless to state, if the waste or by-product was not exempt from duty, there would be no confusion or ambiguity in the first place, inasmuch as it would constitute dutiable goods. The clarifications sought are obviously in the context of inputs contained in such waste, refuse or by-products which are exempt from duty, and in light of the fact that rules after 01.04.2000 are silent on this aspect, as stated in the show cause notice.

- They also referred to the decision of Hon'ble Tribunal reported in 2001 (133) ELT 385 (Para 2), 2004 (178) ELT 255 (Para 4) and 2004 (178) ELT 720 and that in light of the aforesaid circular as well as the decisions of the higher authorities which have consistently taken a view that even after 01.04.2000, Cenvat credit cannot be denied merely because inputs are contained in any by-product or waste which is exempt from duty.
- The very basis of the show cause notice is taken away by the aforesaid decisions, hence the same is required to be quashed.
- The alleged products are not even by-product, but are, as a matter of fact, waste. As a matter of fact, a major portion of corn extractives is drained in the gutter. Furthermore, a portion of Redugent is also disposed off / destroyed. The aforesaid are remnants which contain, after all no active ingredients, as the same are extracted from the in-process material, to the extent possible. The remnants, which is Redugent and / or corn extractives cannot be further worked to extract the active ingredients like starch, glucose etc. These are purchased at a very low price for miscellaneous uses like fillers, supplementary cattle feed etc.
- The impugned by-products are actually waste. It is settled law that merely because waste is sold for any price, the same does not become goods.
- Even if waste is mentioned in the tariff, it is still waste [2004 (176) ELT 819]. They also referred to decision of Hon'ble CESTAT reported in 2005 (179) ELT 461.
- The provisions of Rule 3 of the Cenvat rules only provide that credit can be availed on inputs that are received for use in or in relation to manufacture of the final product. This is the only requirement for availing credit. In this context, Rule 6 must be read to refer to the exempted goods as being final products. This appears to be the purport and the implied reasoning of the aforesaid decision. Hence, if the final product is exempted, Rule 6 would apply, inasmuch as Rule 3 would read to mean that the inputs are received in relation to manufacture of such final product which is exempt, and therefore, under Rule 6 credit can be denied. However, if the final product is dutiable,

then, the entire inputs received for manufacture of such final product, would be eligible to credit irrespective of some by-product or waste, arising in the process which may be exempt.

- The assessee has either not taken any Cenvat on raw material used which may have common usage or have reversed the Cenvat either entirely or in proportion to the clearance value of goods. It is consistent view of the higher authorities that when credit is reversed, no amount of duty can be demanded. If department is of the view that reversal is not proper or perfect or the ratio is not correct, then, demand should have been made for additional reversal of Cenvat. However, benefit of exemption cannot be denied or demand of 5% cannot be sustained, if there are any lacunae in the reversal of Cenvat.
- It is also consistent view of the higher authorities that demand of duty is not sustainable where a small or meager amount of Cenvat credit is availed, denying the benefit of exemption or NIL rate which was otherwise available to the assessee. Here also in the present case, the demand is made on the basis that a small amount of Cenvat could have been taken on the raw-material which may have been used in the manufacture of waste or by-product and for which no separate accounts are maintained. Hence also, the demand is bad in law and requires to be quashed in the interest of justice.
- In light of the aforesaid, the show cause notice is required to be quashed.

18. The assessee also submitted written replies in respect of some of the aforesaid show cause notices on similar lines as stated supra.

PERSONAL HEARING :-

19. Personal Hearing in these cases was fixed on 30.06.2016, however, on the request of the assessee, Personal Hearing was adjourned and held on 01.07.2016, wherein Shri Devan Parikh, Senior Advocate with Shri Raj Vyas, Advocate, Shri Jitendra J. Danak, Senior Executive and Shri Vijay A. Shah, Deputy Manager of the assessee appeared and reiterated the points made in the written defence reply submitted in response to earlier show cause notice e.g. defence reply dated 04.11.2010 in reply to show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010. He said that the case is covered in their favour in view of Hon'ble Gujarat High Court's Order in Tax Appeal No. 839 of 2012 and connected matters dated 09.01.2013 and Hon'ble Supreme Court's Order in C.A. No. 3035-3036 of 2014 dated 18.09.2014. They said that since the matter has already been decided by the Apex Court, it is

no longer *res integra*. They also said that a written submission will be filed within 10 day's time.

FURTHER WRITTEN SUBMISSION :-

20. The Advocate of the assessee filed written submission on 25.07.2016 on behalf of assessee, wherein it was submitted that

- the issue involved in this case was settled by innumerable decisions including those of various High Courts and also Hon'ble Supreme Court of India.
- The present show cause notices are in continuation of earlier cases between the department and the assessee on this very issue. All these cases have also since attained finality in favour of assessee, hence the issue is no longer *res-integra* and is concluded by a catena of decisions, including those in the case of M/s Anil Products itself.
- The present adjudication pertains to innumerable show cause notices issued against the assessee and submitted the details pertaining to each such show cause notice, products involved, period involved, etc.
- A common thread is running through all the show cause notices. The issue pertains to reversal of credit on the inputs used in the context of waste and by-products under Rule 6 of the CCR, 2004.

- The assessee is primarily involved in manufacturing various finished final products like Plain Starch, Dextrose, Anhydrous Dextrose, Liquid Glucose, Sorbitol Solution and Modified Starch, etc. falling under Chapters 11, 17, 29, 35 and various other Chapters of the CETA, 1985. Primarily, all these products are starch based products. The basic raw-material is Maize. Clearly, such Maize, being an agricultural produce, is not subject to excise. Now, in the course of manufacture of final products like Sorbitol, Dextrose, etc. at various stages, waste arises. Such waste has purely incidental use and can hardly even be considered a by-product.
- Even if one considers such remnants to be by-products, the issue stands settled in favour of the assessee. Various show cause notices deal with various such waste and by-products i.e. Maize Gluten, Wet Husk, Maize Germ, Maize Grit, Redugent (Hydrol), Corn Extractive (Corn Steel Liquor), Bio Feed.

- In the course of the present litigation for the past period, learned Commissioner of Central Excise, Ahmedabad-II, had earlier passed Order-in-Original No. 01/AKG/COMMR/AHD-II/TECH/2013, dated 23.1.2013, wherein, he had to decide the amount of credit, which

was availed for the purpose of ascertaining the quantum of reversal in the context of the said waste and by-products. This was as per the direction of Hon'ble High Court of Gujarat. A Committee of Assistant Commissioner, Two Superintendents and Two Inspectors was formed to go into the manufacturing process. From paragraph 13 onwards, the details of various waste and by-products are stated as per the report of the Committee itself. In light thereof, there can hardly be any need to go into the same process again and to explain the said process in detail.

- Corn Extractive/ Corn Steep Liquor is nothing else, but excess water which comes out of the steeping vats where Maize Corn is steeped for 48 to 55 hours in warm water. This water is primarily waste and is mostly released in the gutter lines. However, some quantities are used for animal feed to supplement nutrition. This is called Corn Steep Liquor. Bio-fuel is nothing else, but Maize Kernel while leaching out from corn vet milk. After evaporating water, it is sold as bio-feed or cattle feed.

- It is clear from the aforesaid the products in question are more in the form of waste than even by-products. They are, however, certainly not final products. No one would ever think of putting up a manufacturing unit to make the aforesaid products. They arise in the course of manufacture of final products. In the very nature of waste at different stages, they possess some nutrition value. It is due to this that, on some occasions, there are buyers to purchase this product for miscellaneous use like animal feed supplement, sweetener, etc.

- Since years various show cause notices have been issued by the Department to the assessee with regard to these very products primarily claiming that duty paid inputs are used in the manufacture thereof. It is most pertinent to note that substantial portion of raw-material even at this stage is only Maize and water and it is not as if some high-end raw-material is used in this regard. The duty paid inputs referred to in the show cause notices are in the form of resins for purifying the water or filter for filtering out impurities and such other minor elements used at the stage of production of steam. It is the case of the Department that, as this steam is used in the entire factory, some portion of steam must be deemed to have been used in the process, which brings into existence the aforesaid waste and by-products. Hence, some proportionate credit of such resin, filter, etc. should be reversed.

- The very nature of such a case truly lies more in form than substance. In the first place, the quantum of alleged inputs used to make steam is quite small and they are not even main substantial raw-material. However, to state that steam is used to make such waste and by-

products itself renders the case extremely small, which would, therefore, require such reversal is, more a question of form than substance.

- With regard to this very product the issue had gone all the way to Hon'ble Supreme Court of India and Hon'ble High Court of Gujarat in the case of the assessee themselves. In the context of Rule 6, it has been held that, even if it is presumed that some inputs exist in the operation of waste and by-products, there is no need to reverse the credit thereof. It has been held that Rule 6 only talks of final products. Hence, if there is more than one final product where common inputs are used, then and then only is procedure prescribed in Rule 6 required to be followed. The said Rule does not prohibit Cenvat credit being taken on waste and by-products. This issue now stands settled by the direct decision of Hon'ble Supreme Court of India in the case of Union of India vs. Hindustan Zinc Limited, reported at 2014 (303) ELT 321.

