
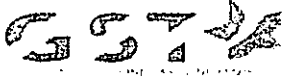


OIM-2021364W T000000E136

आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009		 OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1 <sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009
फ़ोन नंबर/ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- <a href="mailto:aaahmedabad2@gmail.com">aaahmedabad2@gmail.com</a>

F.No:- V.33/15-01/OA/2019

आदेश की तारीख/Date of Order : - 09.03.2021  
जारी करने की तारीख/Date of Issue :- 09.03.2021

DIN No.:

द्वारा पारित/Passed by:-

एम. एल. मीणा / M.L.Meena

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 52/ADC/2020-21/MLM**

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

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

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

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

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

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

(81) उक्त अपील की प्रति।

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

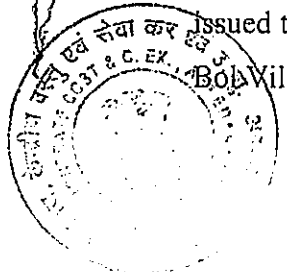
The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

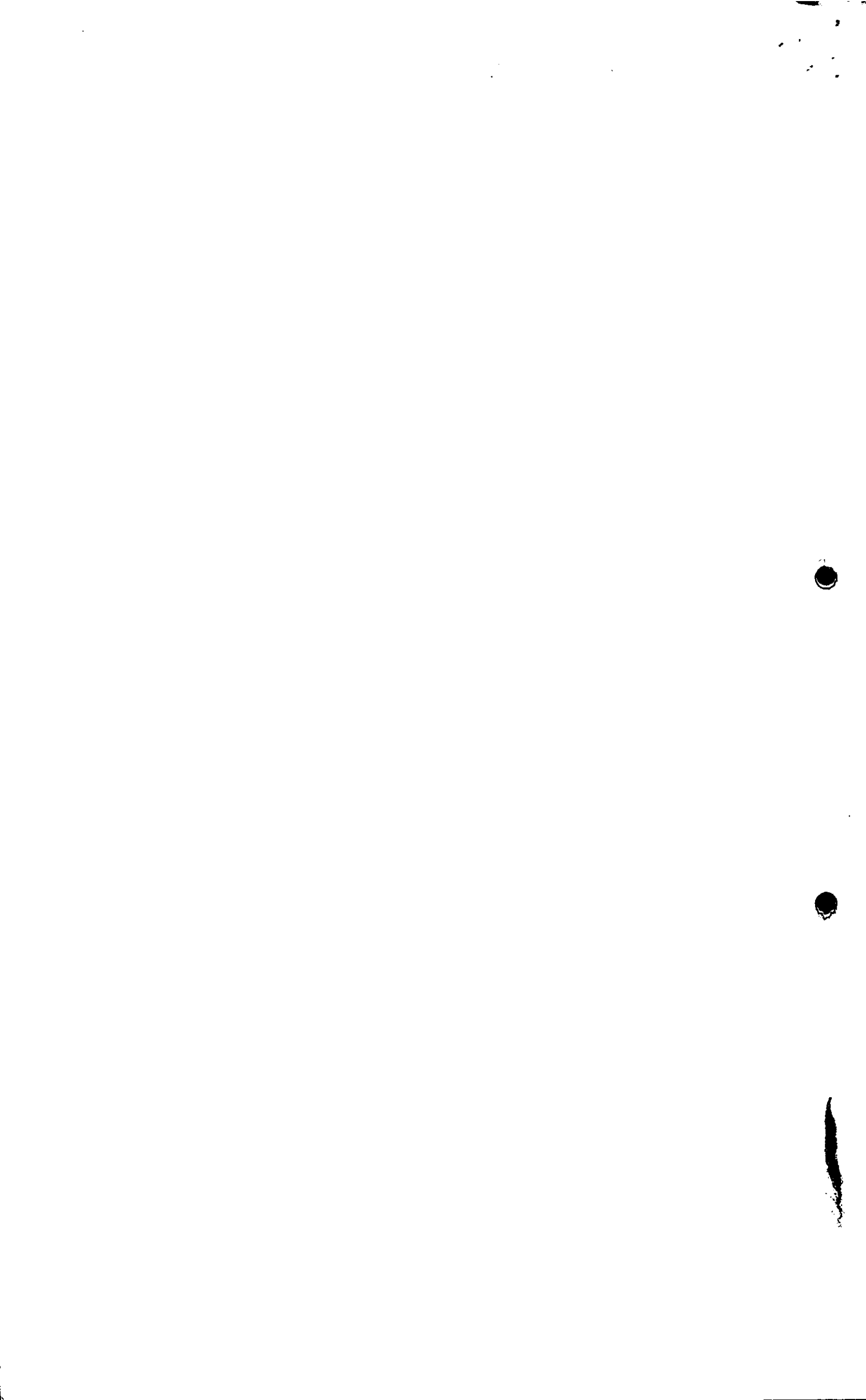
(81) Copy of accompanied Appeal.

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

विषय:- कारण बताओ सूचना/ Show Cause Notice F. No.V.33/15-01/OA/2019 dated 05.07.2019

Issued to M/s. Colgate Palmolive India Limited, SM-02, Sanand-II, GIDC Industrial Estate, Near  
Boli Village, Sanand, Ahmedabad 382170.





Brief Facts of the Case:

M/s. Colgate Palmolive India Limited, SM-02, Sanand-II, GIDC Industrial Estate, Near Bol Village, Sanand, Ahmedabad 382170 (hereinafter referred to as 'the assessee') holding Central Excise Registration Number AAACC4309BEM007 are engaged in the manufacture of toothpaste classifiable under Chapter Heading 3306 of the First Schedule to Central Excise Tariff Act, 1985. They were also availing benefit of Cenvat Credit as per the provisions of CENVAT Credit Rules, 2004.

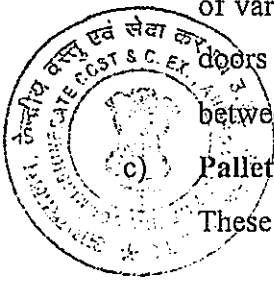
2. During the course of audit of the Central Excise records of the assessee by the CERA, it was observed that the plant at Sanand commenced in the year (March) 2014. In the initial stage of operation of plant, the assessee had procured Capital goods from indigenous/foreign market and availed Cenvat credit on the said goods. During the test check of their records i.e. Cenvat Credit Part II Accounts, invoices/ bills of entry for the period 2014-15 to 2016-17, it was observed that assessee had availed the Cenvat Credit on goods falling under chapters 9403 (Furniture & Its parts) 8716 (trolley), 8302 (Automatic Door) which are not specified in the definition of Capital goods as defined in Rule 2 (a) of the CENVAT Credit Rules, 2004. It was also observed by the auditors that in some of the cases the assessee had wrongly adopted the classification of the goods under chapter 8421 although the goods were falling under chapter headings 9403 as per correct classification depicted correctly in related invoices. CERA had also observed that the said assessee had wrongly availed the CENVAT Credit on capital goods as mentioned above to the tune of Rs. 84,25,103/- for the period from June 2014 to March 2017.

3. With reference to the observation of CERA, M/s. Colgate Palmolive India Limited vide letter dated 29.10.2018 submitted the details of CENVAT Credit taken to the tune of Rs. 5,00,130/- on capital goods in question for the period from April 2017 to June 2017. They have also submitted the letter dated 04.04.2018 wherein they submitted that in the period 2014-15 to 2016-17 they procured various capital goods which were directly or indirectly used in the manufacture of the final products i.e. Tooth Paste; that all the capital goods were received and used in the factory/manufacturing plant itself and the same is not in dispute; that brief description of the capital goods in question and their role in the manufacturing plant is given hereunder:

Trolleys

- a) Trolleys are used in the factory for various purposes such as (i) safe storage of filing modules (ii) collection of ejected tubes (iii) transport of raw material and finished goods from the store room to the manufacturing area and back, etc. Thus, the trolleys are used for material handling purpose and hence are directly used in manufacturing process. These trolleys have been either imported or indigenously procured.
- b) **Automatic Door:** Automatic doors have been installed in the factory for smooth movement of various kinds of raw material, semi-finished goods, finished goods etc. Further, automatic doors separate the various manufacturing processes which makes it easier to differentiate between them.

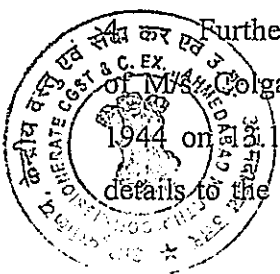
c) **Pallet Location:** Pallets locations are used for storage of raw materials and finished goods. These pallet locations have been imported.



