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| <p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p> |  | <p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p> |
| <p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com</p> | | |

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. V.19/15-14/OA/2014

आदेश की तारीख / Date of Order : 04.03.2020
जारी करने की तारीख / Date of Issue : 04.03.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-32/2019-20

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

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

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

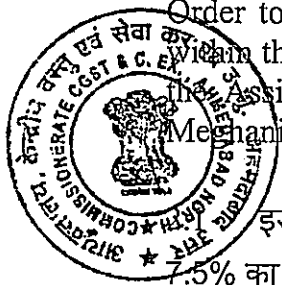
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to The Assistant Registrar, Customs, Excise and Service Tax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

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

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

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



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

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

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

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

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

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

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

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

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

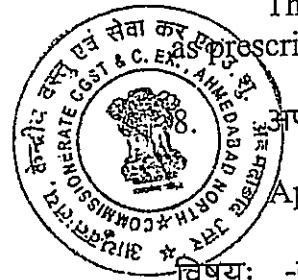
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

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.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide following Show-Cause-Notices F.No. V.19/15-14/OA/2014 dated 24.11.2016 issued to M/s Lao More Biscuits Pvt. Ltd, Plot No. 1010-B, 1011-A, Near Gayantri Mandir,Phase-IV, GIDC Estate, Naroda, Ahmedbad-382300



BRIEF FACTS OF THE CASE:

M/s. Lao More Biscuits Pvt. Ltd., at Plot No. 1010-B, 1011-A, Nr. Gayatri Mandir, Phase-IV, GIDC, Estate, Naroda, Ahmedabad – 382330., (hereinafter referred to as “the said Unit”) engaged in the manufacture of Biscuits – Chapter 19 of the first Schedule to the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No.AAACL2562MXM001.

2. On the basis of an intelligence, a team of officers visited and conducted the verification and preliminary investigation on 03.10.2013 at the premises of said unit. During the said search proceedings, it was informed by Shri Sadhuram J. Phagnani, Director of the said unit, to the officers in presence of the Panchas, that:

- The production department has two sections namely one line (i) Parle G biscuits and another for (ii) 20-20 Cashew Butter Cookies. The director had explained that Parle-G biscuits are exempted products and 20-20 Cashew Butter Cookies are dutiable products having value of more than Rs.100/- per kg.
- Different raw material used were :- (i) Wheat Flour (ii) Sugar (iii) RBD (Palm Oil) (iv) Milk Powder (v) Butter NN 2152 (vi) Butter Flavour (vii) Roasted Cashew-nut (viii) Vitamin Premix PP (ix) Bicarbonate Ammonia (x) Citic Acid (xi) Mono Acid Calcium Phosphate (xii) Sodium BI Carbonate (xiii) Finamul DL (xiv) Finamul SF (xv) Parle Flavour Mix (xvi) Salt (xvii) Soda (xviii) Poly Bag 45gm Cookies offer pack (xix) Poly Bag 72gm PG (xx) Poly Bag 45 gm Cookies (XXI) 72gm wrapper PG, (XXII) 75gm Wrapper loose inner, (XXIII) 300 gm Wrapper PG, (XXIV) 45gm Wrapper Butter Cookies, (XXV) 45gm Wrapper Cashew Cookies, (XXVI) 72gm Corrugated Boxes Parle G , (XXVII) 144 gm Corrugated Boxes Parle G, (XXVIII) 300 gm Corrugated Boxes Parle G, (XXIX) 800 gm Corrugated Boxes Parle G (XXX) 45 gm Corrugated Boxes cookies (XXXI) BOPP Printed Tape.
- The common raw materials used in production of these two kinds of biscuits mentioned above, the director informed, that those were-
 - Sugar
 - Bicarbonate Ammonia
 - Sodium Bi Carbonate
 - BOPP Printed Tape
- The receipt, storage, issuance & consumption of common raw materials used in production of these two kinds of biscuits mentioned above, the director informed that there were no separate records maintained for receipt, storage, issuance & consumption & physically stocks, were commonly stored in one place.
- Thereafter, during the verification proceedings in different sections viz. mixing, baking, picking, & packing of biscuits in specified numbers & size of packing, it was observed, that the Finished goods were stored in finished goods stock area, & other goods were commonly stored in one place from which it could not be ascertained as to which material was for exempted goods and which material for dutiable goods.
- Thereafter the Officers in presence of panchas along with director, entered in the office area, & carried out a systematic verification of documents and records kept in the office. After detailed verification, the officers concluded that the records maintained by the assessee were not proper as they had not maintained separate records for dutiable and exempted goods. The documents and records were withdrawn by the Central Excise Officers as per Annexure ‘A’ & B to the Panchnama dated 03.10.2013 for further scrutiny and under the reasonable belief that the same would be required during further investigation.

3. On further Investigation & verification of records, it was noticed that the assessee was issuing common issue slips and common cardex for dutiable & exempted products. The consumption and inventory of inputs were common. The details worksheet showing the details of receipt/issuance and closing balance of raw material i.e. sugar for the month of December, 2012 was prepared on the basis of cardex withdrawn under Panchnama dated 03.10.2013. The worksheet was shown to Shri Sadharam J. Phagnani, the director of Lao More Biscuits Pvt. Ltd during his statement on 11.11.2013 under Section 14 of Central Excise Act, 1944.

4. A statement of Shri Jaikishan Aiani, Accountant, M/s. Lao More Biscuits Pvt. Ltd., was recorded under Section 14 of the Central Excise Act, 1944 on 11.11.2013. In his statement, he inter alia stated M/s. Lao More Biscuit Pvt. Ltd. is a contract manufacturer of M/s. Parle Products Pvt. Ltd, where M/s. Parle Products Pvt.Ltd, is supplying all the inputs including packing material as per requirement of production for both the above mentioned products on monthly basis, which were cleared from this unit and even the payment of excise duty was done by M/s. Parle Product Pvt. Ltd. He also stated that M/s. Parle Products Pvt. Ltd. Mumbai deputed officers for quality testing. On being asked about the common raw materials and packing materials used in the manufacturing of exempted product i.e. Parle'G' and excisable product i.e. 20-20 Cashew Butter Cookies, he informed that names of the common raw materials used in production of these two kinds of biscuits are (i) Sugar (ii) Bicarbonate Ammonia (iii) Sodium Bi Carbonate (iv) BOPP Printed Tape. On being asked, he further informed that there were no separate records maintained for receipt, storage, issuance, consumption and inventory of raw materials used in both products; that the physical stocks were commonly stored in one place; that, they were issuing common issue slips, common Cardex/job cards for exempted and dutiable products. On being asked about maintaining separate books of account for the receipt, consumption and inventory of inputs used in both the products and availment of Cenvat credit when one of the products was exempted and other was Excisable, he informed that as per Rule 6(2) of Cenvat Credit Rules, 2004, they were supposed to maintain separate accounts for receipt, consumption and inventory of inputs used in both the products; however, they had issued common issue slips, common Cardex/job cards of inputs for production of dutiable and exempted products.