- They have drawn attention to the bottom of the first page of the said judgment, and submitted that the same demonstrates that various other appeals in similar fact-situation were also disposed of by Hon'ble Supreme Court of India arising from Rajasthan, Madras and Bombay High Courts. Thus, the said decision concludes the issues pan India that there is no need to reverse inputs contained in waste and by-products as per the provision of Rule 6. In different fact-situation, but on the same issue, i.e. reversal of inputs contained in waste and by-products, appeals were filed by the Department from the judgments of the High Courts of Gujarat and Karnataka. The department's appeals were dismissed on merits after granting leave holding that the issue involved in these appeals stands settled by Hon'ble Supreme Court of India itself in the case of Hindustan Zinc Limited (supra).
- They submitted a copy of the aforesaid judgment of Hon'ble Supreme Court of India reported at 2015 (320) ELT A343. The judgment that was confirmed by Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise vs. Nirma Limited, reported at 2012 (281) ELT 654.
- The case of various products and various fact-situations, where waste and by-products emerge, the issue is now settled that, under Rule 6, credit of inputs contained therein need not be reversed.
- The Larger Bench of Hon'ble Tribunal in the case of Rallis India Limited took a view against the assessee, however, Hon'ble Bombay High Court, in its decision reported at 2009 (233) ELT 301, reversed the said judgment of the Larger Bench of Hon'ble Tribunal in the case of Rallis India Limited. Similarly, the same view was taken by Hon'ble High Court of Gujarat in the case of Sterling Gelatin, reported at 2011 (270) ELT 200. Now, in the case of the assessee, M/s. Anil Limited, and with regard to this very same products, i.e. Redugent, Corn Extractives, Bio Feed, etc. Hon'ble Tribunal took a view in favour of the

assessee. The Department preferred an appeal before Hon'ble High Court of Gujarat. Hon'ble High Court of Gujarat has, on these very facts, by judgment dated 9.1.2013, referred in detail the entire history of case-law and also referred to its own judgment in the case of Nirma Limited {supra} as well as Sterling Gelatin {supra} and upheld the judgment of Hon'ble Tribunal in favour of the assessee and against the Department.

- Against the aforesaid judgment of Hon'ble High Court of Gujarat, the Department preferred a Petition for Special Leave to Appeal before Hon'ble Supreme Court of India. By judgment and order dated 18.9.2014 rendered in Civil Appeals No. 3035-3036 of 2011 and connected matters, Hon'ble Supreme Court of India confirmed the aforesaid judgment of Hon'ble High Court of Gujarat.
- In light of the aforesaid history, various other show cause notices and appeals on this very issue have since been decided by various authorities in favour of the assessee. Hon'ble CESTAT, by judgment and order dated 22.7.2015, in the case of Anil Bioplus Limited, on this very issue, relied upon the judgment of Hon'ble Supreme Court of India in the case of Hindustan Zinc Limited {supra} and allowed the appeal in favour of Anil Bioplus Limited. Learned Assistant Commissioner has also passed Order-in-Original No. MP/01-02/Dem/AC/2016/PKS, dated 28.1.2016, again following the aforesaid judgment of Hon'ble High Court of Gujarat in the case of the assessee and in view of the fact that Hon'ble Supreme Court of India upheld the judgment of Hon'ble High Court of Gujarat in the case of Anil Products Limited as well as Sterling Gelatin {supra}, and dropped the demand. Again, by referring to the above case-law confirmed by Hon'ble Supreme Court of India in the appellant's own case, the learned Commissioner [Appeals] has allowed the appeal of Anil Bioplus Limited by Order-in-Appeal No.AHM-EXCUS-002-APP-0019-15-16, dated 22.9.2015.
- In light of the aforesaid, it is submitted that, in this very practice and on the very same issue and in the appellant's own case, the issue stands concluded by judgments of the Authorities not less than Hon'ble High Court of Gujarat and Hon'ble Supreme Court of India. Following the same, learned Assistant Commissioner, learned Commissioner [Appeals], as well as Hon'ble Tribunal have decided all the proceedings pending before them in favour of the assessee.
- Hence the issue stands settled in light of the aforesaid history. The present show cause notices are, therefore, required to be dropped in due reference and with respect to the aforesaid judgments and decisions.
- Without prejudice to the generality of the aforesaid submissions, in the alternative and by way of an abundant caution, the provisions of Rule 6 have recently been amended. The Legislature, in their eternal wisdom, recognized that absurdly large demands were raised under Rule 6 on the ground that some minor credit might have been taken on inputs,

which might have been used to make exempt final products. It would, hardly be fair to burden an assessee with such substantial huge demand of 8% or 10% of their turn-over of non-excisable goods only because, through inadvertence or otherwise, they might have availed of a substantial smaller amount of input credit in the context of non-excisable goods. On recognition of the aforesaid, Rule 6 has been amended. New sub-rule [3AA] has come into force with effect from 1.4.2016, which provides that if an assessee has failed to exercise option under sub-rule (3), even in adjudication process, he can request that the quantum of proportionate credit be determined so that he can reverse the same with 15% interest.

- Without prejudice to their earlier submissions that no reversal is necessary as the issue stands settled, by way of an abundant caution,at best, proportionate credit may be required to be reversed along with 15% interest. However, there can be no question, whatsoever, of confirming show cause notices as they stand.
- Thus, without prejudice to the aforesaid, at worst, the assessee may be required to reverse Cenvat credit on the alleged inputs proportionately along with 15% interest. They also submitted calculations for the relevant period.
- Hon'ble Tribunal, in the recent decision in the case of JSW Steel Limited vs. Commissioner of Central Excise, Navi Mumbai, reported at 2016 (332) ELT 189, held that, so long as inputs are used in the context of by-products, it is not necessary to reverse inputs stage credit in as much as, under Rule 6 itself, such reversal is not required.
- In light of the aforesaid, they requested that the present show cause notices are required to be dropped.

PERSONAL HEARING :-

Since personal hearing was not held in respect of the two show cause notices mentioned at serial number 10 and 11 of the table mentioned at Para number 15, another date for personal hearing was fixed on 19.09.2017, 27.09.2017 and on 10.10.2017. However none appeared for the hearing.

DISCUSSION AND FINDINGS :-

22. I have carefully gone through the show cause notices, various written submissions made by the assessee in response to these show cause notices and submissions made during the personal hearing held on 01.07.2016 as well as other evidences / documents available on record.

23. I find that the main issue involved in this case is whether the assessee is required to pay 10 % / 5% / 6% (as the case may be at the relevant time) of the value of clearance of exempted goods, as required under the provisions of Rule 6(3) of CCR, 2004 or otherwise. As the issue

involved in all the aforesaid show cause notices is identical, I take up all these cases together for adjudication.

24.1 In the context to this case it is pertinent to take note of the amendments made in Central Excise Rules, 1944, Cenvat Credit Rules, 2001, Cenvat Credit Rules, 2002 and Cenvat Credit Rules, 2004 vide Sections 69 to 72 read with Fourth Schedule to Eighth Schedule of the Finance Act, 2010, the relevant part of which are reproduced herein below :-

"Section 69 : - Amendment of rule 57AD of Central Excise Rules, 1944.

.....

Section 70 : - Amendment of rule 6 of CENVAT Credit Rules, 2001.....

Section 71 :- Amendment of rule 6 of CENVAT Credit Rules, 2002.....

Section 72 :- Amendment of rule 6 of CENVAT Credit Rules, 2004.....

(1) In the CENVAT Credit Rules, 2004, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, as published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 600(E), dated the 10th September, 2004, rule 6 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Eighth Schedule, on and from and up to the corresponding date specified in column (4) of that Schedule against the rule specified in column (2) of that Schedule.

(2) Where a person opts to pay the amount in accordance with the provisions as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant, certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of exempted goods, within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

(3) The Commissioner of Central Excise shall, on receipt of an application under sub-section (2), verify the correctness of the amount paid within a period of two months from the date of receipt of the application and in case the amount so paid is found to be less than the amount payable, he shall call upon the applicant to pay the differential amount along with interest, which shall be paid within a period of ten days from the date of receipt of the communication from the Commissioner in this regard.

(4) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 10th day of September, 2004 and ending with the 31st day of March, 2008, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been,

for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(5) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation. — For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this section not come into force.

THE EIGHTH SCHEDULE
[See section 73(1)]

Sl. No.	*Provisions of CENVAT Credit Rules, 2004 to be amended*	*Amendment*	*Period of effect of amendment*
(1)	*(2)*	*(3)*	*(4)*
	Rule 6 of the CENVAT Credit Rules, 2004 as published vide notification number G.S.R. 600(E), dated the 10th September, 2004 [23/2004-CENTRAL EXCISE (N.T.) dated the 10th September, 2004].	*In the CENVAT Credit Rules, 2004, in rule 6, after sub-rule (6), the following sub-rule shall be inserted, namely :—* *'(7) Where a dispute relating to adjustment of credit on inputs or input services used in or in relation to exempted final products relating to the period beginning on the 10th day of September, 2004 and ending with the 31st day of March, 2008 (both days inclusive) is pending on the date on which the Finance Bill, 2010 receives the assent of the President, then, notwithstanding anything contained in sub-rules (1) and (2), and clauses (a) and (b) of sub-rule (3), a manufacturer availing CENVAT credit in respect of any inputs or input services and manufacturing final products which are chargeable to duty and also other final products which are exempted goods, may pay an amount equivalent to CENVAT credit attributable to the inputs or input services used in, or in relation to the manufacture of, exempted goods before or after the clearance of such goods :* *Provided that the manufacturer shall pay interest at the rate of twenty-four per cent. per annum from the due date*	*10th day of September, 2004 to the 31st day of March, 2008 (both days inclusive).*

		till the date of payment of the said amount. *Explanation. — For the purpose of this sub-rule, "due date" means the 5th day of the month following the month in which goods have been cleared from the factory.'.*	

24.2 In view of the aforesaid Section 73 of the Finance Act, 2010, the assessee vide their letter dated 04.11.2010 provided details of Cenvat credit taken by them from 2005-06 onwards on Resin and Synthetic Filter Fabrics and a worksheet showing the total sale for the year, sale of excisable goods, sale of non-excisable goods and the amount earned in trading activity. They further submitted that they had debited the amount of inputs proportionately attributable to the value of non-excisable goods and the value earned from trading activity, along with interest calculated at the rate of 24% per annum and requested to consider it as an application as provided under Section 73 of the Finance Act, 2010.