- d) **Material Free Standing Mezzanin and Shelving:** Free standing mezzanins are racks which are used for storage of engineering material and spare parts.
- e) **Operation Table:** An operation table has been indigenously procured for the purpose of material handling.
- f) **Weight Scale Stand:** A weight scale stand was indigenously procured for smooth material movement.
- g) **Machine Guard:** Machine guards were indigenously procured and form part of a machine used in the manufacturing process and hence is involved in the manufacturing process.
- h) **Cross over stairs:** Cross over stairs are used to cover the finishing line to ensure smooth material movement. These stairs have been indigenously procured from various vendors.
- i) **Tube Box Station:** A tube box station is used for storing of tube boxes used in the manufacturing process. They are indigenously procured.
- j) **Cabinet for PPE and wheel:** This is a cabinet used for storage of raw materials, finished goods, semi-finished goods, sample material and goods, spare parts etc. They have been indigenously procured.
- k) **Trimling waste drum:** A waste drum is used for collection of waste and scrap generated during the manufacturing process. They are indigenously procured.

3.1. In the above said letter the assessee also submitted that the irrespective of the fact whether the goods procured fall under the definition of capital goods or no, the same are used directly or indirectly in or in relation to manufacture and hence fall under the definition of "input" under Rule 2(k) of the Cenvat Credit Rules, 2004 and hence Cenvat credit is duly available and rightly availed; that Goods such as Pallet Location, Material Free Standing Mezzanin and Shelving, Operation Table, Weight Scale Stand, Machine Guard, Cross over stairs, Tube Box Station, Cabinet for PPE and wheel and Trimling waste drums are all kinds of furniture and parts thereof basically used for material handling, material movement and storage which are integral processes of manufacture; that these goods are directly utilized in or in relation to manufacture of final products; that the said goods are rightly classified under CTH 9403 as "*Other Furniture and Parts thereof*"; that as per the Harmonized System of Nomenclature (HSN), CTH 9403 covers furniture and parts thereof and includes furniture for general use and special uses; that in any event, irrespective of its classification, all the above goods are used in or in relation to manufacture and hence Cenvat credit has been rightly availed in the same; that reliance is placed on circular no. 943/4/2011-CX dated 29.04.2011 wherein it was mentioned that goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit is allowed; that the Hon'ble CESTAT, Bangalore in the case of Agarwal foundries vs Commr. C.Ex, Cust. & ST, Hyderabad [2015(321) E.L.T 267 (Tri-Bang)] has held that Cenvat Credit be availed on the furniture used in the factory; that CENVAT credit has been rightly availed and hence there does not arise a question of paying the same.

Further, a statement of Shri Mudit Agarwal, Commercial Manager & Authorised Signatory of M/S. Colgate Palmolive India Limited was recorded under Section 14 of Central Excise Act, 1944 on 12.12.2018. During recording of his statement, he stated that they have furnished the details to the CERA office for the period upto March-2017 covering an amount of Rs. 84,25,103/-



and have furnished the details vide letter dated 04.04.2018 covering period April 2017 to June 2017 availing Cenvat credit of Rs.5,00,130/- on capital goods, as objected by CERA Officials, other than the specified in the definition of Capital Goods. He further stated that they re-iterate the reply furnished to the range office on 04.04.2018 and 29.10.2018.

5. The Capital goods is defined in Rules 2 of Cenvat Credit Rules, 2004 is reproduced below:

*Rule 2. Definitions. - In these rules, unless the context otherwise requires-*

(a) "capital goods" means; -

(A) the following goods, namely: -

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No.6805 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank, used-

(1) In the factory of the manufacturer of the final products, but does not include any equipment or

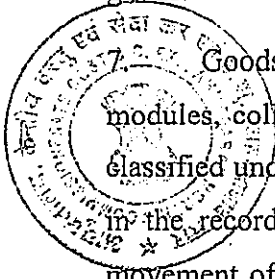
Appliance used in an office; or

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp) and (zzw) of clause (105) of section 65 of the Finance Act;

6. From the plain reading of the Rule 2(a) of CCR, 2004 of capital goods, it is ample clear that the (i) goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No.6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act; (ii) pollution control equipment and components and (iii) spares and accessories of the goods specified at (i) and (ii) are capital goods whereas the goods furniture and its parts falling under chapter 9403, trolley falling under chapter 8716, automatic door falling under chapter 8302 do not come under the purview of the Rule 2(a)(A)(i) ibid of the definition of capital goods.

Goods viz. Trolley used in factory for various purposes such as safe Storage of filing modules, collection of ejected tubes, transport of raw material. Further the said goods have been classified under Chapter 9403 in invoices whereas the same has been classified under chapter 8421 in the records of the assessee. (2) Automatic doors have been installed in factory for smooth movement of various raw materials, semi finished goods, finished goods etc. (3) palette locations are used for storage of raw material and finished goods. Therefore, it appeared that all goods do not



fall under the purview of the definition of the capital goods as given in Rule 2 of Cenvat Credit Rules, 2004.

8. The assessee in their written submission dated 29.10.2018 relied upon circular no. 943/4/2011-CX dated 29.04.2011 and case law of M/s Agarwal foundries reported in 2015(321) E.L.T 267 (Tri-Bang), appeared that the citation relied upon by the assessee is related to Cenvat credit availed on the furniture and stationery. However, the present case is related to Cenvat credit availed on capital goods which do not fall under the definition of Capital Goods as per Rule 2 of CCR 2004. The content of the assessee narrated above is not acceptable as the Cenvat credit availed on capital goods i.e Trolley (CETH-8716), Automatic Door (CETH-8302), Pallet Location (CETH-9403), Material Free Standing Mezzanin) and Shelving (CETH-9403), Operation Table (CETH-9403), Weight Scale Stand (CETH-9403), Machine Guard (CETH-9403), Cross over stairs (CETH-9403), Tube Box Station (CETH-9403), Cabinet for PPE and wheel (CETH-9403), Trimming waste drum (CETH-9403) do not fall under the definition of capital goods as defined in Rule 2 (a) (A) of Cenvat Credit Rules, 2004.

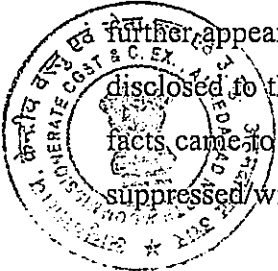
9. The assessee availed the credit on aforesaid goods as capital goods to the tune of Rs. 84,85,103/- covering period from June'2014 to March'2017 and Rs. 5,00,130/- covering period from April'2017 to June'2017, total of Rs. 89,25,233/- on capital goods from June'2014 to June'2017 availed by the assessee on goods which do not covered under purview of the definition of the capital goods defined under Rule 2 of Cenvat Credit Rules, 2004.

10. It appeared that the assessee has not agreed and not paid the wrongly availed CENVAT Credit to the tune of Rs. 89,25,233/-, therefore, it is required to be recovered under Rule 14(1)(ii) of CENVAT Credit Rules, 2004 read with the proviso of Section 11A along with interest at appropriate rate under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11AB and Section 11AA of the Central Excise Act, 1944.

11. The assessee had contravened the provisions of Rule 3 and 4 of Cenvat Credit Rules, 2004 in as much as they have wrongly availed Cenvat Credit in respect of capital goods that do not cover under the ambit of Capital Goods in terms of Rule 2 of Cenvat Credit Rules, 2004. Therefore, Cenvat credit of Rs.89,25,223/- wrongly availed by the said assessee is liable to be recovered from them under the provision of Rule 14 of Cenvat Credit Rules,2004 read with Section 11 A (4) of Central Excise Act,1944.

12. It is only on scrutiny of documents and further communication made in the matter, it was noticed that the assessee had wrongly availed and utilized the CENVAT Credit on such Capital goods that do not fall under the purview of the definition of Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. Therefore, it appeared that even though the assessee is well aware that they have wrongly availed CENVAT Credit on such Capital goods that do not fall under the ambit of the definition of Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. It

further appeared that the above nature of act committed by the said assessee were not intimated or disclosed to the Department at any point of time and it is only during the course of audit the above facts came to the notice of the Department. Therefore, it appeared that the assessee has deliberately suppressed/withhold the material facts from the Department with intent to evade payment of



wrongly availed CENVAT Credit on such Capital goods that do not fall under the ambit of the definition of Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. Since, the above act of omission on the part of the assessee constitute offence of the nature specified under sub section (4) of Section 11A of CEA, 1944, it appeared that demand for recovery of wrongly availed and utilized CENVAT Credit along with interest at appropriate rate is required to be initiated under Rule 14 of the CENVAT Credit Rules, 2004 with the proviso of the sub section (4) of Section 11A of Central Excise Act, 1944 and Section 11A/ 11AA of the Central Excise Act, 1944 by invoking extended period of five years.

