आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
फ़ोन नंबर./ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- oaahmedabad2@gmail.com

F.No:- V.87/15-41/OA/2019

आदेश की तारीख़/Date of Order : - 24.03.2021
जारी करने की तारीख़/Date of Issue :- 24.03.2021

DIN No.:20210364WT000000CCC8

द्वारा पारित/Passed by:- एम. एल. मीणा / *M.L. Meena*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 65/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 विरूद्ध 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 रू .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 अपील करने के लिए आयुक्त(अपील) के समक्ष नियमानुसार पूर्व जमा की धनराशि का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules .

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।

(87) उक्त अपील की प्रति।

(88) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (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:

(87) Copy of accompanied Appeal.

(88) 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 No.VI/1(b)-187/IA/AP-39/Cir-VI/18-19 dated 14.08.2019 issued to M/s. Tata Autocomp Systems Ltd, Interiors and Plastic Division, Plot No. A-2, Tata Motors Vendor Park, Survey No.-01, Village- North Kotpura, Taluka-Sanand, Virochnagar, Ahmedabad- 382170.

Brief Facts of the Case:

M/s. Tata Autocomp Systems Ltd, Interiors and Plastic Division, Plot No. A-2, Tata Motors Vendor Park, Survey No.-01, Village- North Kotpura, Taluka- Sanand, Virochnagar, Ahmedabad- 382170 (hereinafter also referred to as "the assessee") are engaged in manufacture of Motor Vehicle parts for M/s. Tata Motors Ltd (hereinafter also referred to as "TML") ., falling under Chapter 87 of the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No. AAACT1848EEM014 and Service Tax Registration No. AAACT1848ESD017.

2. The audit of the assessee covering the period from March-2014 to 2017-18 (Up to June-2017) was conducted by the Officers of the Central Tax Audit, Ahmedabad and in terms of Revenue Para 2 of the Final Audit Report No.1810/2018-2019 dated 29.05.2019 issued by the Deputy Commissioner, Circle-VI, CGST Audit, Ahmedabad, the following objection was raised.

Revenue Para-2: Non payment of Central Excise Duty on sale of tools/Moulds.

3.1 During the course of audit, on scrutiny/verification of Trial Balance for the year 2015-16, and 2016-17 and sale invoices, it was noticed that the assessee had procured Tools/Moulds on payment of duty and availed Cenvat Credit on the same. The assessee had sold Tools/Moulds amounting to Rs.4,39,00,525/- to M/s. Tata Motors Ltd, Sanand. On further verification it was found that assessee had procured the Tools/Moulds on behalf of M/s. Tata Motors Ltd, Sanand and availed CENVAT Credit under the provisions of CCR, 2004. The assessee has sold the Tools/Moulds to M/s. Tata Motors Ltd, Sanand by issuing commercial invoices without payment of Central Excise Duty. The assessee had paid VAT on such sales. Further, the assessee informed that they had not paid Central Excise duty on such clearance as the said tools were not removed from the factory. However, on scrutiny of invoices, it was observed that the invoices contain details of Purchase Order Number and date, delivery Note, Door delivery and date and shipping address of M/s. Tata Motors Ltd, Survey No. 1, Sanand, Virochan Nagar, Ahmedabad – 382 170. On being asked to produce copy of Delivery Note and Purchase Order, the assessee intimated that no such document was issued but the details are generated through SAP system of accounting. It is evident from all the details mentioned in the invoices that clearance of Tools has taken place from their factory premises. Therefore, it is noticed that the transaction involve, procurement of duty paid tools, clearance from the factory premises and sale of tools. Further, recovery of consideration in the form of invoices and recovery of sales tax show that the effective sale has been taken place. In view of above, the assessee is required to pay appropriate Central Excise duty on value of Tools cleared by them. Thus the assessee has violated the provisions of Rule 3(5A) of CCR, 2004 and made themselves liable to

pay Central Excise Duty from the date on invoices in respect of sale of Tools/Moulds to M/s. Tata Motors Ltd, Sanand. The assessee is required to pay Central Excise Duty amounting to Rs. 54,87,566/-under the provisions of Section 11A of CEA,1944 along with interest and penalty. On being pointed out, the assessee did not agree and have not paid Central Excise Duty amounting to Rs. 54,87,566/- along with interest and penalty.

3.2 It was further noticed that the said assessee had locally procured the said Tools/moulds, etc. and after carrying out necessary modifications, were further used by them (the assessee) for manufacturing the automotive parts. During the period 2015-16 & 2016-17, the assessee had sold the Tools/Mouldsto M/s. Tata Motors Ltd under Commercial Invoices by charging VAT but without charging Central Excise Duty. Thus, the assessee had removed the excisable/capital goods without discharging proper Central Excise duty in terms of Rule 3(5A)(a) of the Cenvat Credit Rules, 2004. Rule 3(5A)(a) of the Cenvat Credit Rules, 2004 is reproduced as under:

> *"(a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-*
>
> *(i) for computers and computer peripherals:*
>
> *for each quarter in the first year @ 10%*
>
> *for each quarter in the second year @ 8%*
>
> *(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:*
>
> *Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value".*

3.3 Therefore, the assessee having sold the Tools/Moulds to M/s. Tata Motors Ltd., after removal from factory, were liable to pay the amount as per Rule 3(5A) of the Cenvat Credit Rules, 2004.