24.3 The application of the assessee was initially rejected by the then Commissioner of Central Excise, Ahmedabad – II vide Order No. Section 68 to 72/F.A./Commissioner/04/2010 dated 03.01.2011 on the grounds and reasons mentioned therein. On appeal, Hon'ble High Court of Gujarat vide Order dated 18.08.2011 in Special Civil Application No. 4838 of 2011 quashed the said Order dated 03.01.2011 and revived the application dated 04.11.2010 of the assessee, with certain directions.

24.4 The application dated 04.11.2010 of the assessee was again rejected by the then Commissioner of Central Excise, Ahmedabad – II vide Order No. Section 68 to 72/F.A./01/COMMR/RAJU/AHD-II/2012 dated 19.04.2012 on the grounds and reasons mentioned therein. The assessee again approached the Hon'ble High Court of Gujarat by filing Special Civil Application No. 9048 of 2012. Hon'ble High Court of Gujarat vide Final Order issued on 11.10.2012 held that the necessary documents were on record, the Commissioner should examine the cases of the petitioner on merits of the order and accordingly, order dated 19.04.2012 was set aside. It was also observed by Hon'ble High Court that the counsel for the department suggested that the exercise that the Commissioner would undertake should be confined to the scheme period itself and not for the claim outside such period, to which the counsel for the petitioners also did not raise any dispute.

24.5 In compliance with the order of the Hon'ble High Court of Gujarat, the Commissioner of Central Excise, Ahmedabad – II vide Order-in-Original No. 01/AKG/COMMR/AHD-II/TECH/2013 dated 22/23.01.2013 decided the application dated 04.11.2010 whereby the assessee was called upon to pay the differential amount of Rs. 6,63,482/- (after adjusting the

amount of Rs. 4,56,656/- already paid by the assessee out of total payable amount determined as Rs. 11,20,138/-) for the years 2005-06, 2006-07 and 2007-08 along with interest @ 24% per annum on the total amount of Rs. 11,20,138/-, with a direction that the interest already paid shall be adjusted against the total interest payable. The assessee paid the said amount of Rs. 6,63,482/- along with interest of Rs. 6,71,807/- vide Challan No. 0220411 08022013 00012 dated 08.02.2013 / PLA Entry No. 674 & 675 dated 08.02.2013. Thus, as far as the issue involved in the show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010 for the period April, 2005 to March, 2008 is concerned, it is covered and concluded by the Order-in-Original No. 01/AKG/COMMR/AHD-II/TECH/2013 dated 22/23.01.2013 and only the period covered from April, 2008 onwards is required to be decided in the present proceedings.

25.1.1 The provisions of Rule 6 of CCR, 2004, which are the subject matter of controversy in the present case, have been frequently amended over a period of time. The major changes made in the said Rule 6 are reproduced herein below. The relevant provisions of Rule 6 of CCR, 2004 on 28.02.2008 were as follows:-

"6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.-

(1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or exempted services, except in the circumstances mentioned in sub-rule (2).

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely:-

(a) if the exempted goods are-

(i) goods falling within heading No. 22.04 of the First Schedule to the Excise Tariff Act (hereinafter in this rule referred to as the said First Schedule);

(ii) Low Sulphur Heavy Stock (LSHS) falling within Chapter 27 of the said First Schedule used in the generation of electricity;

(iii) Naphtha (RN) falling within Chapter 27 of the said First Schedule used in the manufacture of fertilizer;

(iv) Naptha (RN) and furnace oil falling within Chapter 27 of the said First Schedule used for generation of electricity;

(v) newsprint, in rolls or sheets, falling within heading No.48.01 of the said First Schedule;

(vi) final products falling within Chapters 50 to 63 of the said First Schedule,

(vii) goods supplied to defence personnel or for defence projects or to the Ministry of Defence for official purposes, under any of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-

(1) No. 70/92-Central Excise, dated the 17th June, 1992, G.S.R. 595 (E), dated the 17th June, 1992;

(2) No. 62/95-Central Excise, dated the 16th March, 1995, G.S.R. 254 (E), dated the 16th March, 1995;

(3) No. 63/95-Central Excise, dated the 16th March, 1995, G.S.R. 255 (E), dated the 16th March, 1995;

(4) No. 64/95-Central Excise, dated the 16th March, 1995, G.S.R. 256 (E), dated the 16th March, 1995,

(viii) Liquefied Petroleum Gases (LPG) falling under tariff items 2711 12 00, 2711 13 00 and 2711 19 00 of the said First Schedule;

(ix) Kerosene falling within heading 2710 of the said First Schedule, for ultimate sale through public distribution system.

the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or

(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to ten per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted

final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory;

(c) the provider of output service shall utilize credit only to extent of an amount not exceeding twenty per cent. of the amount of service tax payable on taxable output service.

Explanation I.- The amount mentioned in conditions (a) and (b) shall be paid by the manufacturer or provider of output service by debiting the CENVAT credit or otherwise.

Explanation II.- If the manufacturer or provider of output service fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III.- For the removal of doubts, it is hereby clarified that the credit shall not be allowed on inputs and inputs services used exclusively for the manufacture of exempted goods or exempted services.

(4) ……"

25.1.2 Following amendments were made with effect from 01.04.2008 in Rule 6 of CCR, 2004 vide Notification No. 10/2008-C.E.(N.T.) dated 01.03.2008.

- in sub-rule (1) for the words, *"exempted goods or exempted services"*, the words, *"exempted goods or for provision of exempted services"* were substituted;

- for sub-rule (3), the following sub-rules were substituted, namely,-

"(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:-

(i) the manufacturer of goods shall pay an amount equal to ten per cent of value of the exempted goods and the provider of output service shall pay an amount equal to eight per cent of value of the exempted services; or

(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).

Explanation I.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II.- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;
(ii) date from which the option under this clause is exercised or proposed to be exercised;
(iii) description of dutiable goods or taxable services;
(iv) description of exempted goods or exempted services;
(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;
(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional)= (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;
(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-

(i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii)the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services = (M/N) multiplied by P, where L denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, M denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and N denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely:-

(i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),

(ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),

(iii)amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,

(iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date till the date of payment.

Explanation I.- "Value" for the purpose of sub-rules (3) and (3A) shall have the same meaning assigned to it under section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may be, the value determined under section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

Explanation II.-The amount mentioned in sub-rules (3) and (3A), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III.- If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3) or as the case may be sub-rule (3A), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken."

25.1.3 In the said Rule 6 of CCR, 2004, in sub-rule (3), for clause (i), the following clause was substituted vide Notification No. 16/2009-CE(NT) dated 07.07.2009.

*"(i) the manufacturer of goods shall pay an amount equal to **five per cent.** of value of the exempted goods and the provider of output service shall pay an amount equal to six per cent. of value of the exempted services; or".*

25.1.4 Further amendments were made in said Rule 6 of CCR, 2004 with effect from 01.04.2011 vide Notification No. 3/2001-CE(NT) dated 01.03.2011.

- for the marginal heading, the following was substituted, namely :-

"Obligation of a manufacturer or producer of final products and a provider of taxable service"

- in sub-rule (1), for the words *"input or input service which is used in the manufacture of exempted goods or for provision of exempted services"*, the words *"input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services"* were substituted;

- for sub-rule (2), the following was substituted, namely :-

"(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for -

(a) the receipt, consumption and inventory of inputs used -

(i) in or in relation to the manufacture of exempted goods;
(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
(iii)for the provision of exempted services;
(iv)for the provision of output services excluding exempted services; and

(b) the receipt and use of input services-

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
(iii)for the provision of exempted services; and
(iv)for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).";

- in sub-rule (3), -

  - for the word *"either"*, the words *"any one"* were substituted;

  - for clauses (i) and (ii), the following were substituted, namely :-

"(i) pay an amount equal to five per cent. of value of the exempted goods and exempted services; or
(ii) pay an amount as determined under sub-rule (3A); or
(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions

of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be five per cent. of the value so exempted.";

- *for Explanation II, the following was substituted, namely :-*

"Explanation II.- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

Explanation III. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.";

- *in sub-rule (3A), -*

  - *in clause (b), in sub-clause (iii), after the words "manufacture of exempted goods", the words "and their clearance up to the place of removal" were inserted;*
  - *in clause (c), in sub-clause (iii), after the words "manufacture of exempted goods", the words "and their clearance up to the place of removal" were inserted;*

- *after sub-rule (3A), the Explanations I, II and III were omitted;*

- *after sub-rule (3A), the following were inserted, namely-*

'(3B) .....