5. A statement of Shri Sadharam J. Phagnani, Director, M/s. Lao More Biscuits Pvt. Ltd., was recorded under Section 14 of the Central Excise Act, 1944 on 11.11.2013. He was shown a copy of the Panchnama dated 03.10.2013 drawn at the factory premises of M/s. Lao More Biscuits Pvt. Ltd. In his statement, Shri Sadharam J.Phagnani inter alia stated that they had issued common issue slips, common job cards of inputs for production of dutiable and exempted products. Further he stated that he had been informed by M/s. Parle Products Pvt. Ltd., Mumbai about the provision of sub-rule (3) of Rule 6 of the Cenvat Credit Rules 2004. He also submitted that they had issued common issue slips, common Cardex/job cards and they had common storage of inputs for production of dutiable and exempted products. However, he informed that they had maintained RG-23-Pt.I in computer for dutiable products. During panchnama dated 03.10.2013, the assessee could not produce RG 23 A Part-I and also could not show any records in the computer for separate records for dutiable products. Hence, generation of RG23 A Part-I appeared to be afterthought. On being asked about the option exercised for payment of amount as determined under Sub Rule 3(A), of Rule 6 of the Cenvat Credit Rules, 2004, he said that they had not intimated to the Range Superintendent as per Rule 6 Sub Rule 3 (A) of Rule 6 of Cenvat Credit Rules, 2004 for determination and payment of amount payable under clause (iii) of Sub Rule 3 of said Rule 6 of Cenvat Credit Rules, 2004 and not opted for provisional payment of amount every month. He was shown Sub-rule (3) of Rule 6 of Cenvat Credit Rules, 2004, in which an amount equal to 6 % of value of the exempted products was required to be paid. In this regard, Shri Sadharam J.Phagnani stated that they had not paid the amount equal to 6 % of value of the exempted product as per sub-rule (3) of Rule 6 of the Cenvat Credit Rules 2004.

6. *The extracts of provisions of sub-rule (3) of Rule 6 of the Cenvat Credit Rules 2004, as prevailed during the relevant time, are as under:-*

“ Rule 6. Obligation of a manufacturer or producer of final products and a provider of taxable service

(1)

(2)

(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 any one of the following options, as applicable to him, namely:-

(i) pay an amount equal to six 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 six per cent. of the value so exempted.

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 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”.

From the foregoing facts and evidences, the investigation established that the said unit has failed to comply with Rule 6 and sub-rule (3) of the Cenvat Credit Rules 2004.

Further, the Explanation III to Rule 6(3) to 6(3D) of the Cenvat Credit Rules, 2004 is as follows:-

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

7. In view of the explanation the amount equal to 6% of the value of exempted goods payable under Rule 6(3)(i) of Cenvat Credit Rules, 2004, but not paid by the said unit, is recoverable from the said unit under the provisions of Rule 14 of Cenvat Credit Rules, 2004.

7.1 From the foregoing circumstances facts duly corroborated with the confessional statement dated 11.11.2013, of Shri Sadhram J. Phagnani, Director, of the said unit, it appeared that M/s. Lao More Biscuits Pvt. Ltd, have contravened the sub-rule (3) of Rule 6 of Cenvat Credit Rules, 2004, in as much as, they have failed to maintain separate stock of the excisable and exempted goods manufactured by them.

7.2 Thus the above acts of contravention on the part of the said unit appeared to have been committed by reasons of willful misstatement, suppression of facts and contravention of the provision of the said act and rules with intent to evade payment of an amount equal to 6% of the value of exempted goods. Therefore, it appeared that an amount of Rs. 3,59,35,917/- for the period of December 2012 to March, 2014 as calculated in the Annexure A to the Show Cause

Notice payable under the provisions of Rule 6(3)(i) of Cenvat Credit Rules, 2004 but not paid by the said unit, is required to be demanded from the said unit under the provisions of Rule 14 of Cenvat Credit Rules, 2004, read with Explanation III to Rules 6(3) to 6(3D) of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944.

8. All the above acts of contravention on the part of the said unit i. e. M/s Lao More Biscuits Pvt. Ltd., appeared to have been committed by reasons of willful mis-statement, suppression of facts and contravention of various provisions of the said act and rules made there under with an intent to evade the payment of the amount equal to six percent of value of exempted goods. So, it appeared that the provisions of Sub-Section 11 A (4) of Central Excise Act, 1944 read with Rule 14 and Explanation III to Rules 6(3) to 6(3D) of the Cenvat Credit Rules are invocable in the present case. All these contraventions on the part of the said unit constitute the offence of the nature as described under Rule 15 (2) of Cenvat Credit Rule, 2004 and therefore the said unit appeared to be liable to penalty to the extent as permissible under Rule 15 (2) of Cenvat Credit Rule, 2004 read with clauses ©(d) and (e) of Sub-Section (1) of Section 11 AC of Central Excise Act, 1994. Interest is also liable to be charged and recovered from the said unit under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

9. Therefore, M/s Lao More Biscuits Pvt. Ltd., Plot No. 1010-B, 1011-A, Near Gayantri Mandir, Phase-IV, GIDC Estate, Naroda, Ahmedbad- 382 330, were called upon to show cause to the Commissioner, Custom House, Ahmedbad-II vide SCN No.V.19/15-14/OA/2014 dated 24.11.2016 as to why:-

- (1) An amount of Rs.3,59,35,917/- (Rupees three crore Fifty Nine Lakhs Thirty Five Thousand Nine Hundred Seventeen only) payable under the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, for the period December 2012 to March 2014 should not be demanded and recovered from them under the provisions of Rule 14 of Cenvat Credit Rule, 2004, read with the Explanation III to Rules 6(3) to 6(3D) of the Cenvat Credit Rules, 2004 read with Section 11A (1) (4) of the Central Excise Act, 1944;
- (2) Interest at prescribed rates should not be charged from them in terms of Rule 14 of Cenvat Credit Rule, 2004 read with Section 11AA of Central Excise Act, 1944.
- (3) Penalty under the provisions of sub-rule (2) of Rule 15 of Cenvat Credit Rule, 2004 read with clauses ©, (d) and (e) of sub-Section (1) of Section 11AC of the Central Excise Act, 1944 should not be impose upon them;

DEFENCE REPLY

10. M/s.Lao More Biscuits Pvt.Ltd, vide their letter dated 23.10.2018, has replied that-

“On the basis of intelligence, Excise Officers visited and conducted verification & investigation on 3/10/2013 and it was informed by the Director Mr. Sadhram J. Phagnani that Production Department had Two Sections namely for Parle-G Biscuits (exempted) and 20-20 Cashew Butter Cookies (dutiabale) ;

- a) Different raw materials / inputs are used out of which common inputs used are Sugar ,Ammonia -Bicarbonate , Sodium Bicarbonate and BOPP Printed Tape;
- b) Receipt , Storage, Issuance & Consumption of common inputs physically stored at one place without separate records;
- c) Finished goods were stored in finished goods Stock-Area and other inputs were commonly stored in one place & could not be ascertained which material for exempted / dutiabale goods;
- d) It is concluded that separate records were not maintained for dutiabale and exempted goods & cardex was withdrawn by CEX officers as per Annexure A & B to panchnama;

- e) it is noticed that common issue slips were issued and common cardex for kept for dutiable and exempted products / consumption and inventory of inputs were common;
- f) Exempted product is Parle-G biscuit and Excisable product is 20-20 Cashew Butter Cookies and Intimation of rule 6(3A) of CCR was not given to Range Superintendent ;
- g) Amount equal to 6% of Rs. 3,59,35,917/- for period December,2012 to March,2014 was not paid

On the basis of above, it is directed to show cause to your honour why amount of Rs. 3,59,35,917 should not be demanded and recovered under rule 14 of Cenvat Rules read with rule 6(3) to 6(3D) and Section 11A(4) of CEA,1944 with interest under Section 1 IAA of the Act and penalty under rule 15(2) read with Section 1 IAC (1) (c)(d)(e) of the Act.