13. The Government has from the very beginning placed full trust on the manufacturers/service providers and accordingly measures like self assessment etc., based on mutual trust and confidence are in place. Further a manufacturer/service provider is not required to maintain any statutory or separate records under the provisions of the Central Excise/Finance Act and the Rules made there under, as considerable amount of trust is placed on them and private records maintained by them, for normal business purposes are accepted, practically for all the purposes. All these operate on the basis of honesty of the assessee, therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them.

14. It is fact that they never disclosed that they availed CENVAT Credit on such capital goods that are not actually the Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. They never sought any clarification from the department. A person giving his own interpretation to the provisions of law and then arguing that he was under a bona fide belief cannot escape from liability to pay duty arising out of invocation or larger period of limitation.

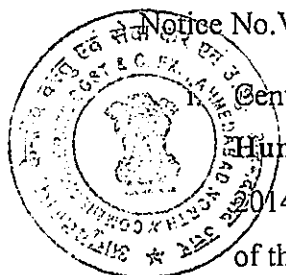
15. From the omission and commission committed on the part of the assessee constitute an offence of the nature specified under Section 11AC of CEA, 1944, and therefore the assessee has rendered themselves liable for penal action under Rule 15 of the CENVAT Credit Rules, 2004 read with the proviso of Section 11AC of the Central Excise Act, 1944.

16. As per instruction dated 21.12.2015 of Member (L&J/IT), CBEC, a pre Show Cause Notice consultation was fixed on 03.07.2019. Mr. Prasad Gosavi, Executive (Finance) of M/s Colgate Palmolive India Pvt. Ltd appeared for pre-consultation and denied the charges of any wrong availment of Cenvat Credit on various invoices by wrong classification. He also submitted a copy of reply of Audit report (HM-07) dated 04.04.2018 and reiterated its content. However the contention of the assessee is not tenable in view of the facts discussed above.

17. Therefore, M/s. Colgate Palmolive India Limited, SM-02, Sanand-II, GIDC Industrial Estate, Near Bol Village-Sanand, Ahmedabad-382170 were called upon to show cause to the Joint/Additional Commissioner of CGST & Central Excise Ahmedabad North vide Show Cause

Notice No.V.33/15-01/OA/2019 dated 05.07.2019 as to why;

Cenvat Credit of Rs.89,25,233/- ( Rs. Eighty Nine Lacs Twenty-Five Thousand Two Hundred And Thirty Three Only) wrongly availed and utilized for the period from June 2014 to June 2017, should not be disallowed and recovered from them under Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 read with Section 11 A (4) of the Central Excise Act,1944.



- ii. Interest at the applicable rate should not be charged and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A/Section 11AA of the Central Excise Act, 1944;
- iii. Penalty should not be imposed upon them the provisions of Rule 15(2) of Central Credit Rules 2004 read with Section 11AC of the Central Excise Act, 1944;

**Defence reply:**

18. Shri J. H. Motwani, Partner, Economic Laws Practice (Advocates for Colgate Palmolive India Ltd) , submitted a written reply dated 03.11.2020 on behalf of M/s.Colgate Palmolive India Ltd. Contents of their reply is produced as below:-

1. "The Noticee is a company incorporated under the Companies Act, 1956 and is *inter alia* engaged in the manufacture of preparations for oral or dental hygiene paste falling under the Chapter Tariff Head 33061020 of the Central Excise Act, 1944. They held the Central Excise Registration No. AAACC4309BEM0079 during the pre-GST era.
2. The Noticee is mainly engaged in the business of manufacturing of Toothbrushes falling under Tariff Heading No. 96032100 of the Central Excise Tariff Act, 1985 and the said manufacturing, quality control and testing takes place in a very hygienic and protective environment. Since the products manufactured by the Noticee are products of oral hygiene used in day to day life, they need to conform to the specific standards issued by the Bureau of Indian Standards.
3. The Noticee has its factory located at Plot No. SM-02, Sanand-II Industrial Estate, near Bol Village, Ahmedabad – 382170.
4. The Noticee discharged its Central Excise as applicable in accordance with law. Further, in the ordinary course of business they also procured Capital Goods, input and input services required for manufacture of toothpaste and availed CENVAT credit of the same as per the provisions of Cenvat Credit Rules, 2004.
5. During the course of audit of the Central Excise records of the Noticee by the 'Central Excise Revenue Audit' for the period from 'April 2014 to March 2017', it was *inter alia* observed that the plant at Sanand commenced its operation in March 2014. In the initial stage of operation of plant, they had procured Capital Goods from indigenous/foreign market and availed CENVAT Credit of the same. It was observed that the Noticee have availed CENVAT Credit on certain goods as 'capital goods', which are falling under CTH 9403 (Furniture & its parts), 8716 (trolley), 8302 (automatic door) and as such not specified in the definition of capital goods as defined in Rule 2(a) of the CCR, 2004. It is also observed that in few cases the Noticee wrongly adopted classification of the goods under CTH 8421 although the goods were falling under CTH 9403 as per correct classification depicted in related invoices. Based on the said observation the CENVAT Credit of Rs. 84,25,103/-, for the period 'April 2014 to March 2017' was sought to be denied.





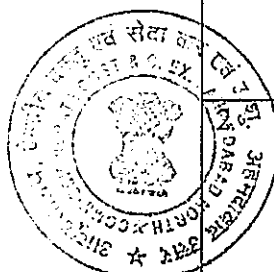
6. Aforesaid contentions were conveyed to the Noticee by the Superintendent, CGST, Division-III (Sanand), Range-V, Ahmedabad North, vide letter F. No. AR-III/Div.III/CERA-HM-7/2017-18/202 dated 18.10.2017.
7. The Noticee vide their letter dated 04.04.2018 replied to Department vide letter dated 18.10.2017, wherein they made detailed submission that during the period 'April 2014 to March 2017' they procured various goods which are used in the manufacturing of their final product i.e. toothpaste. All the goods were received and used in the factory/manufacturing plant itself and the same is not in dispute. The Noticee also submitted that irrespective of the fact whether the Disputed Goods fall under the definition of capital goods or not, the same are used directly or indirectly in or in relation to manufacture and hence fall under the definition of "input" under Rule 2(k) of the CCR, 2004 and hence CENVAT credit which was duly available and rightly availed.
8. The details of the Disputed Goods are as under:

TABLE 1: April 2014 to March 2017

Sr. No.	Vendor	Description of Goods	Use of the Goods	CENVAT Credit (in Rs.)	Imported/Indigenous Purchase & Classification
1	TWK	Trolley	Safe storage of filling module	2,82,532	imported goods 87168090
2	Nergeco Australia PTY Ltd.	Automatic Doors	Quick and smooth material movement	42,71,489	imported goods 93026000 & 83026000
3	Schaefer Systems International	Racks	Storage of finishing goods and Engg. Store materials	38,00,559	imported goods 94032090
4	Neptune Industries	Furniture i.e. Operation table, parts of machine, cross over steps	Smooth material movement and functioning of manufacturing unit	70,522	indigenous goods 9403
<b>Total:</b>				<b>84,25,102</b>	

TABLE 2: April 2017 to June 2017

Sr. No.	Vendor	Description of Goods	Use of the Goods	CENVAT Credit (in Rs.)	Imported/Indigenous Purchase & Classification
1	Endress & Hauser (I) Pvt. Ltd.	TIT WITH RTD + TW THREADED 0-120 DEG C	Temperature Measurement Equipment	20,625	indigenous goods 90258090
	Essae Technologies Pvt. Ltd	Barcode Printer	used for printing of material barcode sticker and batch wise bifurcation	30,219	indigenous goods 48211020