(3C) .....

(3D) .....

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

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

(b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been

availed, shall be the value on which the rate of service tax under section 66 of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or

(c) in case of trading, shall be the difference between the sale price and the purchase price of the goods traded.

Explanation II. - The amount mentioned in sub-rules (3), (3A), (3B) and (3C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March".';

25.1.5 Notification No. 18/2012-CE(NT) dated 17.03.2012 made further amendments with effect from 01.04.2012 in Rule 6 of CCR, 2004. The said Rule 6 was *inter-alia* amended whereby in sub-rule (3), in clause (i), for the words *"five per cent"*, the words ***"six per cent"*** were substituted.

25.1.6 Major amendments were made with effect from 01.04.2016 in Rule 6 of CCR, 2004 vide Notification No. 13/2016-CE(NT) dated 01.03.2016, which are not elaborately discussed here since they do not pertain to the period covered in the present proceedings, except insertion of sub-rule 3AA in Rule 6, which has some bearing on the present proceeding. The said sub-rule 3AA of Rule 6 of CCR, 2004 is as follows.

"(3AA) Where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer competent to adjudicate a case based on amount of CENVAT credit involved, may allow such manufacturer or provider of output service to follow the procedure and pay the amount referred to in clause (ii) of sub-rule (3), calculated for each of the months, mutatis-mutandis in terms of clause (c) of sub-rule (3A), with interest calculated at the rate of fifteen per cent. per annum from the due date for payment of amount for each of the month, till the date of payment thereof."

25.2 I also note that the term 'Exempted Goods' was defined in Rule 2(d) of CCR, 2004 as follows :-

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty.

Further amendment has been made in the aforesaid definition of "exempted goods", however the same is not relevant for the purpose of deciding present issue.

25.3 The term 'Excisable Goods' had been defined in Section 2(d) of the CEA, 1944 as follows :-

(d) "excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;

In the aforesaid definition of 'excisable goods', following explanation has been inserted w.e.f. 10.05.2008 vide Section 78 of the Finance Act, 2008.

Explanation. *— For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.*

26.1 The object of allowing CENVAT credit (earlier MODVAT credit) has been succinctly summarized by Hon'ble Supreme Court in the case of KCP Ltd. Vs. Commissioner of Central Excise, Chennai [2013 (295) E.L.T. 353 (S.C.)] as follows :-

"21. It is pertinent to note that the most important object concerning grant of the MODVAT credit is to see that cascading effect of the duty imposed on the final product cleared at the time of sale is removed. If some duty is levied on the inputs, raw materials, etc., and if the final product is also dutiable, then the duty levied on inputs i.e. raw materials is to be reduced from the duty ascertained on the final product. Thus, there are two conditions for getting the MODVAT credit benefit:

(i) On the raw materials i.e. on the inputs, the manufacturer must have paid duty and such raw material must have been used in the process of manufacturing the final product in his factory or premises.

(ii) Excise duty must have been levied on the final product. If there is no duty levied on the final product, there would not be any question of grant of any relief because in that case there would not be any cascading effect on the duty imposed.

26.2 The aforesaid object of CENVAT credit scheme viz. not to allow CENVAT credit in respect of those final product where no levy of duty, has been incorporated in statutory scheme vide sub-rule (1) of Rule 6 of CCR, 2004, which provides that the CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or exempted services.

26.3 In a case where an assessee manufactures dutiable as well as exempted goods, the assessee is required to maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products and the quantity of input meant for use in the manufacture of exempted goods and can take CENVAT credit only on that quantity of input which is intended for use in the manufacture of dutiable goods. However, if such assessee opted not to maintain separate account, he was required to pay 10% / 5% / 6% amount of the value of clearance of exempted goods. The provision in Rule 6 of CCR, 2004 for payment of such lump-sum amount (10% / 5% / 6%) was made to recover a presumptive sum upon removal of exempted goods from a manufacturer who also manufactured dutiable goods by using common inputs for both dutiable as well as exempted goods and who took CENVAT credit on such common inputs.

26.4 In cases of many assessees manufacturing dutiable as well as exempted goods, it was found not feasible to maintain separate accounts and at the same time, payment of such presumptive amount (10% / 5% / 6% amount of the value of clearance of exempted goods) was found to be disproportionately high as compared to the amount of CENVAT credit attributable to the manufacture and clearance of exempted goods. Therefore, in order to obviate the difficulties faced by the assessees, sub-rule (3A) was inserted in Rule 6 of CCR, 2004 with effect from 01.04.2008 vide Notification No. 10/2008-C.E. (N.T.) dated 01.03.2008. The said sub-rule (3A) provided for payment of an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provisions of exempted services subject to the conditions and procedure specified in the said sub-rule (3A).

26.5 Further, as the said sub-rule (3A) of Rule 6 of CCR, 2004 was only prospective in nature, to conclude the litigations pending for earlier period, amendments were made vide Sections 69 to 73 read with Fourth Schedule to Eighth Schedule of the Finance Act, 2010 in Central Excise Rules, 1944, Cenvat Credit Rules, 2001, Cenvat Credit Rules, 2002 and Cenvat Credit Rules, 2004, which provided for payment of an amount equivalent to CENVAT credit attributable to the

inputs or input services used in, or in relation to the manufacture of exempted goods, along with interest at the rate of twenty-four per cent per annum from the due date till the date of payment of the said amount.

26.6 As already noted in earlier part of this order, the assessee availed the benefit of such amendment made in CCR, 2004 vide Section 73 read with Eighth Schedule of the Finance Act, 2010 and the application dated 04.11.2010 of the assessee was ultimately decided vide Order-in-Original No. 01/AKG/COMMR/AHD-II/TECH/2013 dated 22/23.01.2013 whereby the assessee was called upon to pay the differential amount of Rs. 6,63,482/- (after adjusting the amount of Rs. 4,56,656/- already paid by the assessee out of total payable amount determined as Rs. 11,20,138/- for the years 2005-06, 2006-07 and 2007-08 along with interest @ 24% per annum on the amount of Rs. 11,20,138/, with a direction that the interest already paid shall be adjusted against the total interest payable. Curiously, the assessee has not followed the procedure prescribed under sub-rule (3A) of Rule 6 of CCR, 2004 for the subsequent period, i.e from April, 2008 onwards, which has resulted in issuance of periodical show cause notices as mentioned supra, demanding payment of 10% / 5% / 6% amount of value of exempted goods.

26.7 I find that the law has been further amended and sub-rule (3AA) has been inserted in Rule 6 of the CCR, 2004, with effect from 01.04.2016 so as to enable the adjudicating authority to allow a manufacturer, who had failed to exercise the option under sub-rule (3) of the CCR, 2004, to follow the procedure and pay the amount referred to in clause (ii) of sub-rule (3) in terms of clause (c) of sub-rule (3A) (proportionate payment), with fifteen percent interest p.a.

26.8 The sum and substance of Rule 6 of the CCR, 2004 is that as held by Hon'ble Supreme Court in the case of KCP Ltd. (supra), for availing CENVAT credit, excise duty must have been levied on the final product; if no duty is leviable on the final product, there would not be any question of grant of relief because in that case there would not be any cascading effect on the duty imposed. As per Rule 6 of the CCR, 2004 the manufacturer may follow one of the options so that the unintended benefit of CENVAT credit of duty / tax paid on inputs / input services used in the manufacture of exempted goods is not availed by the manufacturer.

27.1 In the present case, as already noted earlier, the period from April, 2005 to March, 2008 has been covered and concluded by the Order-in-Original No. 01/AKG/COMMR/AHD-II/TECH/2013 dated 22/23.01.2013 and only the period from April, 2008 onwards is required to be decided in the present proceedings.

27.2 The explanation inserted w.e.f. 10.05.2008 vide Section 78 of the Finance Act, 2008 in the definition of excisable goods provides that the "goods" includes any article, material or substance

which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

27.3 Though the issue in respect of some of the exempted products involved in the present case (Redugent (Hydrol), Corn Extractives (Corn Steep Liquor) and Bio Feed) for earlier period have been the subject matter of the judgement dated 09.01.2013 of Hon'ble High Court in Tax Appeal Nos. 839 to 846 of 2012 and judgement of Hon'ble Supreme Court in Civil Appeal Nos. 9228-9335 of 2014, the issue of the amendment made in the definition of "excisable goods" by insertion of explanation w.e.f. 10.05.2008 vide Section 78 of the Finance Act, 2008, have not been discussed therein.

the said judgements have not examined and decided 28.1 As noted in the earlier part of this order, show cause notices up to the period December, 2009 in respect of exempted products, Redugent (Hydrol), Corn Extractives (Corn Steep Liquor) and Bio Feed, were issued and adjudicated by the jurisdictional Assistant Commissioner, and on appeal, by the Commissioner (Appeals), in favour of the department. However, on the appeal by the assessee, Hon'ble CESTAT decided the issue in favour of the assessee. The decision of the Tax Appeal filed by the Department against the order of Hon'ble CESTAT was in favour of the assessee. Hon'ble High Court of Gujarat, vide order dated 09.01.2013 in Tax Appeal Nos. 839 to 846 of 2012, held as follows :-

> " *The factual ground and the statutory provisions applicable being similar, we have no hesitation in upholding the decision of the Tribunal. We may, however, clarify that in the present case, there is no material to suggest that the respondent manufactured any subsidiary products with an intention to market them regularly and consistently and that it was also the case of the Department that in the process of manufacturing the principal product, certain waste/by-product came into existence. We are informed by the counsel for the respondent that the value of such waste/by-product was minuscule and that therefore also no intention can be gathered on the part of the manufacturer to manufacture and market such products as subsidiary product. We have also noticed that the respondents have voluntarily reversed the Cenvat credit utilized for manufacturing the by-product along with interest.*
>
> *On the above basis, we are inclined to uphold the decision of the Tribunal leaving the contention of the counsel for the Revenue that if there is any apparent intention to manufacture not only the principal product but the subsidiary product, the decision of this Court in the case of Sterling Gelatine (supra) may not apply, open to be considered in future. The appeals stand disposed of accordingly."*
>
> *[Underlining supplied]*

28.2 The Appeal, being Civil Appeal Nos. 9228-9335 of 2014, filed by the department were also decided by Hon'ble Supreme Court in favour of the assessee, by relying on the decision in the case of Union of India Vs. M/s. Hindustan Zinc Ltd. [(2014) 6 SCALE 750].