We at the outset humbly submit that allegations of non-reversal of credit on biscuits cleared under exemption so also allegations on separate accounts of inventory of inputs not maintained etc., are incorrect and without basis. In support of this say, we submit below facts for your kind consideration:

1. We are a Contract Manufacturing Unit (CMU) engaged in manufacture of Parle-branded Biscuits falling under CHS 1905 90 20 of CET on job-work basis for Principal Manufacturer Mis. Parle Products Pvt. Ltd., Mumbai under clause (ii) of Notification 36/2001 CE(NT) dated 26/6/2001 for which an Authorisation dated 15/9/2001 (ANNEX-D) as required under the notification, has been filed with Range Office Ahmedabad. It is submitted that after issue of subject show cause notice, the documents referred in the SCN and all supporting records like Cenvat Invoices/ RG23A Part-II registers , Stock Reports etc. were withdrawn by Dept. under Memo No. 3/10/2013 & follow-up for return of documents was being made to enable to reply the subject SCN. The Xerox copies of records withdrawn were provided in February,2018 (ANNEX-2) & since then copies received were being reconciled to put facts & figures together to reply the SCN . It is submitted that during the period, 2- Biscuits-brands were manufactured namely Parle-G (exempted) and 20-20 Cashew Butter Cookies (dutiable) and the common inputs used in these varieties is as under :

Description of Final Product

Common inputs used

Parle -G (Excise Exempted)

} Sugar

20-20 Cashew Butter Cookies - (Excise Dutiable)

} Ammonia Bicarbonate

} Sodium Bicarbonate

} BOPP Tape



It is submitted that during the period under reference, Cerivat credit has been taken on proportionate basis to the extent of quantity of common inputs used in dutiable 20-20 Cashew Butter Cookies only and credit pertaining to input-quantity used in exempted biscuits i.e. Parle-G has not been taken/is forgone. These facts were informed to Department earlier also vide our letter dated 26/8/2015, a copy enclosed herewith as ANNEX-3 for perusal.

2. It is submitted that the Total Duty paid on Common Inputs received in factory and Quantity used in Dutiable & Exempted Biscuits manufactured and credit taken proportionate to quantity of common inputs used in dutiable biscuits, period-wise, is as follows :

Period : December 2012 To March,2013:

| Description Of C. inputs | Qty. received & Duty paid as per supplier Inv. | | Qty. used in Dutiable Biscuits Kgs. | Proportionate credit taken for dutiable use- Rs | Credit forgone not taken-for use in exempted Goods |
|--------------------------|--|--------------|-------------------------------------|---|--|
| | Kgs. | Duty paid Rs | | | |
| Sugar | 1070631 | 6,57,099/- | 357300 | 2,61,293/- | 3,80,035/ |
| ABC | 32000 | 56,882/- | 9342 | 16,605/- | 27,152/- |
| SBC | 9000 | 20,365/ | 2335 | 5,282/ | 13,270 |
| Tape | 900 {Nos.} | 30,591/- | Nil | Nil | 28,722/- |
| Total : | | Rs. 7,64,937 | | 2,83,180/- | 4,49,179/ |

Period: April 2013 To March,2014:

| | | | | | |
|-------|-------------------|-------------|---------|-------------|-------------|
| Sugar | 3878560 | 26,86,536/ | 1376058 | 10,06,312/- | 16,65,839/ |
| ABC | 74000 | 1,11,540/ | 28117 | 44,231/ | 67,818/ |
| SBC | 28800 | 66,368/ | 9888 | 22,694/- | 42,199/ |
| Tape | 3300 (Nos.) | 1,21,253/ | 2068 | 74,930/ | 59,643/- |
| | Total : Rs. | 29,85,697/- | | 11,48,167/ | 18,35,499/- |
| | Grand Total Rs | 37,50,634/- | | 14,31,347/ | 22,84,678 |

Considering the whole period from December,2012 to March,2014 under the notice, it would be observed that total duty paid common inputs received is Rs. 37,50,634/-, out of which credit availed is Rs. 14,31,347/- on input-quantity used in dutiable biscuits and credit on inputs used in exempted biscuits forgone / not availed is Rs. 22,84,678/-. To explain input-wise, during December,12 to March,13, it will be observed that during December,2012 to March,2013, common input Sugar received in factory was 10,70,631 Kgs. on payment of excise duty Rs. 6,57,099/- out of which Sugar of 3,57,300 Kgs was used in dutiable biscuits for which proportionate credit Rs. 2,61,293/- was taken and credit of Rs. 3,80,035/- which related to sugar used in exempted biscuits, was forgone/ not availed. Similarly the common input Ammonia-Bi-Carbonate (ABC), the total quantity received in factory during the period was 32,000 Kgs. on payment of excise duty Rs. 56,882/-, out of which 9342 Kgs were used in manufacture of dutiable biscuits on which proportionate credit Rs. 16,605/- of duty paid was taken and for quantity used in exempted biscuits, credit of Rs. 27,152/- was forgone / not availed. In case of Sodium Bi-Carbonate (SBC), total quantity received was 9000 Kgs. on payment of excise duty Rs. 20,365/- from which quantity 2335 Kgs. was used in dutiable biscuits and proportionate credit availed was Rs. 5282/- and credit Rs. 13,270/- pertaining to quantity used in exempted biscuits was forgone/ not availed. In respect of BOPP Tape, the quantity received was 900 Nos. on payment of duty Rs. 30,591/-, and no credit was availed on quantity used in dutiable biscuits whereas credit of Rs. 28,722/- was forgone/ not availed related to quantity of Tape used in exempted biscuits. Similar details for period 2014-15 for common inputs are indicated above, where credit is taken proportionate to inputs quantity used in dutiable biscuits. Also Enclosed herewith as ANNEX-4 is a Statement of common inputs Quantity received /duty paid thereon / quantity consumed in dutiable & exempted biscuits and proportionate credit taken and credit forgone attributable to inputs used in exempted biscuits, for ready perusal.

3. Apart from the above credit forgone/ not availed on common inputs, the credit on inputs exclusively used in manufacture of exempted biscuits, namely the raw & packing material, was not availed at all. The credit forgone/ not availed on such inputs exclusively used in manufacture of exempted biscuits during period December,2013 to March,2014 is Rs. 14,53,308/- and during April,2014 to March,2015 is Rs. 57,45,077/-. The input-wise details are as shown below:

**INPUTS EXCLUSIVELY USED IN EXEMPTED BISCUITS:
PERIOD DECEMBER -2012 TO MARCH, 2014**

| Desc. Of Exclusively used in exempted Biscuits | Total credit not taken for the Period December, 2012 to March, 2013 | Total credit not taken for the period April, 2013 to March, 2014 |
|--|--|---|
| C. Boxes | 231080 | 845968 |
| Citric Acid | 1923 | 7186 |
| Finamul 4107 | 13473 | 30359 |
| MACP | 1074 | 3461 |
| Parle Flavour | 54315 | 186714 |
| Polybags | 135270 | 499681 |
| S. Milk Powder | 0 | 79088 |
| SMBS | 906 | 2177 |
| Vitamin Premis | 19666 | 94552 |
| Wrapper | 995601 | 3995891 |
| | 14,53,308/ | 57,45,077/ |

A detailed Input-Statement is enclosed herewith as ANNEX-5 showing Supplier's Name, Invoice No. & Date Description of inputs received and Excise Duty paid thereon / Credit not availed during entire period from December, 2012 to March, 2014 for your ready perusal. Also enclosed herewith are copies of Excise Invoices (479 Nos.) of duty paid inputs (2 -Box Files) for which credit not availed at all.

4. Similarly, as per Table below, the credit taken on inputs exclusively used in manufacture of dutiable biscuits is Rs. 18,50,187/- for period December, 2012 to March, 2013 and Rs. 59,39,926/- for period April, 2013 to March, 2014. Also enclosed as ANNEX-6 is a detailed Statement of inputs exclusively used in manufacture of dutiable biscuits showing particulars of Supplier's Name, Invoice No. & Date Description of inputs received and Excise Duty paid/ Credit Taken during entire period from December, 2012 to March, 2014 with copies of Excise Invoices (397 Nos.) of duty paid on inputs (2- Box Files) for ready perusal:

INPUTS EXCLUSIVELY USED IN DUTIABLE BISCUITS :
PERIOD DECEMBER -2012 TO MARCH, 2014

| INPUTS EXCLUSIVELY USED IN DUTIABLE BISCUITS- Desc. of inputs | Total credit taken for the Period December, 2012 to March , 2013 | Total credit taken for the Period April, 2013 to March, 2014 |
|--|--|--|
| Butter Flavour II | 155860 | 311720 |
| C. Box | 287892 | 1278158 |
| Butter Flavour NN | 151848 | 389340 |
| Finamul DL | 54138 | 192941 |
| Polybags | 141285 | 596696 |
| Wrapper | 1059164 | 3171071 |
| | 18,50,187/ | 59,39,926/ |