3.4 The assessee had entered into an agreement with M/s. Tata Motors Ltd to procure the Tools & Moulds as and when M/s. Tata Motors Ltd issues Tool Purchase Order. The Tools/moulds in question were put in use by the said assessee. The assessee has issued Tax invoices in the name of M/s. Tata Motors Ltd., having shipping address to Survey No. 1, Sanand, Virochnagar, Ahmedabad-382170, showing sale and removal

of the said Tools/moulds. They have discharged their VAT liability but did not discharge Central Excise duty liability.

3.5 Further on going through the Trial Balance Sheets/Annual Reports for the F.Y. 2015-16 & 2016-17, the assessee had reduced their inventory in their Tools/Moulds Ledger to the extent of sales made during the relevant period.

3.6 Regarding the sale of tools, the assessee vide letter dated 19.03.2019 submitted their clarifications. It was submitted by the assessee; that they have done only Commercial Transaction with M/s. Tata Motors Ltd for recovery of the Tooling cost; that there is no physical movement involved in these transactions, hence Excise duty was not applicable. On being asked to produce copy of Delivery Note and Purchase Order, the assessee has intimated that no such document was issued but the details are generated through SAP system of accounting. The assessee submitted the details of Tools/moulds sold to M/s. Tata Motors Ltd during the F.Y. 2015-16 &2016-17 along with Invoices and Ledgers at the time of audit.

3.7 The contention raised by the assessee vide their letter dated 19.03.2019 is not tenable in as much as the assessee has also produced the Inventory of such Tools/Moulds as is reflected in their financial records. Further, the assessee has also recovered Sales tax. Recovery of consideration in the form of Invoices and recovery of sales tax shows that effective sale has been taken place. It appeared that this contention of the assessee is not correct and legal. Thus, the assessee has therefore violated the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004 by not paying the Central Excise duty on the date of issue of invoices in respect of sale of such Tools/Moulds to M/s. Tata Motors Ltd. The same is therefore required to be recovered under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 along with interest under the provisions of Section 11AA of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004.

4. In view of above, it appeared that the assessee has contravened the provisions of Rule 6 of Central Excise Rules, 2002, inasmuch as they failed to assess duty payable on tools/moulds sold to M/s. Tata Motors Ltd.; Rule 8 of CER, 2002 read with Rule 3(5A) of the Cenvat Credit Rules, 2004 inasmuch as they failed to pay Central Excise Duty at the time of clearance of the capital goods, in the manner and within such time prescribed under Rule 8 of the said rules.

5. In this case there is a deliberate withholding of essential material information from the Department about the above transactions relating to removal/sale of tools

which were not intimated or disclosed to the Department at any point of time and it was only during the course of audit that the above facts came to the notice of the Department. Therefore, it appeared that, the assessee had deliberately suppressed/withheld the material facts from the Department with intent to evade payment of Central Excise Duty on sale of Tools/moulds.

6. The Government has from the very beginning placed full trust on the manufacturers/ service providers and accordingly measures like Self-assessments 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 Act / Finance Act and the Rules made thereunder, 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.

7. It is a fact that they have never disclosed the clearance of goods to the Department. They also 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 of extended period of limitation of 05 (Five) years.

8. This view was also held by CESTAT, PRINCIPAL BENCH, NEW DELHI in the case of COMMISSIONER OF CENTRAL EXCISE, RAIPUR Versus RAJ WINES - 2012 (28) S.T.R. 46 (Tri. - Del.) – HELD

> *"In the matter of involving Section 80 of the Finance Act, 1994, we are not in agreement with the finding of the Commissioner (Appeals). A person giving* his own interpretation of*notification and then arguing that he was under the bona fide belief cannot get the protection of such Section 80."*

9. Further the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004 are unequivocal. The provisions are explicit to the effect that if the capital goods, on which Cenvat credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified therein for each quarter of a year or part thereof from the date of taking the CENVAT Credit. The assessee who was well aware of these provisions ought to have paid duty on such clearances. There cannot be any doubt on this, and therefore

it is evident that the assessee knowingly suppressed the clearance of the said tools by resorting to suppression.

10. The assessee is a well-established company and dealing with the Central Excise Law and the Rules framed there under, over the years, could not claim a bona fide belief that they ought not to have paid duty at the time of clearance/sale of the saidtools/moulds. Moreover in the present regime of liberalization, self-assessment and filing of ER-1 /ST-3 returns online, no documents whatsoever are submitted by the assessee to the department and therefore the Department would come to know about such wrong doings only during audit or preventive/other checks. In the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai, it is held that extended period is invocable when department came to know of service charges received by appellant on verification of his accounts.

11. The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) – has held:

> *"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any wilful mis-statement 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 extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But* the burden shifts on *the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."*

12. In the case of Rathi Steel & Power Ltd. -2015(321) ELT200(All), The High court of Judicature at Allahabad held that:

> *"32. We further find that under Rules, 2004, a burden is cast upon the manufacturer to ensure that Cenvat credit is correctly claimed by them and proper records are maintained in that regard.*
>
> *33. The assessee, in response to the show cause notice had stated that there is no*

provision in Central Excise Law to disclose the details of the credit or to submit the duty paying documents, which in our opinion is false and an attempt to deliberately contravene the provisions of the Act, 1944 and the rules made thereunder with an intent to evade the duty.

34. In our opinion, the facts of the present case clearly suggest wilful suppression of material facts by the assessee as well as contravention of the provisions of the Act and rules framed thereunder with an intent to evade the demand of duty as would be covered by Clauses IV and V of Section 11A(1) of the Act, 1944. Therefore, the invocation of the extended period of limitation in the facts of the present case is fully justified."