3	Grindwell Norton Ltd	GFDA Hose Dia 4 Inch, L 3 m	Part of Cream manufacturing Pipeline	53,764	indigenous goods 40091100
4	Micro Pneumatics Pvt Ltd	EMERSON TOPWORKS INTERNAL COIL ASSEMBLY	Valve used in Toothpaste making process equipment	65,100	indigenous goods 84819090
5	Mudrika Labels Pvt Ltd	CP Logo stickers	Stickers used for packing	8,504	indigenous goods 39199010
6	Nilkamal Ltd	Roto Pallet	storage raw material, packing material to assist material movement	1,54,875	indigenous goods 39231090
7	Positive Industries	BOPP tape	Tape which is used for Box Packing Activity	16,923	indigenous goods 39191010
8	Simplex Corporation (USA)	CAVITY FILLER KIT SIHTL8--3--F346	It is a part of the cream tank used to prevent leakages	68,870	imported goods 84819090
9	SSM Infotech Solutions Pvt Ltd	PLC Control Panel	Used in plant water system control Panel	81,250	indigenous goods 85381010
<b>Total:</b>				<b>5,00,130</b>	

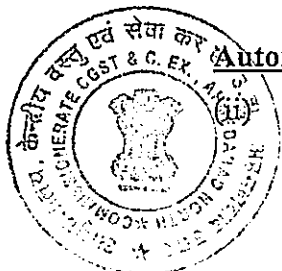
9. A brief description of the Disputed Goods procured by the Noticee and their role in the manufacturing unit is given hereunder:

**Trolleys**

- (i) Trolleys are used in the factory of the Noticee for various purposes such as (i) safe storage of filing modules (ii) collection of ejected tubes (iii) transport of raw material and finished goods from the storeroom to the manufacturing area and back, etc. Thus, the trolleys are used for material handling purpose and hence are directly used in manufacturing process. These trolleys have been either imported or indigenously procured.

**Automatic Door**

Automatic doors have been installed in the factory of the Noticee for smooth movement of various kinds of raw material, semi-finished goods, finished goods etc. Further, automatic doors separate the various manufacturing processes which makes



it easier to differentiate between the goods under process. These doors have been imported.

**Pallet Location**

(iii) Pallets locations are used for storage of raw materials and finished goods. These pallet locations have been imported.

**Material Free Standing Mezzanin and Shelving**

(iv) Free standing mezzanins are racks which are used for storage of engineering material and spare parts. These racks also have been imported.

**Operation Table**

(v) An operation table has been indigenously procured for the purpose of material handling.

**Weight Scale Stand**

(vi) A weight scale stand was indigenously procured for smooth material movement.

**Machine Guard**

(vii) Machine guards were indigenously procured and form part of a machine used in the manufacturing process and hence is involved in the manufacturing process.

**Cross over stairs**

(viii) Cross over stairs are used to cover the finishing line to ensure smooth material movement. These stairs have been indigenously procured from various venders.

**Tube Box Station**

(ix) A tube box station is used for storing of tube boxes used in the manufacturing process. They are indigenously procured.

**Cabinet for PPE and wheel**

(x) This is a cabinet used for storage of personal protection equipments used by the employees at the manufacturing unit. They have been indigenously procured.

**Trimling waste drum**

(xi) A waste drum is used for collection of waste and scrap generated during the manufacturing process. They are indigenously procured.

**Barcode Printer Labels**

(xii) After taking GRN's, labels are generated through a printer to stick on all materials to identify GRN details, SKU details, Batch no Details etc. This is a packing material used for the manufacture of the final product.

**DIA for Engineering Tool**

(xiii) The said tool is used for various type of machinery installation in plant.

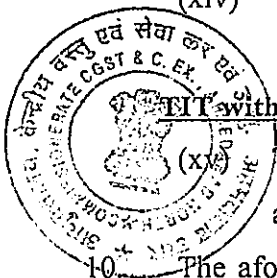
**CP Logo Stickers**

(xiv) The CP Logo Stickers are used for packing related activities.

**RTD + TW Threaded 0-120 DEGC**

(xv) These tools are used for machines and engineering purposes in machinery related activities in the manufacturing unit.

The aforesaid goods are mainly classified under CTH 9403 as "Other Furniture and Parts thereof" and includes furniture for general use and special uses. Noticee in their submission

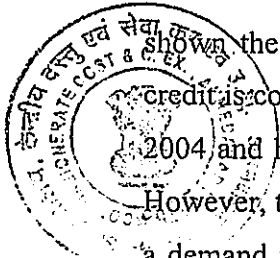


before Department, placed reliance upon Circular No. 943/4/2011-CX dated 29.04.2011 wherein it is specified that 'goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed'.

11. Further, in reference to observations of CERA, the Noticee vide their letter dated 29.10.2018, submitted a detail of CENVAT Credit amounting to Rs.5,00,130/-, taken on Disputed Goods during the period April 2017 to June 2017. The Noticee craves leave to refer to and rely upon the letter dated 29.10.2018 as and when produced.
12. Thereafter, statement of Shri. Mudit Agarwal, Commercial manager & Authorized Signatory of the Noticee Company was recorded on 13.12.2018 in respect of all objections raised by CERA. He reiterated submissions made by them vide letters dated 04.04.2018 and 29.10.2018.
13. Thereafter, a pre-show cause notice consultation for Litigation Management and Dispute Resolution was held on 03.07.2019 before the Additional Commissioner CGST, Ahmedabad North which was attended by the authorized representatives of the Noticee wherein each of the allegation made by the Department was denied.

Thereafter, within two days, a Show Cause Notice F. No. V.33/15-01/2019 dated 05.07.2019 ("impugned SCN") was issued to the Noticee by the Additional Commissioner of CGST, Ahmedabad North, inter alia calling upon it to show cause as to why Cenvat Credit amounting to Rs. 89,25,233/- wrongly availed and utilized for the period from June 2014 to June 2017 should not be disallowed and recovered from them under the Provisions of Rule 14(1)(ii) of the CCR, 2004, read with Section 11A(4) of the Central Excise Act, 1944 along with interest and penalty.

14. The Noticee is making following submissions against the allegation levelled against them in the impugned SCN.
15. At the outset we deny each and every allegation made under the Show Cause Notice under reply and nothing that is alleged therein is admitted or deemed to be admitted unless so specifically admitted herein. It is primarily submitted that the credit in dispute was availed by the Noticee as 'capital goods' instead of 'inputs'. Further, the said credit has been used directly/indirectly in the manufacturing of final dutiable product and its eligibility is not in dispute.
16. It is submitted that the Noticee vide their letter dated 04.04.2018 made detailed submission wherein they explained the nature of disputed goods and also explained the use of the said goods in their manufacturing unit. The Noticee submitted that the major goods are falling under CTH 9403, which is pertaining to "Furniture & Fixtures". Hence, although they have shown the said credit in the column of "Capital Goods" in their Excise returns, the said credit is correctly falling under the definition of "input as stipulated at Rule 2(k) of the CCR, 2004" and has been used directly/indirectly in relation to the manufacture of final products. However, the Department has not taken cognizance of the said submission but merely issued a demand notice for a procedural infraction of showing the disputed credit under the head 'capital goods' instead of correct head 'inputs'.





**Material Free Standing Mezzanin and Shelving (CTH 9403)**

- (iv) Free standing mezzanins are racks which are used for storage of engineering material and spare parts. Thus, the racks used for storage of goods in the factory are used directly/indirectly in relation to the manufacturing process.

**Operation Table (CTH 9403)**

- (v) An operation table has been indigenously procured for the purpose of material handling which is in relation to the manufacturing process.

**Weight Scale Stand (CTH 9403)**

- (vi) A weight scale stand used for weighing the raw materials which are to be used in the manufacturing of the final product. As such, it has been used directly/indirectly in relation to manufacturing process.

**Machine Guard (CTH 9403)**

- (vii) Machine guards form part of a machine used in the manufacturing process and hence is involved in the manufacturing process.

**Cross over stairs (CTH 9403)**

- (viii) Cross over stairs are used to cover the finishing line to ensure smooth material movement. Thus, the cross over stairs used for smooth material movement in the factory are used directly/indirectly in relation to the manufacturing process.

**Tube Box Station (CTH 9403)**

- (ix) A tube box station is used for storing of tube boxes used in the manufacturing process.

**Cabinet for PPE and wheel (CTH 9403)**

- (x) This is a cabinet used for storage of personal protection equipments used by the employees at the manufacturing unit. Thus, the cabinets used for storage of goods in the factory are used directly/indirectly in relation to the manufacturing process.

**Trimling waste drum (CTH 9403)**

- (xi) A waste drum is used for collection of waste and scrap generated during the manufacturing process. Thus, the wate drum used for collection of waste in the factory are used directly/indirectly in relation to the manufacturing process.

**Barcode Printer Labels**

- (xii) After taking GRN's, labels are generated through a printer to stick on all materials to identify GRN details, SKU details, Batch no Details etc. This is a packing material used for the manufacture of the final product and used directly in relation to manufacturing process.