5. Further it is submitted that during period under reference, the total biscuits manufactured and cleared is valued at Rs. 116,31,11,189/- out of which exempted biscuits cleared are of value Rs. 59,89,31,951/- and dutiable biscuits cleared are Rs. 56,41,79,238/- value . The exempted biscuits manufactured & cleared percent to total biscuits clearance value comes @ 51.49% and dutiable percent comes to 48.51 %. Even as per credit eligible /available based as per percentage of dutiable biscuits manufactured / cleared, the credit eligible/ available comes to Rs. 18,19,433/- whereas credit actually taken is only 14,31,347/- ,i.e. less by Rs. 3,88,086/-. The details are shown in table below:

| Period | Value of Clearance (Rs.) | | | | Credit Eligible (Rs.) | Actual Credit Taken (Rs.) | Credit taken Less (Rs.) |
|-------------------------------|--------------------------|--------|---------------------|--------|-----------------------|---------------------------|-------------------------|
| | Exempted Value-Rs. | % | Dutiable Value- Rs. | % | | | |
| December, 2012 to March, 2014 | 598931951 | 51.49% | 564179238 | 48.51% | 1819433 | 1431347 | 388086 |

The above proves beyond doubt that no credit was retained on inputs attributable to exempted biscuits manufactured/cleared. The month-wise details of manufacture/clearance and value are as under:

| Month | Exempted biscuits mfgd. (KG) | Value of clearance exempted (Rs.) | Dutiable biscuits mfgd. (KG) | Value of clearance- dutiable (Rs.) |
|---------|------------------------------|-----------------------------------|------------------------------|------------------------------------|
| Dec. 12 | 604089 | 35357623 | 353471 | 26529552 |
| Jan. 13 | 758043 | 36382783 | 367620 | 26273772 |
| Feb. 13 | 627718 | 34277659 | 403996 | 32341302 |
| Mar. 13 | 652912 | 29418164 | 424477 | 31102722 |

| | | | | |
|----------|---------|----------|---------|-----------|
| Total:- | 2642762 | 13543622 | 1549564 | 116247348 |
| Apr. 13 | 650670 | 32197298 | 503749 | 39570678 |
| May 13 | 666907 | 34705370 | 376138 | 30175740 |
| Jun. 13 | 829673 | 38165050 | 577316 | 40703040 |
| Jul. 13 | 928396 | 47897255 | 460281 | 42508872 |
| Aug. 13 | 776827 | 32293835 | 886133 | 64710576 |
| Sept. 13 | 805198 | 37806097 | 431698 | 36152928 |
| Oct. 13 | 820367 | 47452503 | 304625 | 25217136 |
| Nov. 13 | 620917 | 27761808 | 304352 | 20087928 |
| Dec. 13 | 967475 | 43944264 | 204502 | 17610264 |
| Jan. 14 | 993807 | 49175753 | 559723 | 41201496 |
| Feb. 14 | 982423 | 44274464 | 551422 | 43873704 |
| Mar. 14 | 562219 | 27822025 | 559204 | 46119528 |

6. In the background of above facts, allegations in the notice that common 'Issue Slips' were used and common Cardex is maintained for inputs used in dutiable and exempted biscuits manufactured, are not relevant since no credit was taken on common input-quantity which is attributed to manufacture of exempted biscuits. Hence separate issue slip was not necessary. The credit was taken on fortnightly / monthly basis after calculating dutiable biscuits manufactured and quantity of each common inputs consumed in such dutiable biscuits based on batch-quantity consumption during manufacturing and credit proportionate to such quantity consumed only was taken. Also credit pertaining to inputs exclusively used in manufacture of exempted biscuits, was not taken at all. Separate accounts of receipt / consumption / issues and closing balances of common inputs viz. Sugar, ABC, SBC and BOPP Tape on which proportionate Cenvat credit is taken, was maintained in form of RG23A- Part I & II namely the Quantitative Ale. and Credit Ale. Copies of RG23A-P-I & II maintained for all Cenvated inputs are enclosed as ANNEX-7. Also common Stock Reports generated for other inputs used in manufacture in which no credit was taken --such Stock Reports on specimen basis are enclosed as ANNEX-8 for perusal. Copies of all ERI for period from December,2012 to March,2014 are enclosed herewith as ANNEX-9 for ready perusal declaring the credit availed on inputs and services as applicable. The details of credit taken on inputs is shown in ER-1 Monthly Returns regularly e-filed every month. The allegation that inputs duty paid & exempted were commonly stored in one place, it is submitted that no such requirement is specified under Cenvat Rules requiring separate physical storage of inputs, although accounts - Quantity & Credit A/cs. were kept separately to ascertain the quantity of common inputs consumed in dutiable or exempted biscuits & credit eligible/availed thereon. Under the circumstances, the allegations that separate records of receipt / consumption and closing balance were not maintained, are incorrect. For other inputs, where no Cenvat credit is taken, separate Stock Reports / Stock Cards were maintained. With regard to input-services, the credit reversed as per rule 6(3A) of CCR,2004 as allowed under Rule 6(3)(iii) of CCR and intimation thereof filed with Range Office for 2013-14 vide our letter dated 25/4/2014 in terms of Rule 6(3A) (c) (iii) of CCR,2004, copy of which is enclosed herewith as ANNEX-10. No credit on input service was taken during 2012-13 since most of the period in 2012-13 - i.e. April,2012 to November,2012 we were manufacturing exempted biscuits only & hence no credit on input service was taken through-out 2012-13. Also enclosed herewith as ANNEX-11 is a Certificate of Chartered Accountant dated 19/10/2018 confirming facts / figures in the matter verified from the records.

7. Further it is submitted that procedure envisaged under Rule 6(3)(iii) of Cenvat Rules has been followed. Rule 6(3)(iii) of Cenvat Rules permits to avail credit only on inputs used in relation to manufacture of dutiable final products excluding credit related to exempted goods and in respect of input-services to determine the amount of credit payable in terms of Rule 6(3A) of CCR. Accordingly, the credit was taken on common inputs used in dutiable biscuits only and credit related to inputs used in exempted biscuits was not availed at all. Also no credit was taken on inputs exclusively used in manufacture of exempted biscuits. With regard to common input-service of Goods Transport Service (GTA), no credit on input-services was

taken in 2012-13 and for 2013- 14 compliance letter as per rule 6(3A)(c)(iii) of CCR,2004 was submitted to Range our vide letter dated 25/4/2014 as mentioned above. The procedure followed with regard to Cenvat credit on inputs and input-services is well within knowledge of Department already intimated vide our letters dated 25/4/2014 dated 26/8/2015 (copies enclosed as stated above). Therefore the allegations of suppression of facts & non-reversal of credit etc. are incorrect and not tenable. The subject show cause notice dated 24/11/2016 issued after lapse of 1 year & 3 months from relevant date, not within 1 year as required under Sec 11A(l) of CEA,1944 and hence the demand notice is time barred . Audit was conducted for period September, 2013 to March,2016 in March,2017 although no objection was raised by Audit on compliance of Rule 6 of CCR. Enclosed herewith as ANNEX-12 is FAR No. 1012 /2016-17 raised by Audit for perusal.

8. From the above explanation, it will be observed that credit pertaining to inputs used in manufacture of exempted biscuits was not availed at all. Therefore, demand of amount equal to 6% of value of exempted biscuits, as alleged in the notice, is not demandable. The procedure under Rule 6 of Cenvat Rules correctly followed and intimated to Department from time to time through ER- I Monthly Returns / Letters & through Audit of Records. The allegations of mis-statement and suppression of facts in the notice are routinely made without any basis and without appreciating the procedure followed under Rule 6 of CCR. The proposal in the notice for demand of interest under Section 11AA of the Act and penalty under Rule 15(2) / Sec. 11AC (l) (c)(d)(e) of the Act are untenable . The subject demand notice dated 24/11/2016 is barred by limitation under Sec. 11A(l) of CEA, 1944.