13. Similar view was expressed by the Hon'ble High Court of Judicature for Andhra Pradesh at Hyderabad in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. Versus Commr. ofCus. & C. Ex., Tirupati - 2012 (278) E.L.T. 167 (A.P.) held:

"9. The contention of the learned counsel for the assessee that the extended period of limitation of five years for recovery of the duty under the proviso to Section 11A(1) of the Central Excise Act, 1944 would not be available to the Revenue in this case, as the penalty proposed to be levied was dropped, does not hold water. The extended period of five years for recovery of duties either levied or short-levied arises under various situations such as fraud, collusion, wilfulmis-statement, suppression of facts or contravention of the provisions of the Act or the Rules made thereunder with intention to evade payment of duty. It is no doubt true that the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty [Union of India v. Rajasthan Spinning and Weaving Mills - (2009) 13 SCC 448 = 2009 (238) E.L.T.3 (S.C.)]. But merely because the ingredients for both are the same, it would not mean that in case penalty is not imposed, the duty also cannot be recovered. Once the assessee availed credit under Rule 2(k) of the Rules of 2004 without entitlement it amounts to contravention of the rule with the intention of evading payment and the extended period of limitation would be available to the Revenue, notwithstanding the decision not to purpose penalty upon the assessee."

14. The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) – has held:

"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or

any wilful mis-statement 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 extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts *on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."*

15. In view of the above detailed discussion, it is evident that the assessee resorted to suppression with an intent to evade the payment of Central Excise Duty on Tools/moulds sold to M/s. Tata Motors Ltd and therefore this is a fit case for invoking the extended period for demand of duty not paid, by resorting to the provisions of Section 11A(4) of the Central Excise Act, 1944. Accordingly, the assessee is liable for penal action under the provisions of Section 11AC(1)(c) of the Central Excise Act, 1944 read with the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004.

16. As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre consultation with the adjudicating authority before issuance of a show cause notice was held on 22.7.2019. No representation has been made by the assessee against the offer of pre-consultation on 22.7.2019. However, they have made their submissions under a communication dated 20.7.2019. They have fairly reiterated their earlier submissions made on 19.3.2019 before the audit. In addition to this, they have enclosed a certificate from the Chartered Engineer confirming the physical availability of tools at their Sanand Plant. They have relied on the case law of Polyplastics Industries (I) Pvt Ltd reported at 2016 (332) ELT 895(T), as affirmed by the High Court of Punjab & Haryana reported at 2017 (351) ELT 129(P & H).The contention raised by the assessee vide their letter dated 20.7.2019 is not tenable in as much as the assessee has also reduced the Inventory of such Tools/Moulds as is reflected in their financial records. Further, the assessee has also recovered Sales tax. Recovery of consideration in the form of Invoices and recovery of sales tax shows that effective sale has been taken place. Thus, the assessee has therefore violated the provisions of Rule 3(5A) of the Cenvat Credit Rules, 2004 by not paying the Central Excise duty on the date of issue of invoices in respect of sale of such Tools/Moulds to M/s. Tata Motors Ltd.

17. The provisions of repealed Central Excise Act, 1994 and Rules made there under have been saved under Section 174 (2) of Central Goods and Service Tax Act, 2017.

Therefore, provisions of repealed Act and Rules are enforced for the purpose of recovery of duty, interest and for imposing penalty under this Notice.

18. Therefore, M/s. Tata Autocomp Systems Limited, Interiors and Plastic Division, Plot No. A-2, Tata Motors Vendor Park, Survey No.-01, Village- North Kotpura, Taluka-Sanand, Virochnagar, Ahmedabad- 382170 were called upon to show cause to the Additional/Joint Commissioner of Central Tax, Ahmedabad North, Ahmedabad 380 009 as to why:

i. Central Excise duty of Rs.54,87,566/-(Rs. Fifty Four Lakhs Eighty Seven Thousand Five Hundred Sixty Six Only) should not be demanded and recovered from them under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii)of the Cenvat Credit Rules, 2004;

ii. Interest at appropriate rate should not be charged and recovered from them under Section 11AA of the Central Excise Act, 1944 read with the provisions of Rule 14(i)(ii) of the Cenvat Credit Rules, 2004; and

iii. Penalty should not be imposed upon them under Section 11AC(1)(c) of the Central Excise Act, 1944 read with the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004.

DEFENCE REPLY:

19. Vide their letter dated 18.09.2019 addressed to Additional Commissioner, CGST, Audit, M/s. Tata Autocomp Systems Ltd submitted that -

They denied that they are liable to pay the Central Excise duty, interest and penalty. They had received purchase orders from their customers viz M/s.Tata Motors Ltd, to manufacture certain components and for which they requested the am to purchase moulds so that it can be used for further manufacturing of components. They had in turn placed purchased order on vendors for such tools and bought capital goods "from various parties during the period 2015-16 & 2016-17. They had taken Cenvat Credit to the tune of Rs.53,72,719/- was availed by them. Subsequently, they had raised commercial invoices on the Customer viz. Tata Motors Ltd for sale of tools without involving any physical movement of such goods to the customer premises. The said commercial invoices were raised only to effect sale of such tools to customer by charging VAT on the said commercial invoices. The statement of sale made in this regard. As invoice was raised from SAP due to inadvertent oversight, excise invoice format was used and SAP had indicated the delivery document number also which number gets generated in SAP system and no delivery note was physically issued as the said tools were not physically removed from their factory. They stated that they are not

liable to pay Cenvat Credit under the provisions of Rule 3(5A)(a) of the Cenvat Credit Rules, 2004.