**DIA for Engineering Tool**

- (xiii) The said tool is used for various type of machinery installation in plant.

**CP Logo Stickers**

- (xiv) The CP Logo Stickers are used for packing related activities and as such used directly in relation to manufacturing process.

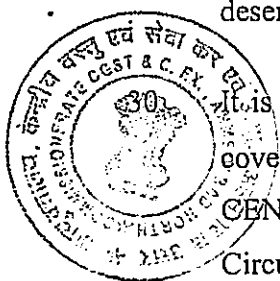


**TIT with RTD + TW Threaded 0-120 DEGC**

(xv) These tools are used for machines and engineering purposes in machinery related activities in the manufacturing unit. Thus, the tools used for machinery related activities in the factory are used directly/indirectly in relation to the manufacturing process.

22. In view thereof, it is submitted that all the Disputed Goods are used in relation to manufacture of final products, credit on the same is eligible in terms of Rule 2(k) of the CCR, 2004 i.e. "inputs". Reliance is placed upon the Hon'ble Apex Court Judgment in the case of **Flex Engineering Ltd. V/s. Commissioner of Central Excise, UP 2012 (276) ELT 153 (S.C.)**.
23. Reliance is also placed upon the Hon'ble Madras High Court judgment in the case of **National Co-Operative Sugar Mills Ltd. V/s. Commissioner of Central Excise, Madurai 2016 (344) ELT 832 (Mad)**.
24. Reliance is also placed upon the judgment of the Hon'ble Delhi Tribunal in the case of **Northern Coalfields Ltd. V/s. Commissioner of Central Excise, Bhopal 2017(5) GSTL 217 (Tri. Del)**.
25. Reliance is also placed upon the Hon'ble Delhi Tribunal in the case of **Jindal Steel and power Ltd. V/s. Commissioner of Central Excise, Raipur 2017 (352) ELT 235 (Tri. Del)**.
26. It can be seen from the aforesaid submission that the disputed credit is eligible credit pertaining to 'inputs' as defined under Rule 2(k) of the CCR, 2004. In view thereof, it is also submitted that if an assessee is eligible to avail CENVAT credit under the category of 'inputs' the same cannot be denied merely on the ground that credit was claimed as 'capital goods'. Reliance is placed upon the Hon'ble Ahmedabad Tribunal in the case of **Sanghvi Forging & Engineering Ltd. V/s. Commissioner of Central Excise, Vadodara-II 2014 (302) ELT 136 (Tri. Ahmd)**.
27. Reliance is also placed upon the Hon'ble Delhi Tribunal judgment in the case of **Kisan Sahakari Chini Mills Ltd. V/s. Commissioner of Central Excise, Meerut-II 2010 (261) ELT 308 (Tri-Del)**.
28. Reliance is also placed upon the Hon'ble Bangalore Tribunal judgment in the case of **Switch Gear Control Technics Pvt. Ltd. V/s. Commissioner of Central Excise, Bangalore 2009 (240) ELT 78 (Tri-Bangalore)**.
29. In view thereof, it is submitted that the Noticee are entitled for the disputed credit since it is pertaining to 'inputs' as specified under Rule 2(k) of CCR, 2004 and impugned SCN deserves to be struck down on this count alone.

It is further submitted that the major Disputed Goods are falling under CTH 9403 which covers furniture and parts thereof and includes furniture for general use and special uses. CENVAT credit of said goods is rightly availed by the Noticee. Reliance is placed upon Circular No. 943/4/2011-CX dated 29.04.2011, wherein it is clarified that goods such as furniture and stationary used in an office within the factory are goods used in the factory and



are used in relation to the manufacturing business and hence the credit of the same is allowed.

31. Reliance is placed upon the Hon'ble Bangalore Tribunal in the case of **Agarwal Foundries V/s. Commercial of C. Ex., Cus& ST, Hyderabad 2015 (321) ELT 267 (Tri. Bang).**
32. Reliance is also placed upon the Hon'ble Mumbai Tribunal in the case of **ICICI Lombard General Insurance Co. Ltd. V/s. Commissioner of ST, Mumbai-I 2016 (42) STR 938 (Tri. Mumbai), 2016(42) STR 938 (Tri. Mumbai).**

In the present case, the Noticee have availed the credit of furniture and fixtures and hence the aforesaid dictum is squarely applicable to the present case.

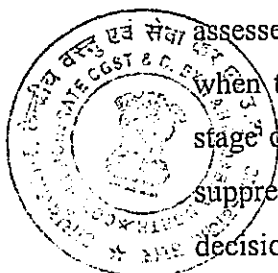
33. In view thereof, it is submitted that the Noticee are entitled for the input credit and impugned SCN deserves to be quashed being untenable on this count, alone.
  34. As submitted above, the disputed credit is pertaining to 'inputs' and the Noticee are entitled for the credit of the same. Further, it is not the case of the Department that the said credit is otherwise ineligible or not used in relation to the manufacture in the factory of the Noticee. The only contention of the Department is that the said credit is falling under the definition of 'capital goods'. The Disputed Goods went to the 'Engineering Store Department' of the Noticee which generally looks after the procurement of 'capital goods' and make the inventory and entries of capital goods. On the other hand, the raw material which is used for manufacturing of toothpaste go to the "Raw material Department", who make the inventory and entries in their system. Since the Disputed Goods have been handled by the "Engineering Store Department" they have inadvertently made the said entries under 'capital goods' instead of their correct entries as 'inputs'. Due to said error the disputed credit was shown under the head of 'capital goods' instead of 'inputs' in the Central Excise returns. In view thereof, it is submitted that showing the said credit under the head 'capital goods' instead of its correct description 'inputs' is just a procedural infraction and as such the right of eligible CENVAT Credit may not be denied to the Noticee.
  35. It is a settled law that the procedural infraction cannot take away substantial right of credit. Reliance is placed upon the judgment of the Hon'ble Uttarakhand High Court in the case of **Commissioner of C. Ex. Meerut V/s. Indica Chemical Industries (P) Ltd., 2008 (224) ELT 41 (Uttarakhand).**
  36. Reliance is also placed upon the judgment of the Hon'ble Mumbai Tribunal in the case of **Commissioner of Central Excise, Surat-II V/s. White En-All Pvt Ltd 2004 (175) ELT 119 (Tri.**
  37. Reliance is also placed upon the judgment of the Hon'ble Delhi Tribunal in the case of **Dhampur Sugar Mills Ltd. V/s. Commissioner of Central Excise, Meerut 2010(260) ELT 106 (Tri. Del).**
- Reliance is also placed upon the judgment of the Hon'ble Kolkata Tribunal in the case of **Vijayshree Textiles Pvt. Ltd. V/s. Commissioner of Central Excise, Kolkata-II 2008 (224) ELT 87 (Tri. Kolkata).**





39. In view of the same it is submitted that the Noticee are entitled for the disputed credit and the same cannot be denied merely for a procedural lapse. Impugned SCN deserves to be quashed on this count, alone.
40. Without prejudice to the aforesaid and in any event it is submitted that the most of the Disputed Goods are imported products and remaining few are procured indigenously. The Noticee have paid duty on all Disputed Goods and availed credit, accordingly. Further, their final product has been cleared upon payment of duty. As such, when the Noticee have availed the credit by making payment to its supplier and also when their final product has been cleared after due payment of Central Excise duty, there is no loss to exchequer and as such any procedural infraction cannot be an impediment for availment of eligible credit. Reliance is placed upon the Hon'ble Tribunal's judgment in the case of **Saurashtra Chemicals V/s. Collector of Central Excise, Rajkot 1998 (101) ELT 379 (Tribunal)**.
41. It is also submitted that the scheme of CENVAT Credit have been introduced to avoid the cascading effect. Inputs/Capital Goods having suffered stipulated duty by manufacturer who avails credit of such duty and uses them to in or in relation to manufacture of their final product. As such, the CENVAT credit scheme has been evolved to avoid multiplication or duplication of duty element upon ultimate cost of the product. Reliance is placed upon the Hon'ble Apex Court's judgment in the case of **KCP Ltd. V/s. Commissioner of Central Excise, Chennai 2013 (295) ELT 353 (S.C.)**.
42. Without prejudice to the aforesaid and in any event the Show cause notice, to the extent that it proposes to confirm demand for the period beyond normal period of limitation (i.e. up to May 2017) is time barred and deserves to be set-aside.
43. It is submitted that in the present case the Department have conducted EA-2000 Audit on the records of the Noticee for the F. Y. 2013-14 to F.Y. 2015-16 in the month of November 2016 and December 2016 and issued Final Audit Report No. 1178/2017-18 dated 02.08.2017.
44. During the said Audit, Department verified all the documents and raised an audit objection pertaining to irregular availment of CENVAT Credit on ineligible input services amounting to Rs. 1,96,83,852/-, which issue is being contested by Noticee in another proceedings.
45. In view thereof, it is submitted that when the Department has itself conducted detail audit on the records of Noticee, extended period of limitation cannot be invoked during subsequent check of the documents.
46. It is settled law that once the records of the assessee were audited by the officers of the Department and all the objections had been explained and complied with, then on subsequent verification of record for the same period, the Department cannot allege that the assessee has misstated or suppressed the facts from the Department. It is submitted that when the Department failed to examine the records in depth and in detail, then at a later stage of time they should not be allowed to burden the assessee by slapping the charge of suppression of facts or mis-declaration. Reliance in this behalf is placed on the following decisions:

- a. **CCE v. Southern Structurals Ltd [2008 (229) E.L.T. 487 (S.C.)]**



- b. **Trans Engineers India Pvt Ltd v/ s Commissioner of C. Ex, Pune [2015 (40) S.T.R 490].**

47. It is also submitted that it is a settled position in law that, when all the facts are in knowledge of the department, no suppression of facts can be alleged on the part of the assessee – **Nizam Sugar Factory vs. CCE, AP [2006 (197) ELT 465 (SC)].**

48. The Noticee also places reliance on the following decisions which peculiarly state that extended period of limitation and penalty cannot be invoked when the Department is already aware about the facts of the case:

- a. **Shri Baidyanath Ayurved Bhawan Ltd. vs. CCE, Patna reported in 2002 (150) ELT 1290 (Tri-Delhi) also affirmed by Hon'ble Supreme Court;**
- b. **Burn Standard Co. Ltd. Vs. Commissioner of Central Excise, Bolpur reported in 2006 (206) ELT 411 (Tri-Kolkata);**
- c. **MEK Slotted Angles (India) Ltd Vs. CCE, Belapur reported in 2004 (178) ELT 948 also affirmed by Hon'ble Bombay High Court;**
- d. **Commissioner of Central Excise, Daman Vs. Raman & Weils P. Ltd cited in 2009 (237) ELT 744 (Tribunal – Ahmedabad);**
- e. **Commissioner of Central Excise & Service Tax, Dibrugarh Vs. Hi Flow Pump co. cited in 2012 (282) ELT 286 (Tribunal Kolkata);**
- f. **Orissa Concrete Industries Vs. Commissioner of Central Excise, Bhubaneswar, 1999 (114) ELT 189 (Tribunal – Kolkata).**

49. Thus, in view of the above, the demand up to the period of March, 2016 amounting to Rs. 84,25,102/-, is liable to be set aside on this count, alone.

50. It is submitted that the Show cause notice purports to invoke the extended period of limitation on the basis that the Noticee has deliberately, consciously and purposefully evaded payment of duty by utilizing wrongly availed Cenvat Credit.

It is clear from the aforesaid that unless ingredients mentioned in sub clause (a) to (e) of Section 11(4) above are present, extended period of limitation cannot be invoked.

51. The Noticee submits that in the present case the Noticee has neither made any misstatement, suppressed any facts nor did it have any intention to evade the payment of tax and hence, provisions of Section 11A(4) of the Act are not imposable.

52. The Noticee has neither made any conscious effort to suppress the facts nor has intended to evade payment of duty. Thus, the invocation of the extended period of limitation is untenable in law. In this regard, reliance is placed on the following judicial decisions:

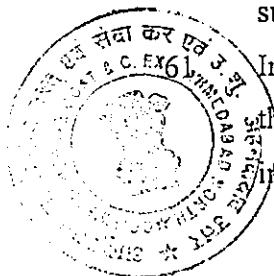
- (a) **CCE v Chemphar Drugs and Liniments [1989 (40) ELT 276 (S.C.)]**
- (b) **Lubrichem Industries Ltd. v CCE [1994 (73) ELT 257 (S.C.) ]**
- (c) **Pushpam Pharmaceuticals Co. v CCE [1995 (78) ELT 401 (S.C)]**

It is well settled law by the judgment of the Hon'ble Supreme Court in **Nestle India Ltd. vs. CCE [2009 (235) E.L.T. 577 (S.C.)]** that, to invoke the larger period of limitation there should be some positive act other than mere inaction or failure on the part of the assessee or there must be conscious or deliberate withholding of information by the assessee. Stated

simply, there must be some positive action in withholding information on the part of the assessee to constitute willful suppression.

54. Reliance is also placed upon below mentioned judgments to buttress our argument:
- (a) Continental Foundation v/s. CCE 2007 (216) ELT 177 (SC);
  - (b) Tamil Nadu Housing Board v/s. CCE 1994 (74) ELT 9 (SC);
  - (c) M/s Uniworth Textiles Ltd. v/s. Commissioner of Central Excise, Raipur 2013 (288) ELT 161 (SC);
  - (d) EssEss Engineering v/s. CCE, Chandigarh 2010 (20) STR 669 (Tri.- Del.) which was affirmed by the Hon'ble High Court at Punjab and Haryana in 2011 (23) STR 3 (P&H)
55. It is reiterated that in the present case, the Noticee consciously has not held back any information with the intent to evade payment of tax, instead, as stated earlier it has adequately disclosed the information which is statutorily required to be disclosed in ER-1 returns and no material information or fact has been withheld, much less with the intent to suppress the fact. Further the Noticee have submitted all the information/documents sought by the department from time to time.
56. In view of the above, it is submitted that there is neither any wilful mis-statement, suppression of facts, etc. nor any deliberate intent to evade payment of duty and therefore the extended period of limitation is not invocable in the facts of the present case. As such, demand up to the period of May, 2017 i.e. Rs. 88,01,346/- is to be dropped being untenable.
57. It is submitted that, penalty under Section 11AC of the Act read with Rule 15 of the CCR is imposable only in cases where duty is not paid for reasons of fraud, collusion or any wilful mis-statement or wilful suppression of facts or contravention of any of the provisions of the Act/rules with the intent to evade duty. The said Rule 15(2) states as under:
58. From a bare perusal of the said Rule 15(2), it is clear that this provision applies where "Cenvat credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty", which is not the factual position in the instant case.
59. In view of the submissions made on merits above, when the demand itself is not sustainable, the consequent penalty under Rule 15(2) read with Section 11AC cannot be imposed. In support of the said proposition reliance is placed on the following decisions:
- (a) CCE v. H.M.M. Ltd. 1995 (76) ELT 497 (SC)
  - (b) Coolade Beverages Ltd. v. CCE, Meerut 2004 (172) ELT 451 (All)
60. Without prejudice to the above it is submitted that, all the details with regard to availment of credit were in the knowledge of the department, Thus, the allegation of any fraud, suppression or wilful mis-statement are unsustainable.

In view of the submissions made above, it is submitted that penalty under Section 11AC of the Act read with Rule 15 of CCR cannot be imposed when extended period cannot be invoked.



62. It is submitted that since the duty demand is not sustainable as per the arguments advanced above, the proposal to demand interest is unsustainable and needs to be set aside.
63. The Hon'ble Supreme Court of India in **Prathibha Processors vs. Union of India** reported at 1996 (88) E.L.T. 12 (S.C.), has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest, either.
64. It is submitted that the liability of interest is inseparably linked with the demand confirmed in the impugned SCN. However, if the demand itself is not sustainable (as explained in the submissions above), the question of demanding interest does not arise and therefore, the demand of interest in the impugned SCN is liable to be dropped.
65. The Noticee reserves its rights to add, alter, retract any or all of the submissions made herein above and requests for a Personal Hearing to further explain its submission made herein above.

### Personal Hearing.

19. Personal hearings in this case were fixed on 28.07.2020, 27.08.2020, 12.10.2020, 05.11.2020, 21.12.2020 and 30.12.2020. Shri Jitendra Motwani, Advocate and Kirti Bhoite, Advocate attended virtual hearing on 30.12.2020. Earlier, the personal hearing was postponed on account of Covid-19 cases. They stated that plant of their client, M/s.Colgate Palmolive (I) Latd, started functional at Sanand in March 2014. They have procured the goods by imports (90%) and remaining by indigenous procurement. All these goods were necessary for initial setting up of a production unit. In fact, they have utilized all the said goods in or in relation of manufacturing. In some cases they have shown it as a capital goods but in fact it should have been entered in the respective as inputs. In any case, they are entitled for the Cenvat Credit of the goods either by capital goods or inputs. The Cenvat Credit taken as capital goods is inputs in some cases and it was inadvertently taken as Capital Goods. They have taken the said Credit in two installments viz. 50% in the first year and remaining 50% in the next financial year. If the case the goods were treated as inputs, they would have taken 100% credit in the year of receipt of goods itself. The furniture and fixtures should be treated as inputs. Therefore, there is no revenue loss to the Government. They also referred to their written submission and various case laws relied therein which are in their favour. They requested to consider all these points.