9. We request Your Honour to kindly consider aforesaid facts and drop the proceedings under the notice. We request for a hearing before the adjudication of the matter”.

Vide another letter received in this office on 11.12.2019, M/s.Lao More Biscuits Pvt.Ltd submitted that during the impugned period i.e. December 2012 to March 2014, Excise duty on final products-Biscuits has been paid in PLA A/c. Rs.2,59,22,152/- and under Cenvat A/c. duty paid is Rs.89,52,048/- and total duty paid being Rs.3,48,74,200/- . They produced month-wise details of duty paid as reported in ER-1.

They submitted that during the period 4-Common Inputs were used in manufacture of dutiable & exempted biscuits the details of which as follows:-

| Description of Final Product | Common Inputs used |
|--|--|
| Parle-G (Excise exempted) 20-20 Cashew Butter Cookies (Excise Dutiable) | Sugar, Ammonia Bicarbonate, Sodium Bicarbonate, BOPP Tape. |

They also stated that the credit has been taken on common inputs on proportionate basis to the extent of input-quantity used in manufacture of dutiable biscuits only and no credit is taken on input-quantity used in manufacture of exempted biscuits. They summarized the details of total duty paid on Common inputs received during impugned period and proportionate credit taken and the credit foregone/not availed etc.

| Description | Rs. |
|--|-------------|
| 1 Total duty paid on common inputs received during period | 37,50,634/- |
| 2 Proportionate credit taken on common inputs used in Dutiable biscuits: | 14,31,347/- |
| 3 Credit foregone/not taken on common inputs used in dutiable biscuits: | 22,84,678/- |
| 4 Credit Not availed on inputs exclusively used in exempted biscuits. | 71,98,385/- |
| 5 Credit taken on inputs used exclusively in mfg. Of Dutiable biscuits: | 77,90,113/- |

They stated that out of total duty paid of Rs.37,50,634/- on common inputs received during the period, the credit foregone is Rs.22,84,678/- on inputs used in exempted biscuits and

credit proportionately taken is Rs.14,31,347/- only which pertains to inputs used in dutiable biscuits. Also credit not availed on inputs exclusively used in exempted biscuits is Rs.71,98,385/-. Thus total Credit foregone on this count (Rs.22,84,678/- + Rs.71,98,385/- comes to Rs.94,83,063/-. The invoices of suppliers of inputs evidencing payment of excise duty on common inputs received have already been submitted with reply to SCN. Besides above, they have paid Excise duty on biscuits in PLA Account amounting to Rs.2,59,22,152/- and through Cenvat A/c. Rs.89,52,048/- total duty paid being Rs.3,48,74,200/-.

They also stated that a Certificate of Chartered Accountant dated 19.10.2018 confirming facts and figures in the matter duly verified from the records have been submitted to the Department with reply to SCN. They requested that since no credit on inputs used in exempted biscuits is taken/retained, the demand of 6% amount under impugned SCN is not sustainable and they requested to drop the proceedings under the notice.

Vide their letter dated 13.02.2019, M/s.Lao More Biscuits Pvt.Ltd referred to the copy of Chartered Accountant's certificate dated 19.10.2018 certifying the common inputs on which credit availed, the proportionate credit taken on common inputs during the period December 2012 to March 2014 and other facts related to the issue involved in the SCN. They stated that the Certificate has already been enclosed with their reply dated 23.10.2018.

They also submitted a letter dated 11.12.2019 wherein they stated that the claim of credits is in accordance with the provisions of law, that they have complied with the provisions of Rule 6(3), of Cenvat Credit Rules, 2004 that they have obtained CA certificate certifying that Cenvat Credit was only taken on the inputs and input services used for manufacturing excisable goods and the calculations are also certificate by the CA. This clearly substantiates that the Noticee had maintained separate accounts and accounts for the use of inputs and input services in taxable as well as exempt final products, which is proper compliance with the provisions of CCR at the relevant time.

They stated that the issue has already decided in favour of the assessee by CESTAT on identical facts in a case of another CMU of the Principal M/s.Parle. The revenue has not filed any appeal against such order of the CESTAT and hence, it can be said that the CBIC has accepted the order and consequently the position. They stated that the CESTAT order is binding on the department and hence the demand should be dropped. They also stated that the jurisdictional Commissioner(A) has also quashed demand of 6% of turnover on identical facts in case of yet another CMU of its principal M/s.Parle. They referred to the case of M/s.Kushal Foods Pvt.Ltd Vs CCEX, Kanpur (Final Order No.70051/2019 dated 10.01.2019, KN Bakers P.Ltd Vs CCEX and ST, Kanpur (Final Order No.72813/2018 dated 29.11.2018) and order issued by Commissioner(A) Allahabad in the case of M/s.KN Bakers Pvat.ltd having order in appeal No.153/CE/Alld/2019 dated 28.05.2019. They enclosed copies of aforesaid orders.

They also stated that the additional Cenvat Credit should be allowed to them. They submitted that in the interest of justice and parity, in the unlikely event if the demand has to be confirmed, they should also be allowed additional Cenvat Credit which they did not claim/had reversed on the goods and services which were also used in manufacture of exempted products.

They submitted that the demand is barred by limitation and hence extended period is not invokable due to absence of any suppression, misstatement etc. They also relied the following judgments.

- a. Chamundi Die Cast 2007(215) ELT 169 (SC)
- b. Gopal Zarda Udyog 2005 (188) ELT 251 (SC)
- c. Ugam Chand Bhandari 2004 (167) ELT 491 (SC)
- d. Pushpam Pharmaceuticals 1995 (78) ELT 401 (SC)
- e. Cosmic Dye Chemical 1995 (75) ELT 721 (SC)
- f. Tamil Nadu Housing Board 1994(74) ELT 9 (SC)

- g. Chemphar Drugs & Liniments 1989(40) ELT (275)
- h. Lanxess ABS Ltd 2010 (259) ELT 551(T)
- i. Neptune Equipments 2010 (259) ELT 588
- j. Nizam Sugar Factaory 2006 (197) ELT 465 (SC)
- k. Kushal Fertilizers (P) Ltd 2009(238) ELT 21 (SC)
- l. Padmini Products (1989 (43) ELT 195 (SC)
- m. Champhar Drugs 1989 (40) ELT 285 (SC)
- n. Nestle India 2009 (235) ELT 577 (SC)

They also stated that they had always co-operated with the department and provided all the information whenever asked for and was always prompt in its compliances along with relevant other disclosures. It can not be said that there is any withholding of the facts. They also stated that they had furnished all the information in the ER-1 Returns in the prescribed format. Since all the information was already disclosed in the Return, the department can not invoke extended period of limitations. They were also under bona fide belief that credit was available to them. They also placed reliance on the judgment of CCEx. Kolkatta Vs ITC Ltd 2013(291)ELT 377 (Tri-Kolkatta).

They stated that since the demand itself is not sustainable, there can not be question of any interest. They also stated that no penalty can be levied under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act. They also placed the following case laws.

- (i) Commissioner of Central Excise, Rajkot Vs Adishiv Forge P Ltd 2008(9) STR 534 (Tri-Ahd)
- (ii) Wiptech Peripherals Pvt.Ltd Vs Commissioner of C.Ex Rajkot 2008(232) ELT 621 (Tri-Ahmd)
- (iii) Fibre Foils Ltd Vs Commissioner of Central Excise, Mumbai IV 2005 (190) ELT 352 (Tri-Mum).
- (iv) Rajasthan Spinning & Weaving Mills 2009 (238) ELT 3 (SC)
- (v) Singhal Strips Ltd 2010 (256) ELT 15 (P&H)
- (vi) JR Fabrics 2009 (238) ELT 209 (P&H)
- (vii) Thirumala Alloys Castings 2009(238) ELT 226 (Mad)
- (viii) KP Pouches 2008 (228) ELT 31 (Del)
- (ix) CCE Vs Sunrise Zinc Ltd 2015 (322) ELT 198 (Bom).