29.1 I find that while deciding the Tax Appeal Nos. 839 to 846 of 2012 in favour of the assessee, Hon'ble High Court clarified that in that case, there was no material to suggest that the said assessee manufactured any subsidiary products with an intention to market them regularly and consistently. Hon'ble High Court was informed by the counsel for the assessee that the value of such waste / by-product was miniscule and therefore also no intention can be gathered on the part of the manufacturer to manufacture and market such products as subsidiary product. In that case, the said assessee had voluntarily reversed the CENVAT credit utilized for manufacturing the by-products, along with interest, which fact has also been noted by the Hon'ble High Court. Further, the contention of the department that if there is any apparent intention to manufacture not only the principal product but the subsidiary product, the decision of Hon'ble High Court in the case of Sterling Gelatine may not apply, was kept open by the Hon'ble High Court to be considered in future.

29.2 From the details submitted by the assessee, it emerges that the said assessee has manufactured the dutiable goods and exempted goods as follows :-

[Rs. In Lakh]

Description	2008-2009	2009-2010	2013-14	2014-15	2015-16
Total Sales	27960.02	37760.93	82491.46	93270.86	
Sale of dutiable goods (Excisable Sales)	15251.81	18766.36	31022.01	27481.06	
Sale of exempted goods (non excisable sales)	10326.34	18550.55	51469.45	65789.80	
Trading Sales	2381.86	444.00			
Total of non dutiable sales	12708.20	18994.56			
Ratio of Dutiable Sales value to Non-Dutiable Sales Value	55 : 45	50 : 50	38 : 62	29 : 71	

From the above details, it is evident that the said assessee has not only regularly and consistently manufactured the subsidiary products, but the share of the sales volume of these subsidiary / exempted goods in the total sales volume of the said assessee has also risen consistently and considerably.

29.3 I have also considered whether the exempted goods being manufactured by the said assessee can be considered to be waste or otherwise. In this regard, I find that the Hon'ble CESTAT, in the case of Commissioner of Central Excise, Jalandhar Vs. A.G. Fats Ltd. [2012 (277) E.L.T. 96 (Tri. – Del.)], has differentiated between the terms "waste" and "by-product" as follows :-

> *"6. ..... However, a distinction has to be made between the term 'by-product' and the term 'waste.' Oxford Advanced Learner's Dictionary defines the term "by-product" as a substance produced during the process of making or destroying something else. Thus, if in course of manufacture of product A, a product B, also emerges in addition to the intended product A, even though there was no intention to manufacture the product B, the product B would be called a by-product. The waste is a by-product which is of no value or very low value. Larger Bench of the Tribunal in the case of Markfed Vanaspati & Allied Indus v. CCE, Chandigarh reported in 2000 (116) E.L.T. 204 (Tribunal) after observing that by-product means something of value produced in making the main product or a substance obtained in course of a specific process but not a primary object, has held that the spent earth arising in course of refining of oil, being of no value, is not a new product or a by-product. ..... When a product emerges as a by-product in course of manufacture of some other product, that by-product cannot be treated as waste just because it is an unintended product arising in course of manufacture of an intended final product. The by-product would be waste only if it is of no value or negligible value something which the manufacture would want to get rid of. No evidence has been produced by the Assessee that the products, in question, are of no value or negligible value, which have to be got rid of. On the contrary, the records indicate that the price of fatty acids, soap stock, waxes and gums is around Rs. 23,000/- per M.T., Rs. 11,000/- to Rs. 13,500/- per M.T., Rs. 10,000/- per M.T. and Rs. 1700 to Rs. 1800 per M.T. respectively. Since the products, in question, have not been shown to be of no value or negligible value which have only to be discarded, the same would not be eligible for exemption under Notification No. 89/95-C.E."*

In a similar case as that of M/s A. G Flats Ltd mentioned supra, Hon'ble Supreme Court upheld the above decision of Tribunal when the said decision was challenged by the party in the case of A.P.Solvex Ltd. v. Commissioner- (2014(300)E.L.T.A74 (S.C)).

29.4 The per Metric Ton average value of the subsidiary products of the assessee during the period of October, 2014 to March, 2015 was as follows :-

Sr. No.	Name of the Product	Qty. (MT)	Total Value (Rs.)	Average Value per MT (Rs.)
1	Redugent (Hydrol)	783.245	14100698/-	18,003/-
2	Corn Extractives (CSL)	55.710	1380040/-	24,772/-
3	Bio Feed / Feed Anil	22.210	176804/-	7,961/-
4	Maize Gluten	2807.500	110777138/-	39,458/-
5	Wet Husk (Wet Bran)	40710.562	102976806/-	2,529/-
6	Maize Grit	705.640	2915407/-	4,132/-
7	Maize Germ	4198.635	127678880/-	30,410/-

29.4.1 The per Metric Ton average value of the subsidiary products of the assessee during the period of October, 2015 to March, 2016 was as follows :-

Sr. No.	Name of the Product	Qty. (MT)	Total Value (Rs.)	Average Value per MT (Rs.)
1	Redugent (Hydrol)	984.545	1,54,71,832/-	15,715/-
2	Corn Extractives (CSL)	7.750	77,500/-	10,000/-
3	Bio Feed / Feed Anil	875.230	39,67,988/-	4,534/-
4	Maize Gluten	2308.150	10,81,46,275/-	46,854/-
5	Wet Husk (Wet Bran)	25929.750	7,27,52,852/-	2,806/-
6	Maize Grit	0	0/-	0/-
7	Maize Germ	3435.155	10,47,57,630/-	30,496/-

The fact that the average value per MT of Redugent (Hydrol), Corn Extractives (CSL), Bio Feed / Feed Anil, Maize Gluten, Wet Husk (Wet Bran), Maize Grit and Maize Germ has been around Rs. 18,000/ 15715, Rs.24,700/10000, Rs.8,000/4500, Rs. 39,500/46800, Rs.2,500/2800, Rs. 4,100/0 and Rs. 30,400/30500 respectively indicates that these products cannot be termed as of no value or of very low value and that the assessee wanted to get rid of these products namely Redugent (Hydrol), Corn Extractives (CSL), Maize Gluten, and Maize Germ.

As against this, the average value of dutiable goods as per ER-1 Return for the month of January, 2015 was as follows :-

Sr. No.	Name of the Product	Qty. (MT)	Total Value (Rs.)	Average Value per MT (Rs.)
1	Plain Starch	2277.45	46110428	20247
2	DMHIP, Bakewell, Glucose, D.Anny. Dest.-IP	738.70	28790634	38975
3	Liquid Glucose	304.00	7067505	23248
4	Dextrose	230.19	4500765	19552
5	Sorbitol	60.90	2436000	40000
6	Modified Starch	197.6	5925050	29985

Similarly the average value of dutiable goods as per ER-1 Return for the month of January, 2016 was as follows :-

the average value of dutiable goods as per ER-1 Return for the month of January, 2016				
Sr. No.	Name of the Product	Qty. (MT)	Total Value (Rs.)	Average Value per MT (Rs.)
1	Plain Starch	1562.85	35415585/-	22658/-
2	DMHIP, Bakewell, Glucose, D.Anny. Dest.-IP	731.6	33026250/-	45179/-
3	Liquid Glucose	190.58	4409191/-	23206/-
4	Dextrose	187.18	3698322/-	19671/-
5	Sorbitol	20.1	793950/-	39697/-
6	Modified Starch	2399.35	73730638/-	30721/-

Thus, it is apparent that the average per MT value of dutiable products was ranging between Rs. 19,552/19671/- to Rs. 40,000/45179/- during the period January 2015 and corresponding period in 2016. The average per MT price of some of the exempted products viz. Redugent (Hydrol), Corn Extractives (CSL), Maize Gluten, and Maize Germ were also in the same range of dutiable products. When one considers the fact that the exempted products are being sold at average per MT value ranging from around Rs. 2500/2,800 to as high as around Rs.39500/ 46,854/-, coupled with the fact that the sales volume (in value terms) of these

subsidiary / exempted goods in the total sales volume (in value terms) of the said assessee has been consistently increasing considerably, the only conclusion one can draw is that these goods cannot be termed as mere waste or by- product.