20. They stated that it is correct in law to avail Cenvat Credit on such tools procured from vendors and then sold to customer without physical movement of such tools and thus it is appropriate to charge only VAT under the commercial invoice from the customer. They stated that no excise duty needs to be demanded in the matter under reference when there is no physical movement of goods. They stated that mere mention of details on the invoices such as details of purchase order number and date, delivery note, door delivery and date, shipping address of M/s. Tata Motors Ltd, as has been stated in the audit para, no conclusion can be drawn by the department without any supporting evidence that there was physical movement of tools to M/s. Tata Motors Ltd. They stated that there is no merit whatsoever in law in the objection raised in the audit note that duty/reversal of an amount to Rs.54,07,566/- under the provisions of Section 11A of CEA, 1944 is required to be made along with interest and penalty as they emphatically state and submit that no duty or reversal of Cenvat Credit is attracted on the tools sold to M/s.Tata Motors Ltd by raising commercial invoice (though inadvertently excise invoice format was used in SAP system) and it is also submitted that they have not violated the provisions of Rule 3(5A)(a) of the Cenvat Credit Rules, 2004. They relied the following case laws-

(i) Poly plastics Industries (I) Pvt.Ltd Vs Commissioner of Central Excise & ST Panchkula 2016(332) ELT 895 (Tri-Del).

(ii) Commissioner of Central Excise & ST Panchkula Vs Polyplastics Inds (I) Pvt.Ltd - 2017(351) ELT-129 (P&H).

(iii) DCM Engineering Products Vs Commissioner of Central Excise, Jalandhar - 2010(251)_ELT 91 (Tri-Del)

(iv) TC Healthcare Pvt.Ltd Vs Commissioner of Central Excise, Ghaziabad - 2015(329) ELT 529 (Tri-Del).

(v) L.G.Balakrishnan & Bros Ltd Vs Commissioner of C.Ex, Trichy-2016 (340) ELT 708 (Tri-Chennai)

(vi) Commissioner of C.Ex, Cus & S.T. Raipur Vs, Bhilai Steel Plant - 2018(12)GSTL.28(Chhattisgarh).

21. They stated that extended period is not invokable and levy of penalty is not sustainable as there is no suppression of facts with wilful intent to evade duty and relied the following case laws.

(i) Pushpam Pharmaceuticals Co, Vs Collector of C.Ex, Bombay - 1995(78) ELT 401(SC).

(ii) CCE Mumbay-IV Vs Damnet Chemicals Pvt.Ltd - 2007(216) ELT.3 (SC).

(iii) Continental Foundation Jt Venture Vs Commissioner of C.Ex. Chandigarh-1 – 2007(216) ELT 177(SC).

(iv) CCE Vs Chemphar Drugs & Liniments – 1989(40) ELT-276(SC)

(v) CCE & C, Aurangabad Vs Wockhardt Ltd – 2009(248) ELT-517 (Tri-Mumbai)

(vi) UOI Vs Rajasthan Spinning & Weaving Mills – 2009 (238) ELT.3 (SC).

22. They also requested to withdraw the SCN demanding Central Excise duty, proposing penalty and interest and also requested for a personal hearing.

23. M/s. Tata Autocomp Systems Ltd also submitted additional written submission dated 08.01.2021 wherein they submitted that –

They do not agree with reasoning adopted by the department to hold that their contention raised vide our letter dated 20.7.2019 is not tenable. There is no merit in the allegation levelled in the show cause notice in as much as the Inventory of such Tools/Moulds has been reduced in the financial records and that Sales tax stands recovered as consideration in the form of Commercial Invoices which indicates effective sale has been taken place and therefore the excise duty is payable on such a premise is totally untenable in law and said averment is not at all supported by any authority under the Central Excise Act, 1944, or Central Excise Rules, 2002 or supported by any of the provisions of Cenvat Credit Rules, 2004.

24. They stated that they had raised commercial invoices on the Customer viz. TML for sale of such tools without involving any physical movement of such tools to the customer premises. The said commercial invoices were raised only to effect sale of such tools to customer by charging VAT on the said commercial invoices. As invoice was raised from SAP due to inadvertent oversight, excise invoice format was used and SAP had indicated the delivery document number also, which number gets generated in SAP system and no delivery note was physically issued as the said tools were not physically removed from our factory.

25. They submitted that when such tools are purchased from tool vendor, they raise commercial invoice for the tooling cost given by the customer by way of sale of such tool to the customer who becomes the owner of such tool. It is important to note that there is no physical movement of such tools to the customer and hence the question of payment of excise duty do not arise at this stage at all for such tools retained for producing dutiable final product for the customer in our premises. Hence, it is appropriate to raise the commercial invoice only charging VAT and the question of issue of excise invoice would arise only when the said tools are physically removed to the customer and hence, not having raised the excise invoice and charging excise duty is

the correct proposition of law, which is also well settled position of law. They also enclosed an affidavit dated 17.09.2019 in this regard affirming the fact that the said tools were not physically removed by the Company to M/s TML and the aspect that such tools does physically exists and used for production of final product, in their plant at Sanand also stands supported by Chartered Engineer certificate produced in this regard. The said issue stands raised during audit much later and it is not a case of removal of capital goods without payment of duty.

26. They stated that there is no contrary evidence in the form of statement recorded of M/s TML to the effect that M/s TML had physically received the said tools from them in their plant, nor is there any such evidence which exists that the transporter had physically carried the said tools to M/s TML, Sanand premises and hence, they submitted that payment of Central Excise duty/reversal of Cenvat Credit availed in the impugned matter do not arise.