### Discussion and findings:

20. I have carefully gone through the records of the case, written submission made by the assessee in reply to the show cause notice as well as submission made during the course of personal hearing.

21. The issue to be decided in the present case is whether the demand raised against M/s. Colgate Palmolive India Ltd for wrong availment of Cenvat Credit on various goods/materials in the guise of capital goods to the tune of Rs.89,25,233/- is sustainable in law or otherwise.

22. It is a fact that the said assessee had availed Cenvat Credit on various goods/material procured by them by way of import and indigenous procurement which are of different Tariff Headings and description of the said goods did not fall within the definition of 'Capital Goods' as per the Cenvat Credit Rules, 2004. The show cause notice has alleged that during the course of

audit of the Central Excise records of the assessee by the CERA, it was observed that the plant at Sanand commenced in the year (March) 2014. In the initial stage of operation of plant, the assessee had procured various goods from indigenous/foreign market and availed Cenvat credit on the said goods. During the test check of their records i.e. Cenvat Credit Part II Accounts, invoices/ bills of entry for the period 2014-15 to 2016-17, it was observed that they had availed the Cenvat Credit on goods falling under chapters 9403 (Furniture & Its parts) 8716 (trolley), 8302 (Automatic Door) which are not specified in the definition of Capital goods as defined in Rule 2 (a) of the CENVAT Credit Rules, 2004. It was also observed by the auditors that in some of the cases the assessee had wrongly adopted the classification of the goods under chapter 8421 although the goods were falling under chapter headings 9403 as per correct classification depicted correctly in related invoices. CERA had also observed that the said assessee had wrongly availed the CENVAT Credit on capital goods to the tune of Rs. 84,25,103/- for the period from June 2014 to March 2017.

23. The assessee has not contested that they have not availed the Cenvat Credit to the tune of Rs.84,25,103/- on various goods falling under different chapters of Central Excise Tariff Act, 1985. Their main explanation is that there is no revenue loss to the Department, if not capital goods, the said goods may be treated as input as they are used in or in relation to the manufacture of goods. They quoted a number of case laws in their defence.

24. I find that the assessee has taken Cenvat Credit of goods/materials in the guise of capital goods of various Central Excise Tariff Heading such as 8716, 9302, 9403, 8421 (classified under Chapter 9403 in invoice) 8302, etc which are, in fact, not capital goods and which can not be treated as Capital Goods.

The Capital goods is defined in Rules 2 of Cenvat Credit Rules, 2004 is reproduced below:

*Rule 2. Definitions. - In these rules, unless the context otherwise requires-*

(a) "capital goods" means: -

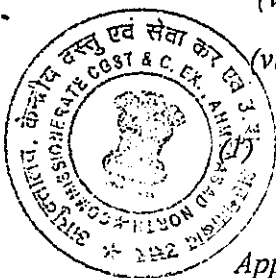
(A) the following goods, namely: -

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No.6805 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof; and
- (vii) storage tank, used-

*In the factory of the manufacturer of the final products, but does not include any equipment or*

*Appliance used in an office; or*

(2) *for providing output service;*



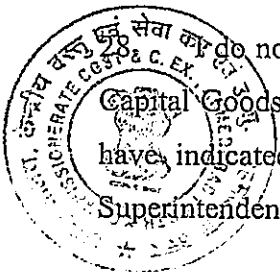
(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp) and (zzw) of clause (105) of section 65 of the Finance Act;

25. I also find the description of the goods on which the Cenvat Credit have been taken as "Capital Goods" are Trolleys, Automatic Door, Pallet Location, Material Free Standing Mezzanin and Shelving, Operation Table, Weight Scale Stand, Machine Guard, Cross over stairs, Tube Box Station, Cabinet for PPE and wheel, Trimming waste drum etc, which are not covered under the definition of Capital Goods in view of the definition of capital goods mentioned above.

26. I also find that they have also availed Cenvat Credit in the guise of Capital Goods on the description of goods such as Temperature Measurement Equipment, Barcode Printer, DFDA Hose Dia 4 inch, L 3m, CP logo stickers, Roto pallet, BOPP Tape, PLC Control Panel etc, which are falling under Chapter 9025, 4821, 4009, 8481, 3919, 3923, 3919 of Central Excise Tariff Act, 1985. According to the SCN, the said goods/material can also not be considered as Capital Goods as per the Definition of Capital Goods mentioned in Rules 2 of Cenvat Credit Rules, 2004. Therefore, I hold that the assessee has wrongly taken the Cenvat Credit on the said goods/materials which were not falling under the definition of Capital Goods and as such, they were not entitled to avail the said Credit. The wrongly availed Cenvat Credit in the guise of capital goods is liable to be recovered from the assessee in terms of Rule 14 (1)(ii) of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944.

27. The assessee has explained the use of these goods/materials in their reply to the show cause notice. I find that they had also submitted copy of similar letter addressed to Supdt, AR-V, Division-III wherein usage of the goods/material was mentioned. They also stated that the disputed credit is pertaining to 'inputs' and they are entitled for the credit of the same. They stated that it is not the case of the Department that the said credit is otherwise ineligible or not used in relation to the manufacture in their factory and the only contention of the Department is that the said credit is falling under the definition of 'capital goods'. They stated that the Disputed Goods went to their 'Engineering Store Department' which generally looks after the procurement of 'capital goods' and make the inventory and entries of capital goods. On the other hand, the raw material which is used for manufacturing of toothpaste go to the "Raw material Department", who make the inventory and entries in their system. Since the Disputed Goods have been handled by the "Engineering Store Department" they have inadvertently made the said entries under 'capital goods' instead of their correct entries as 'inputs'. Due to said error the disputed credit was shown under the head of 'capital goods' instead of 'inputs' in the Central Excise returns. They submitted that showing the said credit under the head 'capital goods' instead of its correct description 'inputs' is just a procedural infraction and as such the right of eligible CENVAT Credit may not be denied to them.

I do not agree with the contention of the assessee that they inadvertently made entries in the Capital Goods instead of inputs. If they mistakenly entered the goods as capital goods, they should have indicated in their ER-1 Return or they should have intimated in writing to the Range Superintendent. This was not done by the said assessee. Further, from the description of the goods,



Chapter headings etc, I find that the said goods/materials are neither falling as their inputs nor can be classified as Capital Goods.

29. From the definition of the capital goods and inputs, it is clear that the goods falling under Chapter 87, 83, 93, 94, 48. 40 and 39 would not fall under the 'Capital Goods'. Further, on going through the case records, it is apparent that the said assessee have availed Cenvat Credit on various items of goods falling under Chapter 87, 83, 93, 94, 48, 40, and 39 of the Central Excise Tariff Act, 1985 considering them as "capital goods".

30. It is also significant to note that the legislature has specifically defined the expression capital goods under Rule 2(a) of the Cenvat Credit Rules, 2004. If the inputs were to include every product under the sun which is somehow related to the premises where the manufacturing process goes on, then there is no need to provide a definition of the term capital goods and, therefore, the acceptance of the contention of the assessee would render the definition of the term the capital goods to be redundant as well as the provisions relating to extending the benefit of Cenvat credit to the capital goods."

31. The said noticee, in their defense, stated that they are eligible for the Cenvat Credit in question and they have rightly taken the Credit. In support of their contentions they have relied upon various case laws.

32. I find that the case laws cited by the assessee are not comparable with the present case as the facts and circumstances of the cases, manufacture and clearance of the products are different. Therefore, I hold that the said case laws relied by the said assessee are not relevant to the present case. Further, I find that in the case of M/s. Bharti Airtel Ltd. Vs The Commissioner of Central Excise, Pune III reported in 2014 (3) ECS 25 (HC-Mum) the Hon'ble High Court of Bombay has held that "All capital goods are not eligible for credit and only those relating to the output services would be eligible for credit. The towers are immovable property and non-excisable and hence can neither be regarded as 'capital goods' nor can be categorized as 'inputs'. I find that the said case is squarely applicable in the present case. Further, as per the definition of capital goods, the said goods are not falling under the definition of capital goods and therefore, can not be termed as capital goods. Under the circumstances, the claim of the noticee that the goods are capital goods can not be considered.