29.5 In this context, it would be apposite to refer to the judgement of Hon'ble High Court of Jharkhand in the case of Adhunik Power Transmission Ltd. Vs. Union of India [2015 (329) E.L.T. 58 (Jhar.)], wherein it has been *inter-alia* held as follows :-

> *"9. .....*
> *(vii) Now the question before this Court is even if these petitions are tenable at law whether O-in-Os passed in aforesaid writ petitions are legal or not. To answer this question there is a need to refer Section 3 to be read with Section 2(d) and 2(f) of Central Excise and Customs Act, 1944. For ready reference, these Sections 2(d), 2(f) and relevant part of Section 3 read as under :-*
>
> *Section 2(d) "excisable goods" means .....*
>
> *(f) "manufacture" includes .....*
>
> *3. Duties specified in the Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. - (1) There shall be levied and collected in such manner as may be prescribed, -*
> *.....*
>
> *In view of the aforesaid provisions of the Act, 1944 "Zn-dross" which is a by-product of these manufacturers-petitioners is to be watched. If "Zn-dross", which is a by-product of manufacturing process of "galvanized tubes" is capable of being sold and purchased in a market and if it is commercially, a new item, then the same is "excisable goods" produced or manufactured, in India. Learned counsel appearing for the petitioners submitted that "Zn-dross" is never manufactured or produced by these petitioners nor it is excisable goods and hence O-in-Os deserve to be quashed and set aside.*
>
> *This contention is not accepted by this Court mainly for the reason that even if a by-product or ancillary product or even a subsidiary product of a main manufacturing product is capable of being sold in a market which is commercially a new item, it is always falling within Section 2(d) and 2(f) and, hence, always excise duty can be imposed and levied in view of the tariff entry for that particular item enacted under the Central Excise Tariff Act, 1985. In the facts of the present case, these petitioners are manufacturing "galvanized tubes" and during the process of manufacturing of "galvanized tubes", "Zn-dross" is produced. This may be a voluntary phenomena or involuntary phenomena and there may not be any intention on the part of the manufacturer to produce "Zinc-dross"; nonetheless it is a fact that "Zn-dross" is produced during the manufacturing process of "galvanized tubes". This involuntary phenomena of the production of "Zn-dross" is also covered, by the definition given under Section 2(d) and 2(f) specially, when "Zn-dross" is -*
>
> *commercially another item;*
> *saleable item;*
> *purchasable commodity,*
> *marketable;*

In the facts of the present case, these petitioners have actually sold away this "Zn-dross" in open market for lakhs of rupees. These lakhs of rupees have been mentioned in all the four O-in-Os by the Assistant Commissioner of Central Excise, Jamshedpur. Therefore, "Zn-dross" is undoubtedly produced by these petitioners and they are produced as a by-product of galvanized tubes. Several times it happens that several by-products are also produced whenever main product is being manufactured. For example :-

$$A + B \rightleftharpoons C + D$$

If A + B are the raw materials and if the main manufacturing item is 'C' and if the product 'D' is also, under compulsion, manufactured, in that situation "D" is known as a by-product. This by-product may be a desirable item or may be an undesirable item. If this by-product is commercially another item and if it is marketable item and if it is saleable and purchasable in the open market then the production of 'D', even though there was no intention on the part of manufacturer to produce goods "D", is always excisable. In the facts of the present case also, "Zn-dross" is commercially another item produced as a by-product - may be compulsory by-product - may be undesirable by-product. Nonetheless if it is saleable and purchasable in the open market, it is marketable goods and hence this "Zn-dross" is excisable goods arising out of manufacturing process of galvanized tubes and hence looking to the provisions of Section 3 - a charging Section for Excise Duty to be read with Section 2(d) and 2(f) of the Central Excise Act, 1944. The rate of the duty is also prescribed under Tariff Entry No. 7902 00 10. ....."

29.6 As already discussed in Para 3.4(of brief facts), the exempted products of the assessee are commercially different item, saleable item, purchasable commodity and marketable. I, therefore, hold that these products are 'excisable goods' within the meaning of Section 2(d) of the CEA, 1944 and 'exempted goods' within the meaning of Rule 2(d) of the CCR, 2004 and therefore provisions of Rule 6 of the CCR, 2004 are attracted in this case.

30.1 I have gone through the other case laws cited by the said assessee. In the cases of Hindustan Zinc Limited [2014 (303) ELT 321 (SC)], [2015 (320) ELT A343], Nirma Ltd. [2012 (281) ELT 654 (Guj.)], Rallis India Ltd. [2009 (233) E.L.T. 301 (Bom.)] and Sterling Gelatin [2011 (270) ELT 200 (Guj.)], the products were different and the Hon'ble Supreme Court and Hon'ble High Courts decided the issue in favour of the assessees after reaching the conclusion that the products involved therein were in the nature of waste or by-products, whereas in the present case, as already discussed herein above, the products involved cannot be termed as waste.

30.2 I have also gone through the Order No. A/11092-11094/2015 dated 22.07.2015 of the Hon'ble CESTAT in the case of M/s. Anil Bioplus Limited Vs. Commissioner of Central Excise, Ahmedabad – II wherein the product involved was 'Bio Feed' and Hon'ble CESTAT allowed the appeal filed by the assessee. However, I find that the said Order of the Hon'ble CESTAT has been accepted by the department on the ground of monetary limit. I also find that in the case of Tax Appeal Nos. 1435, 1438, 1473, 1474, 1486 and 1491 of 2011 filed by the department, the Hon'ble High Court of Gujarat vide judgement dated 23.01.2015 dismissed the tax appeals as not

maintainable by observing that since the demand of duty amounting to Rs. 7,53,690 as well as the equal amount of penalty was less than Rs. 10 Lakh, the instruction dated 17.08.2011 also applies to the pending appeal. I find that in view of the provisions of Section 35R of the CEA, 1944, it cannot be said that the department has agreed with the decision on the disputed issue by not filing appeal against the said decision.

31. In view of above discussion, I hold that the said assessee is required to follow the procedure prescribed under Rule 6 of the CCR, 2004 in respect of manufacture of dutiable and exempted final goods, which they have failed to do.

32.1 The said assessee, in their written submissions dated 25.07.2016 has referred to the sub-rule (3AA) of Rule 6 of the CCR, 2004 and submitted that proportionate credit may be required to be reversed by them with interest at the rate of 15% and submitted the calculations of proportionate amount required to be reversed by them for relevant period.

32.2 I find that the said sub-rule (3AA) has been inserted in the Rule 6 of the CCR, 2004 with effect from 01.04.2016 vide Notification No. 13/2016-CE(NT) dated 01.03.2016.

32.3 As the entire period covered in the present order is upto 31st March, 2015, whereas the sub-rule (3AA) has been inserted with effect from 01.04.2016 in the Rule 6 of the CCR, 2004, an issue arises whether the said sub-rule (3AA) can be given retrospective effect.

32.4 I find that the said Notification No. 13/2016-CE(NT) dated 01.03.2016 has been issued in exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), whereby the Central Government has made the rules further to amend the CENVAT Credit Rules, 2004. It has been mentioned at Para 1 of the said Notification that those rules may be called the CENVAT Credit (Third Amendment) Rules, 2016; and that 'save as otherwise provided, they shall come into force on the 1st day of April, 2016'. Obviously, the CENVAT Credit (Third Amendment) Rules, 2016 made by the Central Government are in the nature of delegated or subordinate legislation.

32.5 The Hon'ble Supreme Court, in the case of the Cannanore Spg.& Wvg. Mills Ltd. Vs. Collector of Customs & Central Excise [1978 (2) E.L.T. J 375 (S.C.)] has held that, 'the rule making authority had not been vested with the power under the Central Excises and Salt Act to make rules with retrospective effect, therefore the retrospective effect purported to be given under Ext P-12 was beyond the powers of the rule making authority'.

32.6 In the case of State of Rajasthan Vs. Basant Agrotech (India) Ltd. [2014 (302) E.L.T. 3 (S.C.)], Hon'ble Supreme Court has held as follows :-

> *"22. There is no dispute over the fact that a legislature can make a law retrospectively or prospectively subject to justifiability and acceptability within the constitutional parameters. A subordinate legislation can be given retrospective effect if a power in this behalf is contained in the principal Act. In this regard we may refer with profit to the decision in Mahabir Vegetable Oils (P) Ltd. and Another v. State of Haryana and Others - (2006) 3 SCC 620, wherein it has been held that :-*
>
> > *"We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.*
> >
> > *42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. [See West v. Gwynne - (1911) 2 Ch 1 : 104 LT 759 (CA)]."*
>
> *23. In MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and Other - (2006) 8 SCC 702 = 2006 (206) E.L.T. 6 (S.C.), the question arose whether under Section 10(3) of the Kerala General Sales Tax Act, 1963 power was conferred on the Government to issue a notification retrospectively. This Court approved the view expressed by the Kerala High Court in M.M. Nagalingam Nadar Sons v. State of Kerala - (1993) 91 STC 61 (Ker), wherein it has been stated that in issuing notifications under Section 10, the Government exercises only delegated powers while legislature has plenary powers to legislate prospectively and retrospectively, a delegated authority like the Government acting under the powers conferred on it by the enactment concerned, can exercise only those powers which are specifically conferred. In the absence of such conferment of power the Government, the delegated authority, has no power to issue a notification with retrospective effect.*
>
> *24. In Vice Chancellor, M.D. University, Rohtak v. Jahan Singh - (2007) 5 SCC 77, it has been clearly laid down that in the absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect."*

32.7 Similarly, in the case of Director General of Foreign Trade Vs. Kanak Exports [2015 (326) E.L.T. 26 (S.C.)], Hon'ble Supreme Court has held that delegated or subordinate legislation can only be prospective and not retrospective, unless rule making authority has been vested with power under a statute to make rules with retrospective effect.