27. They further stated that it is also correct in law to avail Cenvat Credit on such tools procured from vendors and then sold to customer without physical movement of such tools and thus it is appropriate to charge only VAT under the commercial invoice from the customer.

28. They submitted that the whole thrust of the case after having considered their submissions to the department is at Para 3.7, which has led the department to confirm the duty. The department has come to a conclusion that when ownership of the tools gets transferred to the Customer, Excise duty is to be paid and they submitted that the said reasoning do not have any legal force under Central Excise act, 1944 r/w Central Excise Rules, 2002 r/w Cenvat Credit Rules, 2004 and hence, proposing demand of Central Excise duty on such supposed intention of law, is not supported by any authority of law and thus the show cause notice merits to be set aside. On the contrary, they have relied on various decisions, which supports the view that excise duty is not applicable when there is no physical removal of goods, in particular when it comes to provisions of Rule 3(5A) (a) of Cenvat Credit Rules, 2004.

29. They stated that the department in the impugned show cause notice, further have not justified their position by referring to any authority of law, as to in what way the transfer of ownership of such capital goods by reducing the same from the inventory, constitutes removal of Central Excise duty. Further, there is no provision Central Excise/ Cenvat law, which insists on payment of Central Excise duty or reversal of Cenvat Credit on such a premise that raising of commercial tax invoice for effecting sale of such moulds / tools charging VAT and hence, they submitted that the whole

basis adopted for issue of impugned show cause notice do not stand the test of law, to propose demand of duty / reversal of Cenvat Credit.

30. They stated that they have not suppressed any material fact with an intention to evade payment of duty nor is there any such evidence produced by the department in the impugned show cause notice They also submitted that extended period of demand has been wrongly invoked under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A (4) of Central Excise Act, 1944 and the proposed levy of interest under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA and hence, the proposal to levy of penalty under Rule 15 of the Cenvat Credit Rules, 2004, read with Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 is also wrong and not applicable and thus the impugned show cause notice merits to be set aside in totality, both on the grounds on merits as well on the grounds of limitation. They relied the following decisions.

POLYPLASTICS INDUSTRIES (I) PVT. LTD. Versus COMMR. OF C. EX. & S.T., PANCHKULA- 2016 (332) E.L.T. 895 (Tri. - Del).

COMMR. OF C. EX. & S.T., PANCHKULA Versus POLYPLASTICS INDUSTRIES (I) PVT. LTD- 2017 (351) E.L.T. 129 (P & H)

DCM ENGINEERING PRODUCTS Versus COMMISSIONER OF C. EX., JALANDHAR- 2010 (251) E.L.T. 91 (Tri. - Del:

TC HEALTHCARE P. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD- 2015 (329) E.L.T. 529 (Tri. - Del)

L.G. BALAKRISHNAN & BROS. LTD. Versus COMMISSIONER OF C. EX., TRICHY- 2016 (340) E.L.T. 708 (Tri. - Chennai)

COMMISSIONER OF C. EX., TIRUCHIRAPPALLI Versus CESTAT, CHENNAI- 2015 (323) E.L.T. 290 (Mad)

UNION OF INDIA Versus RAJASTHAN SPINNING & WEAVING MILLS- 2009 (238) E.L.T. 3 (S.C)

31. They also requested to set aside the show cause notice in totality, for the various legal reasons in the case laws referred to above.

PERSONAL HEARING:

32. Personal hearing in this case were fixed on 18.12.2020 and 11.01.2021. Shri Narayanan Srinivasan, Advocate appeared for the virtual hearing. He stated that he has submitted reply dated 18.09.2019 defending their case and highlighting case laws. Also submitted additional submission through mail on 08.01.2021 and an affidavit stating that no physical movement of goods involved. In the absence of physical clearance of

the tools/dies, no demand can be raised and therefore, he requested to drop the proceedings initiated in the show cause notice.

DISCUSSION AND FINDINGS:

33. I have carefully gone through the impugned Show Cause Notice with its relied upon documents, defence reply dated 18.09.2019, additional written submission dated 08.01.2021 and depositions made by the assessee at the time of personal hearing.

34. I find that the impugned Show Cause Notice was issued demanding Central Excise duty of Rs. 54,87,566/- on the value of Tools/Moulds of Rs.4,39,00,525/- sold to M/s. Tata Motors Ltd., Sanand under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the CENVAT Credit Rules, 2004, which is arisen on account of audit observation raised vide Revenue Para-2 of the Final Audit Report No. 1810/2018-19 dated 29.05.2019, wherein, it had been observed by the Audit Officers that the assessee had procured the tools, dies and moulds and had availed CENVAT credit and had used such tools/moulds for manufacturing automotive parts, subsequently, they sold Tools/Moulds amounting to Rs. 4,39,00,525/- to M/s. Tata Motors Ltd, Sanand without payment of Central Excise duty, however, they had paid VAT thereon; in view of Rule 3(5A)(a) of the CENVAT Credit Rules, 2004 on removal of used capital goods on which CENVAT credit has been taken, the assessee was liable to pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method and if the amount so calculated was less than the amount equal to the duty leviable on transaction value, then the assessee was liable to pay an amount equal to the duty leviable on transaction value; thus, it appeared that the assessee was liable to pay Central Excise duty on sale of tools/moulds to M/s. Tata Motors Ltd., Sanand.