They stated that penalty not imposable in the absence of mens-rea is a mandatory requirement and in the absence of which imposition of penalty is unjustified and relied the following case laws:-

- Hindustan Steel Ltd Vs State of Orissa 1978 (2) ELT J-159
- 2010 (258) ELT 465 (SC – Sanjiv Fabrics
- 2007 (207) ELT 27 (P&H) – UT Ltd
- 2007 (5) STR 251 (P&H) – Kamal Kapoor.

Vide another letter dated 19.02.2020, M/s.Lao More Biscuits Pvt.Ltd submitted additional written submission wherein they submitted that they had claimed credit of only inputs used for dutiable products and in case of common inputs, the Cenvat Credit on the inputs used in manufacture of exempt goods was reversed, while no credit was claimed in inputs used in exempt products. This is in compliance with provisions of Rule 6 without prejudice to any other submissions. They referred to Gujarat High Court judgment in case of Commissioner of Central GST & CX Vs Himmat Glazed Tiles 2018 (15) GSTL 486 (Guj) HC wherein the Gujarat High Court had held that even when the credit claimed on common inputs has been subsequently reversed, it was sufficient compliance of provisions of provisions under Rule 6 of Cenvat Credit Rules, 2004. They referred to the case of Swiss Parentals Pvt.Ltd Vs CCEx & ST, Ahmedabad 2014 (308) ELT 81 (Tri-Ahmd) the Ahmedabad Bench of CESTAT also held that if the credit in proportion to exempt goods has been reversed without maintaining separate inventory of inputs

used in manufacture of dutiable and exempt medicaments, such credit availment was held to be in order and the demand computed as % of exempt turnover (rate depending on the period involved) were dropped. In the present case, since they have not claimed the credits ab initio on the inputs used in exempt proportion and regularly reversed the credit on common inputs, they submitted that they have adhered to the provisions of Rule 6 in a much stricter way, then allowed by the Gujarat High Court and the Ahmedabad CESTAT where they allowed subsequent reversal of proportionate credit also as a sufficient compliance of Rule 6(3A) and dropped the demand computed on % of the exempt turnover. Relying on the above judgments as well as various other favourable judgments in case of other CMU of Parle Biscuits, where the CESTAT as well as lower authorities have dropped the demands computed as a % of exempt turn over in identical facts. They requested to drop the SCN.

PERSONAL HEARING.

11. Personal hearing in this case was fixed for 16.11.2017. Vide their letter dated 14.11.2017, M/s Lao More Biscuits Pvt. Ltd, submitted that they are unable to attend the hearing due to certain difficulties. They requested for fixing the date of personal hearing after 20.12.2017. Accordingly the hearing was fixed for 17.05.2018. Vide this office letter F.No.V.19/15-14/OA/2014 dated 19.04.2018 they were also informed about the option available to them to approach the Settlement Commission under the provisions contained under Chapter V of the Central Excise Act, 1944/Chapter XIVA of the Customs Act, 1962. Vide their letter dated 14.05.2018, M/s.Lao More Buisuits Pvt.Ltd requested to grant them one month and fix the hearing after 15.06.2018. Thereafter, hearing was fixed for 12.12.2018. Vide their letter dated 10.01.2019, they again requested for another date of personal hearing after 10.01.2019. Accordingly, personal hearing was fixed for 10.01.2019. They again requested for postponement of hearing on any convenient date after 25th January, 2019. Therefore, personal hearing was fixed for 11.02.2019. Shri Jaikishan Ainani, appeared on 11.02.2019 for hearing. He reiterated the points made in the written defence reply and also presented a written brief which is taken on record. He stated that audit was not taken on the portion of common inputs going to the stream of exempted for final products. Also no audit was taken on the inputs which were exclusively used in the manufacturing of exempted products. He said that the RG23A Pt.I register was being maintained in the system. He admitted common stage of the inputs going in the two streams but emphasized that the proper accounting was done. He also said that CA certificate also mentions the fact. He, therefore, requested to drop the SCN. Due to the change of adjudicating authority, fresh date of personal hearing was granted to them on 25.11.2019. They requested for 15 days time. Accordingly, hearing was fixed for 11.12.2019. They submitted a written reply dated 11.12.2019 and requested for another 15 days time for further written submission. Thereafter, hearing was fixed for 10.01.2020. In the meantime, vide their letter dated 26.12.2019, they stated that the entire sets of documents relating to the matter has been misplaced and therefore, requested for copies of documents along with SCN to enable them effectively represent the case. Vide email dated 06.01.2020 and 07.01.2020, scanned copies were mailed to them.

Shri Kartik Solanki, Advocate and Shri Jaikishan Ainani, Manager of the unit appeared before me on 10.01.2020 for personal hearing. They reiterated their previous submissions. They submitted that since the credit was taken only on the inputs used exclusively in production of taxable goods and no credit was taken on inputs used exclusively in manufacture of exempted goods, they have complied with the provisions of Rule 6, especially when the credit on common inputs was taken only to the extent of the inputs used in the manufacture of taxable goods and no credit on common inputs was taken on the proportionate inputs used for exempt goods. They also submitted various judgments in case of other contract manufacturing units of M/s.Parle, where demands were dropped in identical issues at various levels. The judgments submitted were (1) Kushal Foods and (2) K.N.Bakery, both of CESTAT (3) K.N.Bakeri issued by Commissioner(A) and (4) Ambaji Foods issued by Commissioner and urged to drop the SCN and also requested for additional time of 15 days to make further submission.

DISCUSSION AND FINDINGS:

12. I have carefully gone through the facts of the case, show cause notice, written submissions made in reply to the show cause notice and also submission made during the course of personal hearings.

13. It is a fact that the said assessee is engaged in manufacture of excisable as well as exempted products. It is also a fact that they availed and utilized Cenvat Credit on common inputs and input services. Also it is on record that they had not followed any of the provisions laid down under Rule 6 of the CCR, 2004.

14. The said unit is engaged in the manufacture of Biscuits falling under Chapter 19 of the first Schedule to the Central Excise Tariff Act, 1985. The products, manufactured by them namely, Parle-G biscuits are exempted products and the products 20-20 Cashew Butter Cookies are dutiable product.

15. I find that the during the course of the statement recorded before the Superintendent (Prev) Central Excise, Division-I, Ahmedabad II under Section 14 of Central Excise Act, 1944 on 11.11.2013, Shri Jaikishan Ainani, Accountant of M/s.Lao More Buisuits Pvt.Ltd, it was admitted that there are no separate records maintained for receipt, storage, issuance, consumption and inventory of raw materials used in both products. The physical stocks are commonly stored in one place, that they are issuing common issue slips, common Cardex for exempted and dutiable products. He also admitted that they were proportionately availing Cenvat Credit on common inputs after consuming the raw materials. He also stated that he was aware of the Rule 6 of the Cenvat Credit Rules, 2004 for availment of Cenvat Credit under the Cenvat Credit rules when one of the product is exempted and other is excisable. He also admitted that as per Rule 6 and sub-rule (1) of the Cenvat Credit Rules, 2004 the Cenvat Credit shall not be allowed on such quantity of inputs used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal and as per Rule 6 and sub-rule (2) of the Cenvat Credit Rules, 2004 for availment of Cenvat Credit under the Cenvat Credit Rules when one of the product is exempted and other is excisable, they are supposed to maintain separate accounts for the receipt, consumption and inventory of inputs used in both the products. They had issued common issue slips, common Cardex of inputs for production of dutiable and exempted products. He also admitted that they have not paid 6% of the value of the exempted products as per Rule 6 and Sub-rule (3) of the Cenvat Credit Rules, 2004. He also stated that they have not intimated to the Range Superintendent as per Rule 6 sub-rule 3(A) for determination and payment of amount payable under clause (iii) of sub-rule 3 and they have not opted for provisional payment of duty for every month.