32.8 In the context of sub-rule (3A) inserted in Rule 6 of the CCR, 2004 with effect from 01.04.2008, Hon'ble High Court of Bombay, in the case of Commissioner of Central Excise, Thane-I Vs. Nicholas Piramal (India) Ltd. [2009 (244) E.L.T. 321 (Bom.)], held that the said rule was prospective from the date the rules came into force and could not be applied retrospectively. The relevant paragraph of the said judgement reads as follows -

"30. Pro rata credit it is submitted has been statutorily provided in Cenvat Credit Rules 2004 with effect from 1-4-2008 and the principles and basis enshrined in those rules can be applied for the past period. The submission is that it is only a rule of evidence and such rules of procedural law, they can be applied for the period prior to 1st April 2000 also. Learned counsel seeks to rely on the judgment of the Supreme Court in Commissioner of Wealth Tax v. Sharvan Kumar Swarup - 1994 (210) ITR 886 (SC) and in Commissioner of Wealth Tax v. Lakshmipat Singhania - 1978 (111) ITR 272 (Alld). In our opinion, it is not possible to accept such a submission. Once there be rules in force, it is those rules which are to be applied. Rules subsequently made may be as a result of experience cannot be made retrospective unless so provided. In the instant case, the rule is prospective from the date the rules come into force and cannot be applied retrospectively. That submission therefore has to be rejected."

[emphasis supplied]

32.9 It is also pertinent to note that in respect of the very same Rule 6 of the CCR, 2004, when the legislature intended to make retrospective amendment, the same were made vide Section 73 read with the Eighth Schedule of the Finance Act, 2010 passed by the Parliament and not through the delegated legislation.

32.10 I, therefore hold that sub-rule (3AA) inserted with effect from 1st April, 2016 in the Rule 6 of the CCR, 2004 vide Notification No. 13/2016-CE(NT) dated 01.03.2016 cannot be given retrospective effect and therefore, the said sub-rule will not be applicable in the present case, wherein the period involved is only upto 31st March, 2016.

33.1 I have also examined whether the said assessee can pay an amount determined under sub-rule (3A) (as existed at relevant time) of Rule 6 of the CCR, 2004. I find that the said assessee had not followed any of the procedure and conditions prescribed under various clauses of said sub-rule 3A of Rule 6 of CCR, 2004. As per clause (a), the manufacturer or the provider of output service, while exercising this option, shall intimate in writing to the Superintendent of Central Excise giving the prescribed particulars. However, no such written intimation to the Superintendent of Central Excise has been given by the said assessee. Further, as per clause (b), the manufacturer of goods or the provider of output service shall provisionally determine and pay the amount as calculated in the prescribed manner for every month, but the said assessee had not determined and paid the amount as calculated in the prescribed manner for every month. As the said assessee has not provisionally determined and paid the amount every month, the question of finally determining the amount of Cenvat credit attributable to exempted goods and exempted services for the whole financial year, as provided under clause (c), does not arise. For the same reason, conditions of payment of amount equal to difference between amount provisionally determined and paid and amount finally determined, along with interest, as provided under clause (d) and (e) or taking the credit of excess amount paid as provided under clause (f) etc. have not been fulfilled by the said assessee. As the said assessee has not followed any of the procedure and

conditions prescribed under various clauses of sub-rule 3A of Rule 6 of CCR, 2004, options provided at clause (ii) or clause (iii) of Rule 3 of CCR, 2004 is not applicable to the said assessee.

33.2 In this context, the judgment of Hon'ble High Court of Bombay, in the case of Commissioner of Central Excise, Thane-I Vs. Nicholas Piramal (India) Ltd. [2009 (244) E.L.T. 321 (Bom.)], though rendered in the context of Rule 6 of CCR, 2004 prior to insertion of said sub-rule (3A), would be applicable. The relevant portion of which is reproduced herein below –

> *"18. Let us now consider Rule 6. On a plain reading of Rule 6(1), it is obvious that if inputs are used in the manufacture of exempted goods, credit is not allowed except in the circumstances mentioned under sub-rule (2) which has already been reproduced. A manufacturer who avails of Cenvat credit in respect of inputs used in the manufacture of final products which are chargeable to duty as also exempted goods, the manufacturer has to maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs used for the manufacture of exempted goods and takes Cenvat credit only on that quantity of inputs which are used in the manufacture of dutiable goods. A plain reading of this rule does not lead to any ambiguity, absurdity or defeat the provisions of the Act. The submission on behalf of the respondents that this would defeat the provisions of the Act and the rules, atleast we are not in a position to understand on a clear and literal interpretation of Rul 6(2). Rule 6(1) and Rule 6(2) read together mean that inputs used in the manufacture of exempted products no cenvat credit is allowed. It may however happen that the inputs are used in the manufacture of both exempted and dutiable goods, in which event if the register as required is maintained the credit can be taken for the quantity of inputs used in the manufacture of dutiable goods. If records are not maintained as required, the duty has to be paid in terms of Rule 6(3). The presumptive tax payable in terms of Rule 6(3) has been recognised and accepted by the Supreme Court in Ballarpur Industries (supra) while construing Rule 57CC. Rule 6(1) does not lead to the construction that if the manufacturer without maintaining the books, does not take credit for the duty paid on inputs for manufacture of exempted goods. Rule 6(1) is satisfied. Rule 6(1) is satisfied only when the requirements of the Rule 6(2) are satisfied, what requires register to be maintained for separate accounts for receipt, consumption and inventory of the inputs. Rule 6(3) then provides that if separate accounts are not maintained then the amount as set out thus has to be paid by a manufacturer who does not maintain accounts."*

34. As regards the contention of the assessee that the show cause notices nowhere mentioned the details of common inputs on which Cenvat credit was taken and such inputs were used in the manufacture of dutiable final products and exempted products, I find that during the proceedings leading to issuance of Order-in-Original No. 01/AKG/COMMR/AHD-II/TECH/2013 dated 22/23.01.2013, a committee of Central Excise Officers was formed, which, after ascertaining actual usage of each of raw material with the help of Shri Harish Tekchandani, Head (R&D), Shri Arvind Kumar Singh, Manufacturing Head and Shri Vishad Jagasheth, Authorised Signatory of Anil Limited, identified 17 raw materials as commonly used in the manufacture of dutiable as well as exempted products. Besides, the inputs such as Caustic Soda Flakes / Lye, Hydrochloric Acid which were used in the Boiler and some of the inputs out of the identified 17 raw material appeared to have been used in the entire plant and could not be identified as used for manufacture only of a particular product, were also considered as common inputs. These common inputs were

identified in concurrence with the authorized production related officials of the assessee and the differential amount on common inputs ordered to be paid vide aforesaid Order-in-Original was paid by the assessee, along with interest.

35. Therefore, I hold that the said assessee is required to pay an amount equal to 10 % / 5% / 6% (as the case may be at the material time) of the value of clearance of exempted goods, as required under the provisions of Rule 6(3) of CCR, 2004 and the same is required to be recovered from them under Rule 14 of the CCR, 2004 read with Section 11A of the CEA, 1944.

36. The said assessee is also liable to pay interest at appropriate rate on the said amount not paid, as provided under Rule 14 of the CCR, 2004 read with Section 11AB/ Section 11AA of the CEA, 1944.

37.1 I find that the said assessee was not showing their products Maize Gluten, Wet Husk, Maize Grit, Corn Flour in their ER-1 Returns. The details of these products manufactured and cleared by the said assessee from their factory were called for vide letter dated 31.10.2009 and Summon dated 17.12.2009 and 29.12.2009 issued to Shri Sunil Seth, Vice President of M/s. Anil Products Ltd. The said assessee was further requested vide letters dated 27.1.2010 and 16.02.2010 to provide required details in respect of the said products. However, the said assessee submitted the details only for the F.Y. 2009-10 vide their letter dated 25.02.2010. Therefore, the said assessee was again requested vide letter dated 04.03.2010 to furnish the details of the said products for previous four financial years. The said assessee submitted details of the said products for the last five years vide their letter dated 23.03.2010, only after such persistent correspondence by the department. I, therefore find that in respect of show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010, the said assessee had suppressed the material facts inasmuch as they did not show the details of production and clearance of the said products in their ER-1 returns and they initially did not provide such details to the department even after issuance of various letters and summons. I, therefore hold that the assessee has indulged in suppression of facts with intent to evade payment of duty and, therefore, the extended period of five years as provided under proviso to sub-section (1) of erstwhile Section 11A of the CEA, 1944, instead of normal period of one year, is rightly invoked in the case vide Para 9 of the said show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010. Since the issue involved in the said show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010 for the period April, 2005 to March, 2008 is already covered and concluded by the Order-in-Original No. 01/AKG/COMMR/AHD-II/TECH/2013 dated 22/23.01.2013 where upon an amount of Rs 11,20,138/- alongwith interest was paid by the assessee as discussed supra. I hold that the said assessee is liable to pay an amount equal to 10 % / 5 % of the value of clearance of exempted goods, as required under the provisions of Rule 6(3) and Rule 14 of the CCR, 2004 read with Section 11A of the CEA, 1944

for the period from April, 2008 onwards. The amount equal to 10% / 5% of the value of clearance of exempted goods for the period from April, 2008 to December, 2009 comes to Rs. 5,89,81,000/- as per the calculation provided by the Jurisdictional Range Officer. Thus the show cause notice no F.No. V.35/15-30/OA/2010 dated 04.05.2010 for the period April, 2005 to December, 2009 wherein an amount of Rs 13,18,44,171/- was demanded stand settled at Rs 11,20,138/- for the period April, 2005 to March, 2008 and for the remaining period of April, 2008 to December, 2009 the demand to the extent of Rs. 5,89,81,000/- stands confirmed by this order.