33. From the records available, I find that Cenvat Credit on the following categories have been taken/availed by the assessee as Capital Goods.

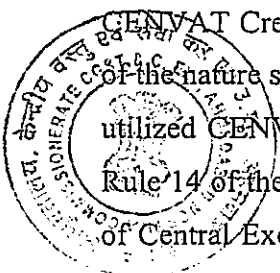
Sr.No.	Vender	Description of goods	Cenvat Credit (in Rupees)	Classification
01	Endress & Hauser (I) Pvt.Ltd	TIT With RTD + TW Threaded 0-120 DEG C	20,625	90258090
	Micro Pneumatics Pvt.Ltd	Emerson Top works Internal Coil Assembly	65,100	84819090
	Simplex Cororation (USA)	Cavity Filler KIT SIHTL8-3-F346	68,870	84819090
	SSM Infotech Solutions Pvt.Ltd	PLC Control Panel	81,250	85381010
		Total	2,35,845	

34. I find that the assessee has taken Cenvat Credit on goods falling under Chapter 82, 84, 85, 90 of the Central Excise Tariff Act, 1985. Goods falling under the said Chapters are covering under the definition of Capital Goods, as such, the assessee is eligible to take Cenvat Credit on the goods mentioned in the above table amounting to Rs.2,35,845/-. Therefore, I allow the assessee to avail/utilize the Cenvat Credit of the said goods as Capital Goods. I hold that they are not eligible to take Cenvat Credit in respect of the remaining goods as indicated in the show cause notice. Therefore, the said wrongly availed Cenvat Credit in the guise of Capital Goods amounting to Rs.86,25,233/- is to be recovered from the assessee in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 along with interest in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A/11AA of the Central Excise Act, 1944 and penalty in terms of Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1994.

35. The assessee has relied upon a large number of case laws and stated that the Cenvat Credit availed by them is in accordance with the law. On examining the said cases, I find that the facts and circumstances of the said cases are distinguishable in so far as the facts and circumstances, period involved, amount involved and product manufactured etc are different. Therefore, I am not inclined to consider the said case laws in the present case.

36. From the foregoing paras, it is evident that the said assessee had contravened the provisions of Rule 3 and 4 of Cenvat Credit Rules, 2004 in as much as they have wrongly availed Cenvat Credit in respect of capital goods that do not cover under the ambit of Capital Goods in terms of Rule 2 of Cenvat Credit Rules, 2004. Therefore, after allowing the eligible Cenvat credit of Capital Goods amounting to Rs. 2,35,845/-, an amount of Rs. 86,25,233/- wrongly availed by the said assessee is liable to be recovered from them under the provision of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A (4) of Central Excise Act, 1944.

37. Further, I find that it is only on scrutiny of documents and further communication made in the matter, it was noticed that the assessee had wrongly availed and utilized the CENVAT Credit on such Capital goods that do not fall under the purview of the definition of Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. Even though the assessee were well aware that they have wrongly availed CENVAT Credit on such Capital goods that do not fall under the ambit of the definition of Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. The above nature of act committed by the said assessee were not intimated or disclosed to the Department at any point of time and it is only during the course of audit the above facts came to the notice of the Department. Therefore, the assessee has deliberately suppressed/withheld the material facts from the Department with intent to evade payment of wrongly availed CENVAT Credit on such Capital goods that do not fall under the ambit of the definition of Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. Above act of omission on the part of the assessee constitute offence of the nature specified under sub section (4) of Section 11A of CEA, 1944. The wrongly availed and utilized CENVAT Credit along with interest at appropriate rate is required to be recovered under Rule 14 of the CENVAT Credit Rules, 2004 with the proviso of the sub section (4) of Section 11A of Central Excise Act, 1944 and Section 11A/ 11AA of the Central Excise Act, 1944 by invoking extended period of five years.





38. The Government has from the very beginning placed full trust on the manufacturers/service providers and accordingly measures like self assessment etc., based on mutual trust and confidence are in place. Further a manufacturer/service provider is not required to maintain any statutory or separate records under the provisions of the Central Excise/Finance Act and the Rules made there under, as considerable amount of trust is placed on the assessee and private records maintained by them, for normal business purposes are accepted, practically for all the purposes. All these operate on the basis of honesty of the assessee, therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them.

39. It is fact that they never disclosed that they availed CENVAT Credit on such capital goods that are not actually the Capital goods, as defined in Rule 2 of the CENVAT Credit Rules, 2004. They never sought any clarification from the department. Their argument that inadvertently they entered goods in their Engineering Department instead of Raw Material Department and therefore wrong entry made in their records of Capital Goods instead of inputs can not be accepted as the assessee has a well organized set up for accounting each material entering their premises and also removing their final products and having their own SOP for procurement, manufacture and clearance. Therefore, their argument is not tenable and not acceptable. Further, a person giving his own interpretation to the provisions of law and then arguing that he was under a bona fide belief cannot escape from liability to pay duty arising out of invocation or larger period of limitation.

40. Their argument that there is no loss to the exchequer, is also not acceptable as in my view, the subject goods are neither their inputs nor can be termed as Capital Goods. Further, in their reply to the show cause notice they have accepted the goods covered in the present show cause notice as "Disputed Goods". That itself shows that they were aware that the goods in question is not Capital Goods nor inputs. Therefore, I am not inclined to consider their request to treat the said goods as their inputs. They have also contested against charging interest, invoking extended period and imposing penalty in the present case. I find that this is a clear cut case of availment of Cenvat Credit on Capital Goods which they were ineligible. So, their argument is not tenable.

41. I find that from the omission and commission committed on the part of the assessee, constitute an offence of the nature specified under Section 11AC of CEA, 1944, and therefore the assessee has rendered themselves liable for penal action under Rule 15 of the CENVAT Credit Rules, 2004 read with the proviso of Section 11AC of the Central Excise Act, 1944.

42. In view of the discussion in the foregoing paras and my findings, I pass the following orders:-

ORDER

deny Cenvat Credit of Rs. 86,25,233/- (Rupees Eighty Six Lakhs Twenty Five Thousand Two Hundred and Thirty Three Only) wrongly availed and utilized by the assessee and order that the above wrongly availed Cenvat Credit be recovered from them under Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 read with Section 11 A (4) of the Central Excise Act, 1944.

ii. I allow the Cenvat Credit of Rs. 2,35,845/- availed by the assessee as discussed in para 34 above.


iii. I order to recover interest at the applicable rate from the assessee on the amount of wrongly availed Cenvat Credit of Rs.86,25,233/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act,1944;

iv. I impose a penalty of Rs.86,25,233/- (Rupees Eighty Six Lakhs Twenty Five Thousand Two Hundred and Thirty Three Only) on M/s. Colgate Palmolive India Ltd, Sanand, Dist-Ahmedabad under Rule 15(2) of Central Credit Rules 2004 read with Section 11AC of the Central Excise Act, 1944;

v. I further order that in terms of Section 11AC (1) (e) of the Central Excise Act, 1944, if M/s. Colgate Palmolive India Ltd, Sanand, Dist-Ahmedabad, pays the amount of wrongly Cenvat Credit/Central Excise duty determined at Sl. No. (i) above and interest payable thereon at (iii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Colgate Palmolive India Ltd, Sanand, Dist-Ahmedabad 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.

43. Show Cause Notice F. No.V.33/15-01/OA/2019 dated 05.07.2019 issued to M/s. Colgate Palmolive India Limited, SM-02, Sanand-II, GIDC Industrial Estate, Near Bol Village, Sanand, Ahmedabad 382170 is disposed-of in the above manner.



  
(M. L. MEEENA)  
Additional Commissioner,  
Central goods & Service Tax,  
Ahmedabad-North.

F. No. V.33/15-01/OA/2019

Date: 09.03.2021

**By Speed post with AD/By Hand delivery**

To,

M/s. Colgate Palmolive India Limited,  
SM-02, Sanand-II, GIDC Industrial Estate,  
Near Bol Village, Sanand, Ahmedabad 382170

**Copy to:-**

1. The Commissioner, Central GST & Central Excise, Ahmedabad North
2. The Deputy/Assistant Commissioner, CGST, Division -III, Ahmedabad-North.
3. The Superintendent, CGST, Range-V, Division -III, Ahmedabad-North.
4. Guard File.

F.No. V.33/15-01/OA/2019