16. Further the course of recording the statement of Shri Sadhram J Phagnani, Director of M/s.Lao More Biscuits Pvt.Ltd he admitted that they are issuing common issue slips and common Cardex for exempted and excisable products. The receipt, consumption and inventory of inputs were common, the physical stocks are commonly stored in one place, they were issuing common issue slips common Cardex for exempted and dutiable products. However, they had maintained RG 23 Pt.I in computer for dutiable, that they were aware of the provisions of Rule 6 of Cenvat Credit Rules for availment of Cenvat Credit under the Cenvat Credit rules when one of the products is exempted and other is excisable. He also stated that as per Rule 6 and sub-rule (1) of the Cenvat Credit Rules, 2004 the Cenvat Credit not be allowed on such quantity of inputs used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal, that they are supposed to maintain separate accounts for the receipt, consumption and inventory of inputs and in both the products. They had issued common issue slips, common Cardex of inputs for production of dutiable and exempted products, that they have not paid 6% of the value of the exempted product as per Rule 6 and sub-rule (3) of the Cenvat Credit Rules, 2004 and have not opted for provisional payment of duty for every month. He also stated that the Executives of M/s.Parle Products Pvt.Ltd, Mumbai were monitoring production, clearance, quality control, issue slips, Cardex and other documents.

17. From the above, it is evident that the unit were engaged in manufacture of dutiable goods and exempted goods. They were required to maintain separate accounts for receipt of common inputs/input services as per the provisions of Rule 6(2) of Cenvat Credit Rules, 2004. By not following the provision of Rule 6(2) the said assessee will have to follow the options available in sub-rule(3) therein. I find that the unit neither opted to avail the facility as per sub-rule (3) of Rule 6 of the Cenvat Credit Rules, 2004 nor did they follow any of the procedures laid down under Rule 6(3) of Cenvat Credit Rules, 2004. I find that under clause (a) of sub-rule (3A) of Rule 6, no declaration was filed before the jurisdictional Range Superintendent. In absence of any such intimation communicating their option to the department as provided under Rule 6(3) (ii) they are left with no other option but to pay an amount equal to 6% of the value of exempted goods. Therefore, their contention that Option-3 of Rule 6(3) is applicable to them is not maintainable as they have admitted that they have not followed any of the procedures laid down under Rule 6(3) of the Cenvat Credit Rules. During the search and investigation conducted by the officers of the Department and the Panchnama drawn at that time, it was established that they have not followed the conditions laid down under the Rule 6(3) of the Cenvat Credit Rules, 2004. Under the circumstances, I am of the view that they have to reverse an amount equivalent to 6% of the value of exempted goods.

18. The extracts of provisions of sub-rule (3) of Rule 6 of the Cenvat Credit Rules 2004, as prevailed during the disputed period, are as under:-

“ Rule 6. Obligation of a manufacturer or producer of final products and a provider of taxable service

(1)

(2)

(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 any one of the following options, as applicable to him, namely:-

(i) pay an amount equal to six 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 six per cent. of the value so exempted.

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 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”.

From the foregoing facts and evidences, the investigation established that the said unit has failed to comply with Rule 6 and sub-rule (3) of the Cenvat Credit Rules 2004.

Further, the Explanation III to Rule 6(3) to 6(3D) of the Cenvat Credit Rules, 2004 is as follows:-

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

19. In view of the explanation the amount equal to 6% of the value of exempted goods payable under Rule 6(3)(i) of Cenvat Credit Rules, 2004, but not paid by the said unit, is recoverable from the said unit under the provisions of Rule 14 of Cenvat Credit Rules, 2004.

In reply to the show cause notice, the unit submitted copies of ER-1 filed by them during the period from December 2012 to March 2014 and stated that the credit was availed on inputs and services as applicable. They stated that the allegation that inputs duty paid and exempted were commonly stored in one place and that no such requirement is specified under Cenvat Rules requiring separate physical storage of inputs although accounts – quantity and Credit accounts were kept separately to ascertain the quantity of common inputs consumed in dutiable and exempted biscuits and credit eligible availed thereon. On going through the said copies of ER-1, I find that under the column of "Credit utilized for payment of amount in terms of Rule 6 of Cenvat Credit Rules, 2004", in respect of all the ER-1s, where copies were submitted by them, the amount debited/reversed were shown as zero. Therefore, there is no documentary proof available that they have followed Rule 6(3).

They have also produced copy of letter dated 25.04.2014 addressed to the Superintendent of C.Ex, Range – Naroda-I, Ahmedabad showing final credit payable under Rule 6(3A) © (iii). But again, there is no proof of payment produced by them. They also produced CA certificate dated 19.10.2018 showing that no Cenvat Credit was taken on common input-services during April 2012 to March 2013. However, from the copies of ER-1 submitted by the unit (from December 2012 to March 2014), I find that every month, they had taken credit and utilized. Therefore, I am unable to consider the argument of the said unit that they have not taken Cenvat Credit between April 12 to March 13. With respect to other documents produced by the unit viz. copies of RG 23A Pt.I relating to the period from December 2012 to March 2014, During panchnama dated 03.10.2013, the assesee could not produce RG 23 A Part-I and also could not show any records in the computer for separate records for dutiable products. Hence, generation of RG23 A Part-I and other documents appeared to be an act of afterthought. Therefore, I am not in a position to accept the same at this stage. I also find that the unit has submitted a number of work-sheet and calculation of the value and duty of exempted/dutiable amount but none of them have backed with evidences. Therefore, I am not in a position to consider the same. When the investigating officers demanded, they could not produce the same. I strongly believe that these documents might have been generated at a later stage to clear their stand.

Regarding the unit's contention that the show cause notice dated 24.11.2016 issued after a lapse of 1 year 3 months from the relevant date and not within one year as required under Section 11A(1) of the Central Excise Act, 1944 and the notice is time barred, I find that the SCN has been issued for violating the provision of Rule 6(3) of Cenvat Credit Rules, 2004, the demand is recoverable in terms of provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11(4) of the Central Excise Act, 1944 and the SCN has rightly issued by the Department invoking the extended period of limitations.

19.1 From the foregoing circumstances facts duly corroborated with the confessional statement dated 11.11.2013, of Shri Sadhram J. Phagnani, Director, of the said unit, it appeared that M/s. Lao More Biscuits Pvt. Ltd, have contravened the sub-rule (3) of Rule 6 of Cenvat Credit Rules, 2004, in as much as, they have failed to maintain separate stock of the excisable and exempted goods manufactured by them nor followed any of the conditions stipulated under Rule 6(3) of the Cenvat credit Rules, 2004.

19.2 The said unit has relied a number of case laws including the cases of Hon'ble Supreme Court, Hon'ble High Courts and CESTAT and Commissioner (Appeals) with respect to applicability of Rule 6(3) in their case, non-applicability of interest and penalty in terms of 11AC

of the Central Excise Act, 1944. I find that the case laws relied upon by the said unit cannot be applied to the present case as the nature of the case, circumstances and period involved are different. Besides, in the present case, the Director of the said unit and the Accountant has admitted in their respective statements that they have not followed the Rule 6(3) of the Cenvat Credit Rules, 2004 and they have not reversed/paid the amount equivalent to the 6% of the value of exempted goods or they reversed any amount on monthly basis. Accordingly, I hold that the case laws relied by the said unit are not comparable to the present case in hand.

19.3 Thus the above acts of contravention on the part of the said unit appeared to have been committed by reasons of willful misstatement, suppression of facts and contravention of the provision of the said act and rules with intent to evade payment of an amount equal to 6% of the value of exempted goods. Therefore, it appeared that an amount of Rs. 3,59,35,917/- for the period of December 2012 to March, 2014 as calculated in the Annexure A to the Show Cause Notice payable under the provisions of Rule 6(3)(i) of Cenvat Credit Rules, 2004 not paid by the said unit, is required to be recovered from the said unit under the provisions of Rule 14 of Cenvat Credit Rules, 2004, read with Explanation III to Rules 6(3) to 6(3D) of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944.