35. I find that the assessee in their defence reply, had submitted, *inter-alia*, that they do not agree with reasoning adopted by the department to hold that their contention raised vide our letter dated 20.7.2019 is not tenable, there is no merit in the averment made in the impugned show cause notice in as much as the Inventory of such Tools/Moulds has been reduced in the financial records and that Sales tax stands recovered as consideration in the form of Commercial Invoices which indicates effective sale has been taken place and therefore the excise duty is payable on such a premise is totally untenable in law and said averment is not at all supported by any authority under the Central Excise Act, 1944, or Central Excise Rules, 2002 or supported by any authority under any of the provisions of Cenvat Credit Rules, 2004.

36. They stated that they had raised commercial invoices on the Customer viz. Tata Motors Ltd, for sale of such tools without involving any physical movement of such tools to the customer premises. The said commercial invoices were raised only to effect sale of such tools to customer by charging VAT on the said commercial invoices. As invoice was raised from SAP due to inadvertent oversight, excise invoice format was

used and SAP had indicated the delivery document number also, which number gets generated in SAP system and no delivery note was physically issued as the said tools were not physically removed from our factory, that when such tools are purchased from tool vendor, they raise commercial invoice for the tooling cost given by the customer by way of sale of such tool to the customer who becomes the owner of such tool, there is no physical movement of such tools to the customer and hence the question of payment of excise duty do not arise at this stage at all for such tools retained for producing dutiable final product for the customer in their premises. Hence, it is appropriate to raise the commercial invoice only charging VAT and the question of issue of excise invoice would arise only when the said tools are physically removed to the customer and hence, not having raised the excise invoice and charging excise duty is the correct proposition of law, which is also well settled position of law. They also **enclosed an affidavit dated 17.09.2019** stating that the said tools were not physically removed by the Company to M/s Tata Motors Ltd, and the aspect that such tools does physically exists and used for production of final product, in their plant at Sanand also stands supported by Chartered Engineer certificate produced in this regard. The said issue stands raised during audit much later and it is not a case of removal of capital goods without payment of duty.

37. The assessee also stated that there is no contrary evidence in the form of statement recorded of M/s TML to the effect that M/s TML had physically received the said tools from them in their plant, nor is there any such evidence which exists that the transporter had physically carried the said tools to M/s TML, Sanand premises and hence, payment of Central Excise duty / reversal of Cenvat Credit availed in the matter do not arise.

38. They further stated that it is also correct in law to avail Cenvat Credit on such tools procured from vendors and then sold to customer without physical movement of such tools and thus it is appropriate to charge only VAT under the commercial invoice from the customer.

39. The assessee has contended that the invoice was raised from SAP due to inadvertent oversight, excise invoice format was used in SAP. I find that the assessee at no stage informed the department about their so called mistake in the SAP. In fact, the issue of non payment of Central Excise Duty was detected during course of Audit. Had the Audit not detected the non payment of Central Excise Duty, this would have left unnoticed. Therefore, the contention of the assessee can not be justified. Accordingly, I find that the department has rightly issued the show cause notice demanding Central Excise Duty, Interest and penalty.

40. I find that the assessee had relied upon a series of the judgments in their written submissions, however, they had not provided the copy thereof or examination and reference. I also find that the assessee had raised objection regarding limitation relying on a series of judgments, without producing copy thereof for examination and reference of the same. They submitted the gist in some of the judgments as under:

POLYPLASTICS INDUSTRIES (I) PVT. LTD. Versus COMMR. OF C. EX. & S.T., PANCHKULA- 2016 (332) E.L.T. 895 (Tri. - Del).

COMMR. OF C. EX. & S.T., PANCHKULA Versus POLYPLASTICS INDUSTRIES (I) PVT. LTD- 2017 (351) E.L.T. 129 (P & H)

DCM ENGINEERING PRODUCTS Versus COMMISSIONER OF C. EX., JALANDHAR- 2010 (251) E.L.T. 91 (Tri. - Del:

TC HEALTHCARE P. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD- 2015 (329) E.L.T. 529 (Tri. - Del)

L.G. BALAKRISHNAN & BROS. LTD. Versus COMMISSIONER OF C. EX., TRICHY- 2016 (340) E.L.T. 708 (Tri. - Chennai)

COMMISSIONER OF C. EX., TIRUCHIRAPPALLI Versus CESTAT, CHENNAI- 2015 (323) E.L.T. 290 (Mad)

UNION OF INDIA Versus RAJASTHAN SPINNING & WEAVING MILLS- 2009 (238) E.L.T. 3 (S.C)

41. I find that the assessee also relied upon a series of judgments to the effect that invoking extended period and imposing penalty in this case is not invokable.

(i) Pushpam Pharmaceuticals Co, Vs Collector of C.Ex, Bombay - 1995(78) ELT 401(SC).
(ii) CCE Mumbay-IV Vs Damnet Chemicals Pvt.Ltd - 2007(216) ELT.3 (SC).
(iii) Continental Foundation Jt Venture Vs Commissioner of C.Ex. Chandigarh-1 - 2007(216) ELT 177(SC).
(iv) CCE Vs Chemphar Drugs & Liniments - 1989(40) ELT-276(SC)
(v) CCE & C, Aurangabad Vs Wockhardt Ltd - 2009(248) ELT-517 (Tri-Mumbai)
(vi) UOI Vs Rajasthan Spinning & Weaving Mills - 2009 (238) ELT.3 (SC).

42. I further find that the assessee had also submitted an affidavit dated 17.09.2019 stating that tools covered under invoice No.974096893-28.10.2015/974096894-27.10.2015/974096895-28.10.2015/974096896-28.10.2015/974096897-28.10.2015/974099762-14.12.2015/9741039868-30.01.2016/974124502-18.06.2016/974124508-18.06.2016 involving the value amount of Rs.4,39,00,525/- was not physically removed or cleared by the Company to M/s.TML, Sanand.