37.2 I find that the subsequent show cause notices have been issued within normal period of one year prescribed under Section 11A of the CEA, 1944 and the said assessee is liable to pay an amount equal to 10 % / 5 % / 6 % (as the case may be at the material time) of the value of clearance of exempted goods, as required under the provisions of Rule 6(3) and Rule 14 of the CCR, 2004 read with Section 11A of the CEA, 1944.

38.1 As the said assessee had not paid the amount required to be paid under Rule 6(3) of the CCR, 2004 and thereby taken and utilized the CENVAT credit wrongly and in contravention of the provisions of the CCR, 2004, I hold the said assessee liable for penalty as provided under Rule 15 of the CCR, 2004.

38.2 I further find that in respect of the show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010, the said assessee has not paid / short paid the amount required to be paid under the provisions of Rule 6(3) of the CCR, 2004 by reasons of suppression of facts and contraventions of provisions of the CCR, 2004 with intent to evade payment of duty, therefore, penalty under Section 11AC of the CEA, 1944 is mandatorily imposable as has been held by Hon'ble Supreme Court in the case of M/s. Dharmendra Textile Mills Ltd. [2008 (231) E.L.T. 3 (S.C.)], in the case of M/s. Rajasthan Spinning & Weaving Mills Ltd. [2009 (238) E.L.T. 3 (S.C.)] and in the case of Commissioner of Central Excise & Customs, Surat-I Vs. Vandana Art Prints Pvt. Ltd. [2016 (340) E.L.T. 4 (S.C.). Therefore, I hold the assessee liable to penalty as provided under Section 11AC of the CEA, 1944 read with Rule 15 of the CCR, 2004 in respect of the show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010.

39. I also find that Shri Sunil Seth, Vice President of M/s Anil Products Ltd., was responsible for all Central Excise matters including filing of returns, reports, statements, correspondences with the revenue. I find that in respect of the show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010, the details of the said excisable goods were not shown in the Returns filed with the department. Even after issuance of letter dated 9.5.2009 by the department, he persisted, in his statement dated 5.1.10, letter dated 25.2.2010 and 23.2.2010, with the plea that the said goods were non-excisable and did not provide the details and information sought for by the department. Not only this, he invariably delayed

the supply of data regarding clearance of these products for the period from department's first request letter dated 31.10.09 upto the actual supply of data on 25.03.2010, i.e. making delay of 5 months. I, therefore find that Shri Sunil Seth, Vice President of M/s Anil Products Ltd. had intentionally and willfully involved himself in the act of concealing and suppressing the data, not showing the details of excisable goods in the periodic returns (ER-1) filed by the assessee, misclassifying their product as non – excisable, delaying the reporting by misstatement, making huge loss to the government exchequer, and thereby rendered himself liable for penalty under rule 26 of the CER, 2002.

40. In view of the foregoing, I pass the following order.

ORDER

(A) In respect of show cause notice F.No. V.35/15-30/OA/2010 dated 04.05.2010:-

(i) I confirm the demand of amount of Rs. 5,89,81,000/- (Rupees Five Crore Eighty Nine Lakh Eighty One Thousand Only) for the period April, 2008 to December, 2009 under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 from M/s. Anil Limited.

(ii) M/s. Anil Limited are ordered to pay interest at appropriate rate under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AB / 11AA of the Central Excise Act, 1944 on the aforesaid amount.

(iii) I impose penalty of Rs. 5,89,81,000/- (Rupees Five Crore Eighty Nine Lakh Eighty One Thousand Only) on M/s. Anil Limited under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

However, if they pay the amount determined under (i) above along with interest payable thereon as ordered under (ii) above within thirty days from the date of communication of this order, the amount of penalty shall be twenty-five percent of the amount determined. The benefit of reduced penalty shall be available if the amount of penalty so determined is also paid within the aforesaid period of thirty days.

(iv) I impose penalty of Rs. 30,00,000/- (Rupees Thirty Lakh Only) on Shri Sunil Seth, Vice President of M/s. Anil Limited under Rule 26 of the Central Excise Rules, 2002.

(B) In respect of other show cause notices covered by this order :-

(i) I confirm the demand of amount of Rs. **15,40,77,138/-** (Rupees Fifteen Crore Forty Lakh Seventy Seven Thousand One Hundred Thirty Eight Only) for the period from January, 2010 to September, 2014 under Rule 14

of the CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 from M/s. Anil Limited, as shown below.

Sl. No.	SCN No. and Date	Amount (Rs.)
1.	V.35/15-71/Dem/2010 dated 12.01.2011	1,19,07,468/-
2.	V.23/15-35/OA/2011 dated 02.09.2011	1,46,58,462/-
3.	V.35/15-18/OA/2012 dated 04.05.2012	98,30,324/-
4.	V.35/15-82/OA/2012 dated 1.11.2012	1,44,58,304/-
5.	V.35/15-36/OA/2013 dated 16.04.2013	2,34,82,422/-
6.	V.24/15-115/OA/2013 dated 25.10.2013	2,74,85,090/-
7	V.35/15-73/OA/2014 dated 24.07.2014	3,02,79,782/-
8.	V.35/15-135/OA/2014 dated 27.04.2015	2,19,75,286/-
	TOTAL	**15,40,77,138/-**

(ii) M/s. Anil Limited are ordered to pay interest at appropriate rate under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AB / 11AA of the Central Excise Act, 1944 on the aforesaid amount.

(iii) I impose penalty of Rs. **15,40,77,138/-** (Rupees Fifteen Crore Forty Lak Seventy Seven Thousand One Hundred Thirty Eight Only) on M/s. Anil Limited under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

(iv) I also confirm the demand of amount of Rs **5,87,62,209/-** (Rupees Five Crore Eighty Seven Lakh Sixty Two Thousand Two Hundred and Nine Only) for the period October, 2014 to March, 2016 under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 from M/s. Anil Limited, as shown below.

Sl. No.	SCN No. and Date	Amount (Rs.)
1.	V.35/15-60/OA/2015 dated 30.09.2015	2,16,00,346/-
2.	V.35/15-05/OA/2016 dated 19.04.2016	1,88,51,418/-
3.	V.35/15-58/OA/2016 dated 23.09.2016	1,83,10,445/-
	TOTAL	**5,87,62,209/-**

(v) M/s. Anil Limited are ordered to pay interest at appropriate rate under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 on the aforesaid amount.

(vi) I impose penalty of Rs. **5,87,62,209/-** (Rupees Rupees Five Crore Eighty Seven Lakh Sixty Two Thousand Two Hundred and Nine Only) on M/s. Anil Limited under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

However, if they pay the amount determined under (i) and (iv) above along with interest payable thereon as ordered under (ii) &(v) above within thirty days from the date of communication of this order, the amount of penalty shall be twenty-five percent of the penalty imposed. The benefit of reduced penalty shall be available if the amount of penalty so determined is also paid within the aforesaid period of thirty days.

40. Proceedings under the above mentioned provisions are saved by Section 174(2)(e) of the Central Goods and Service Act, 2017.

(J.A. Khan)
Commissioner
Date:27.10.2017.

F.No.V.35/15-60/OA/2015

BY R.P.A.D.

To,

1) M/s Anil Ltd. (formerly known as Anil Products Ltd.),
Anil Road, Bapunagar,
Ahmedabad – 380 025.
2) Shri Sunil Seth, Vice President of M/s. Anil Limited
Anil Road, Bapunagar,
Ahmedabad – 380 025

Copy to :

1. The Chief Commissioner, CGST,Ahmedabad Zone, Ahmedabad.
2. Assistant Commissioner, Central Excise, Division-II, CGST and Central Excise, Ahmedabad North.
3. Superintendent,Central Excise, AR-IV Division-II,CGST and Central Excise, Ahmedabad North.
4. File No.
   (i) V.35/15-30/OA/2010
   (ii) V.35/15-71/Dem/2010
   (iii) V.23/15-35/OA/2011
   (iv) V.35/15-18/OA/2012
   (v) V.35/15-82/OA/2012
   (vi) V.35/15-36/OA/2013
   (vii) V.24/15-115/OA/2013
   (viii) V.35/15-73/OA/2014
   (ix) V.35/15-135/OA/2014
   (x) V.35/15-05/OA/2016
   (xi) V.35/15-58/OA/2016

4. Guard File.