20. All the above acts of contravention on the part of the said unit i. e. M/s Lao More Biscuits Pvt. Ltd., appeared to have been committed by reasons of willful mis-statement, suppression of facts and contravention of various provisions of the said act and rules made there under with an intend to evade the payment of the amount equal to six percent of value of exempted goods. So, the provisions of Sub-Section 11 A(1) (4) of Central Excise Act, 1944 read with Rule 14 and Explanation III to Rules 6(3) to 6(3D) of the Cenvat Credit Rules are invocable in the present case. All theses contraventions on the part of the said unit constitute the offence of the nature as described under Rule 15 (2) of Cenvat Credit Rule, 2004 and therefore the said unit liable to penalty to the extent as permissible under Rule 15 (2) of Cenvat Credit Rule, 2004 read with clauses ©(d) and (e) of Sub-Section (1) of Section 11 AC of Central Excise Act, 1994. Interest is also liable to be charged and recovered from the said unit under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

21. The said unit had not followed any of the procedure and conditions prescribed under various clauses of sub-rule 3A of Rule 6 of CCR, 2004. As per the 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 proof has been submitted by them on account of payment under sub-rule 3A of Rule 6 of Cenvat Credit Rules, 2004. 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 they had not determined and paid the amount as calculated in the prescribed manner for every month. As the assessee have 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 them. The assessee had 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 applicable to them. Therefore, their contention that they followed the procedure of Rule 6(3A) is not maintainable.

22. The collection of indirect taxes now is based on the trust placed on the tax payer. They have to do the self-assessment and various aspects related to Cenvat credit, such as, whether a particular item is input / input service or not, whether credit is admissible or not, same can be used or not, whether the document on the basis of which Cenvat credit has been availed is prescribed one or not, whether proper procedure in respect of dutiable and exempted goods and taxable and exempted services has been followed or not, are part of assessment process. The

department cannot, nor are they expected to, find out on their own in all cases what each assessee is doing and whether discharging the correct duty liability and availing correct admissible Cenvat credit. Even during the course of audit of records of the tax payer by Departmental Audit officers is carried out on test check basis and 100% verification / scrutiny of documents is not carried out. After due verification, the Preventive officers have pointed out that the said unit has neither maintained separate accounts, as provided under sub-rule (2) of Rule 6 of CCR, 2004, nor exercised the option to pay an amount as determined under sub-rule (3A) of Rule 6 of CCR, 2004 provided under clause (ii) of sub-rule (3) of Rule 6 of CCR, 2004, nor followed the procedure prescribed vide clause (iii) of sub-rule (3) of Rule 6 of CCR, 2004. Though the said assessee was well aware that they were engaged in manufacture of taxable and exempted goods and were availing cenvat credit of common inputs and hence were required to follow the procedure prescribed under Rule 6 of CCR, 2004 but they never followed any procedure prescribed under either sub-rule (2), or sub-rule (3) or sub-rule (3A) of Rule 6 of CCR, 2004 as admitted by their Accountant and Director during the course of recording of their respective statement. Therefore, M/s. Lao More Biscuits Pvt.Ltd, had contravened the provisions of Rule 6 of CCR, 2004 with intent to avail inadmissible Cenvat credit and thereby evade payment of Central Excise duty in cash and had suppressed the facts from the department in as much as the fact that they were engaged in manufacture of exempted and taxable goods; the value of such exempted goods; the amount required to be paid under Rule 6 of CCR, 2004 in respect of such exempted goods etc. were known to them, which was never informed to the department and therefore, extended period of five years as provided under sub-section (4) of Section 11A of CEA, 1944, instead of normal period, for demand and recovery of the said amount has been correctly invoked in the Show Cause Notice.

23. Regarding imposition of penalty under 15 of the Cenvat Credit Rules 2004 read with Section 11AC of the CEA, 1944, I find that M/s Lao More Biscuits Pvt. Ltd. were fully cognizant of the fact that they were not maintaining separate accounts for input services that were used in both dutiable goods and exempted services and also failed to reverse/pay an amount equal to 6% of the exempted goods and intentionally suppressed this fact from the department. Suppression of material facts was manifested resulting in invocation of extended period in terms of proviso to Section 11A(1) (4) of the Act Central Excise Act, 1944. Once suppression is manifested, M/s Lao More Biscuits (India) Pvt. Ltd. is liable to imposition of penalty in terms of the provisions of Central Excise Act, 1944 and Cenvat Credit Rules, 2004.

24. I find that penalty has been proposed in the show cause notice in terms of the provisions of sub-rule (2) of Rule 15 of the Cenvat Credit Rules, 2004 read with clauses © (d) and (e) of sub-Section (1) of Section 11AC of the Central Excise Act, 1944. Section 11AC 1 (c) reads as under:-

“ where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, by reason of fraud or collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty percent of the duty so determined” .

25. However, in terms of Section 11AC1(e), where any duty as determined under sub-section (10) of Section 11A and the interest payable thereon under Section 11AA in respect of the transaction referred in clause (c) is paid within 30 days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period so specified.

26. In view of above discussion, I hold that M/s Lao More Biscuits Pvt. Ltd by willful suppression of facts, contravened the provisions of Rule 6(3) of the CCR, 2004; failed to reverse the amount equal to 6% of the value of exempted goods, Therefore, the said amount is required to be recovered under Rule 14 of the CCR, 2004 read with Section 11A(1)(4) along with interest under section 11AA of the Central Excise Act, 1944. They are also liable to penalty under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC (1) (c) of the Central Excise Act, 1944.

27. In view of the aforesaid finding, I pass the following orders.

ORDER

- (1) I confirm the demand of Rs.3,59,35,917/- (Rupees three crore Fifty Nine Lakhs Thirty Five Thousand Nine Hundred Seventeen only) on M/s Lao More Biscuits Pvt.Ltd, payable under the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, for the period December 2012 to March 2014 and order that the said amount be recovered from them under the provisions of Rule 14 of Cenvat Credit Rule, 2004, read with the Explanation III to Rules 6(3) to 6(3D) of the Cenvat Credit Rules, 2004 read with Section 11A (1) (4) of the Central Excise Act, 1944;
 - (2) I order that Interest at prescribed rates be charged from them on the amount of Rs.3,59,35,917/-, in terms of Rule 14 of Cenvat Credit Rule, 2004 read with Section 11AA of Central Excise Act, 1944.
 - (3) I impose a penalty of Rs.1,79,67,959/- (being 50% of Rs.3,59,35,917/-) on M/s.Lao More Biscuits Pvt.Ltd, under the provisions of sub-rule (2) of Rule 15 of Cenvat Credit Rule, 2004 read with clause (c) of sub-Section (1) of Section 11AC of the Central Excise Act, 1944.
 - (4) In terms of Section 11AC (1) (e) of the Central Excise Act, 1944, if M/s. Lao More Pvt. Ltd pays the Central Excise duty determined at Sl. No. (1) above and interest payable thereon at (2) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by them shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.
28. The Show Cause Notice No.V.19/15-14/OA/2014 dated 24.11.2016 issued to M/s Lao More Biscuits Pvt. Ltd, is disposed-off in the above manner.


(Dr. Balbir Singh)

Commissioner,
Central GST & C. Excise,
Ahmedabad North.

F. No. V.19/15-14/OA/2014

Date: 04.03.2020

R.P.A.D/S.P

To

M/s Lao More Biscuits Pvt. Ltd.,
Plot No. 1010-B, 1011-A, Near Gayantri Mandir,
Phase-IV, GIDC Estate, Naroda, Ahmedbad-382300.

Copy to:

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone.
2. The Deputy/Assistant Commissioner, CGST, Division-I, Ahmedabad North.
3. The Superintendent, Central GST, Range- I, Division-I, Ahmedabad North
4. Guard File