43. I find that the main contention in the instant case is whether the tools, dies and moulds got processed /manufactured by the assessee on which CENVAT credit had been availed by them and sold to M/s.Tata Motors Ltd, were actually removed from their factory premises and an

amount equal to Central Excise duty leviable on transaction value was required to be paid by the assessee.

44. As per the submissions made by the assessee, I find that the assessee are engaged in the manufacture of Automobile parts and sold to M/s. Tata Motors Ltd. In order to manufacture Automobile parts, the assessee requires tools, dies and moulds, which they got manufactured availed CENVAT credit thereon as capital goods and subsequently sold these tools, dies and moulds to their buyer viz. M/s. Tata Motors Ltd. for consideration. The assessee used to pay VAT, but they do not pay any Central Excise duty.

45. I find that 'Sale' has been defined under Clause (h) of Section 2 of the Central Excise Act, 1944, which reads as –

> *(h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;*

46. I find that the assessee had not disputed that they had sold the tools, dies and moulds to M/s. Tata Motors Ltd; it is also not disputed that they transfer the possession of tools, dies and moulds to M/s. Tata Motors Ltd. The activity of transfer the possession of the tools, dies and moulds by the assessee to M/s. Tata Motors Ltd. in the ordinary course of trade or business for consideration covered under the definition of 'sale' provided under Clause (h) of Section 2 of the Central Excise Act, 1944.

I find that Section 3(1) of the Central Excise Act, 1944 provides that -

> *"There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule:"*

47. I find that the assessee had got tools, dies and moulds further processed and manufactured therefore, the Central Excise duty shall be levied on such excisable manufactured i.e. tools, dies and moulds in view of Section 3 of the Central Excise Act, 1944. I find that the assessee had never disputed that Central Excise duty was leviable on the tools, dies and moulds. They had only disputed that the Central Excise duty was payable only when the tools, dies and moulds had been removed from the factory premises.

48. I find that in view of Rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by specified straight line method provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

49. I find from the above submissions of the assessee, where emphasis provided, that the assessee had got the tools, dies and moulds further processed and manufactured, thereafter sold such tools, dies and moulds to M/s. Tata Motors Ltd. without payment of Central Excise duty. I have also examined the copy of invoices produced by the assessee with their written submissions. I find that the assessee had issued the invoices under Rule 11 of the Central Excise Rules. Provisions of Rule 11 is reproduced as under for ease of reference:

> *"(1)no excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorised agent and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory.*
>
> *(2) the invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon:"*

50. I further find on examination of the invoices produced by the assessee with their written submissions that the invoices contained the details of the Date and Time of Removal of Goods. Thus, by issuing invoices under the provisions of Rule 11 of the Central Excise Rules and mentioning therein the details of Date and Time of Removal of Goods, itself indicates that the assessee had removed the tools, dies and moulds.

51. I find that Rule 4(1) of the Central Excise Rules, 2002 provides that –

> *"every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided."*

52. I find that the assessee had to pay the duty leviable on tools, dies and moulds which they sold to M/s.Tata Motors Ltd.

I find that Rule 8(1) of the Central Excise Rules, 2002 provides that -

> *"the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case :*
>
> *Provided that in case of goods removed during the month of March, the duty shall be paid by the 31st day of March."*

53. I find that Rule 6(1) of the Central Excise Rules, 2002 provides that the assessee shall himself assess the duty payable on any excisable goods.

54. In view of the above, I find that the assessee had removed the tools, dies and moulds and sold to M/s. Tata Motors Ltd. on which they were required to pay an amount equal to the Central Excise duty leviable on transaction value, duly assessed on their own in terms of the provisions of Section 4 of the Central Excise Act, 1944 read with Rule 4, 6 and 8 of the Central Excise Rules, 2002 and Rule 3(5A) of the CENVAT Credit Rules, 2004.

55. In view of the above, I find that the tools, dies and moulds, sold to M/s. Tata Motors Ltd., were actually removed from their factory premises without payment of an amount equal to duty leviable on the transaction value, however, in order to mislead the Department, they had knowingly not mentioned the transportation and vehicle details in the invoices issued under the provisions of Rule 11 of the Central Excise Rules, 2002.

56. I further find that the assessee had though relied upon a series of judgments and they had submitted the gist of some of the judgments, as mentioned *supra*. I have examined these judgments and find that these judgments relied upon by the assessee are not squarely applicable to them, as –

POLYPLASTICS INDUSTRIES (I) PVT. LTD. Versus COMMR. OF C. EX. & S.T., PANCHKULA- 2016 (332) E.L.T. 895 (Tri. - Del) - related to denial of Cenvat Credit.

COMMR. OF C. EX. & S.T., PANCHKULA Versus POLYPLASTICS INDUSTRIES (I) PVT. LTD- 2017 (351) E.L.T. 129 (P & H) – related to denial of Cenvat Credit.

DCM ENGINEERING PRODUCTS Versus COMMISSIONER OF C. EX., JALANDHAR- 2010 (251) E.L.T. 91 (Tri. - Del: - related to old Central Excise Rules. Period involved different.

TC HEALTHCARE P. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD- 2015 (329) E.L.T. 529 (Tri. - Del) - involved ownership of Capital Goods.

L.G. BALAKRISHNAN & BROS. LTD. Versus COMMISSIONER OF C. EX., TRICHY- 2016 (340) E.L.T. 708 (Tri. - Chennai) – facts are not similar.

COMMISSIONER OF C. EX., TIRUCHIRAPPALLI Versus CESTAT, CHENNAI- 2015 (323) E.L.T. 290 (Mad) – facts are not similar.

UNION OF INDIA Versus RAJASTHAN SPINNING & WEAVING MILLS- 2009 (238) E.L.T. 3 (S.C)- facts and circumstances are not similar.

Pushpam Pharmaceuticals Co, Vs Collector of C.Ex, Bombay – 1995(78) ELT 401(SC).

CCE Mumbay-IV Vs Damnet Chemicals Pvt.Ltd – 2007(216) ELT.3 (SC) – facts are not similar.

Continental Foundation Jt Venture Vs Commissioner of C.Ex. Chandigarh-1 – 2007(216) ELT 177(SC) – facts are not similar

CCE Vs Chemphar Drugs & Liniments – 1989(40) ELT-276(SC) – wrong availment of exemption notification.

CCE & C, Aurangabad Vs Wockhardt Ltd - 2009(248) ELT-517 (Tri-Mumbai)- facts are not similar.

57. I find that the case laws relied by the Department in the show cause notice is more appropriate in the present case.

58. I find that the assessee had suppressed the material facts of removal of tools, dies and moulds to M/s. Tata Motors Ltd. from their factory premises and in order to mislead the Department, they had mentioned the transportation and vehicle details in the invoices issued under the provisions of Rule 11 of the Central Excise Rules, 2002, which requires to be issued only for removal of excisable goods. The invoices also containing the details of 'date and time of removal'. I find that the assessee had contravened the provisions Rule 6 and 8 of the Central Excise Rules, 2002 and Rule 3(5A) of the CENVAT Credit Rules, 2004 in as much as they failed to assess the duty payable on removal of tools, dies and moulds and also they failed to pay an amount equal to the duty leviable on transaction value in the prescribed manners. These shows the *malafide* intention of the assessee, which proves the intention of the assessee to evade payment of Central Excise duty on removal of tools, dies and moulds.

59. In view thereof, I find that the assessee was required to pay an amount equal to duty leviable on the transaction value in respect of tools, dies and moulds and sold to M/s. Tata Motors Ltd., as they had not paid the said Central Excise duty at the time of removal of the same from their factory premises, as proved in view of the discussions, *supra*, the same is required to be recovered along with interest thereon from the assessee in view of the provisions of Section 11(4) and Section 11AA of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 by invoking the extended period of the limitation, as suppression of the facts and mis-declaration of removal of tools, dies and moulds from their factory premises and contravention of the provisions of the Central Excise Act and rules made thereunder in order to evade payment of Central Excise duty stands proved in view of discussion and findings *supra.*

60. I find that the assessee has also made themselves liable for penal action under the provisions of Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004.

61. In view of the above discussion and findings, I pass the following orders.

ORDER

1. I confirm the demand of Central Excise duty of Rs. 54,87,566 (Rupees Fifty Four Lakhs Eighty Seven Thousand Five Hundred and Sixty Six only) under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 and order the assessee to pay the said confirmed demand forthwith;

2. I order the assessee to pay interest at the applicable rate on the above said confirmed demand under Section 11AA of the Central Excise Act, 1944 read with Rule 14(1)(ii) of the Cenvat Credit Rules, 2004; and

3. I impose a penalty of Rs. 54,87,566 (Rupees Fifty Four Lakhs Eighty Seven Thousand Five Hundred and Sixty Six only) on M/s. Tata Autocomp Systems Ltd, Interiors and Plastic Division, Plot No. A-2, Tata Motors Vendor Park, Survey No.-01, Village- North Kotpura, Taluka- Sanand, Virochnagar, Ahmedabad- 382 170 under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004.

4. In terms of Section 11AC (1) (e) of the Central Excise Act, 1944, if M/s. Tata Autocomp Systems Ltd, Interiors and Plastic Division, Plot No. A-2, Tata Motors Vendor Park, Survey No.-01, Village- North Kotpura, Taluka- Sanand, Virochnagar, Ahmedabad- 382170 pays the Central Excise duty confirmed above as determined at Sl. No. (i) and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Tata Autocomp Systems Ltd, Interiors and Plastic Division, 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.

62. Show Cause Notice No.VI/1(b)-187/IA/AP-39/Cir-VI/18-19 dated 14.08.2019 issued to M/s. Tata Autocomp Systems Ltd, Interiors and Plastic Division, Plot No. A-2, Tata Motors Vendor Park, Survey No.-01, Village- North Kotpura, Taluka- Sanand, Virochnagar, Ahmedabad- 382170 is disposed-of in the above manner.

(M. L. Meena)
Additional Commissioner,
CGST &Central Excise,
Ahmedabad North.

BY REGISTERED AD/HAND DELIVERY

F. No. V.87/15-41/OA/2019 Date :24.03.2021

To,

M/s. Tata Autocomp Systems Limited,
Interiors and Plastic Division,
Plot No. A-2, Tata Motors Vendor Park,
Survey No.-01, Village- North Kotpura,
Taluka- Sanand, Virochnagar, Ahmedabad- 382 170

Copyto:

(i) The Commissioner, Central GST, Ahmedabad North, Ahmedabad.

(ii) The Deputy Commissioner, Central GST, Division III (Sanand), Ahmedabad North.

(iii) The Superintendent, Central GST, Range-IV (Sanand), Division III (Sanand), Ahmedabad North

(iv) Guard File.