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

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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. V.87/15-52/OA/2018 **DIN-20210664WT0000222A7D**

आदेश की तारीख़ / Date of Order :31.05.2021

जारी करने की तारीख़ / Date of Issue : 02 .06.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–07/2021-22

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

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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

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

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

उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के

विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

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

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

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

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

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

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

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

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

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

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

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

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notices no. VI/1(d)/CTA/Tech-10/SCN/Grupo/2018-19 dated 20.09.2018 issued to M/s Grupo Antolin India Pvt. Ltd., Survey No. 30, Paiki 1 Naranpura, Sanand, Near Khoda Fire College, Sanand Virmagam Highway, Ahmedabad-382170.

BRIEF FACTS OF THE CASE:

M/s. Grupo Antolin India Private Limited, Survey No.30, Paiki 1, Naranpura, Sanand, Near Khoda Fire College, Sanand Viramgam Highway, Ahmedabad (herein after also referred to as "the assessee") are engaged in manufacture of Motor Vehicle parts for M/s. Ford India Private Limited, falling under Chapter 87 of the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAACA6730GEM009.

2. The audit of the assessee covering the period from 2014-15 to 2016-17 was conducted by the Officers of the Central Tax Audit, Ahmedabad and in terms of **Revenue Para 6 of the Final Audit Report No.2124/2017-2018 dated 02.07.2018 issued by the Assistant Commissioner, Circle-VI, CGST Audit, Ahmedabad,** the following objection was raised.

REVENUE PARA 6: Nonpayment of Central Excise Duty on Sale of Tools.

3.1. During the course of audit, on scrutiny of Trial Balance Sheet of the assessee for the period 2015-16 to 2016-17, it was observed that the assessee had procured Tools/ moulds and availed Cenvat Credit on the same as Capital Goods. The assessee had carried out modification on the said Tools/moulds as and when required. The said assessee had raised Invoices in favour of M/s. Ford India Pvt. Ltd and sold the said Tools /Moulds to them during the F.Y. 2015-16& 2016-17 detailed as under:

Year	Value of Tools/Moulds	Central Excise Duty involved @12.5 %
2015-16	Rs. 4,46,27,190/-	Rs.55,78,399/-
2016-17	Rs.24,14,10,066/-	Rs.3,01,76,258/-
GRAND TOTAL		**Rs.3,57,54,657/-**

3.2 It was further noticed that the said assessee had imported as well as locally procured the said Tools/moulds,etc. and after carrying out necessary modifications,further used by them (the assessee) for manufacturing the automotive parts. Thereafter, during the period 2015-16 & 2016-17,the assessee had sold the Tools/Moulds to M/s. Ford India Pvt. 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;

> *(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. Ford India Pvt. Ltd.,after removal from their 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. Ford India Pvt Ltd. to procure the Tools & Moulds as and when M/s. Ford India Pvt.Ltd issues Tool Purchase Order. Further, the Tools/moulds in question were put in use by the said assessee. The assessee had issued Tax invoices in the name and address of M/s. Ford India Pvt. Ltd., Revenue Survey No.1, Village: North Kotpura, Taluka: Sanand, Dist. Ahmedabad, showing sale of the said Tools/moulds. They have discharged their VAT liability but did not discharge Central Excise duty liability. (Copies of sample invoices received are relied upon).

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 12.01.2018 submitted their legal opinion. It was opined that the assessee had not paid/reversed Central Excise duty on sale of tools as the Tools in question **were not removed from the factory.** The assessee had submitted the details of Tools/moulds sold to M/s. Ford India Pvt. Ltd during the F.Y. 2015-16 &2016-17 vide their letter dated 12.01.2018.

3.7 The contention raised by the assessee vide their letter dated 12.01.2018 is not tenable in as much as the assessee had physically removed the Capital goods i.e. Tools/Moulds (on which Cenvat credit was availed) by issuing Invoices to M/s. Ford India Pvt. Ltd (and thereby transferring the ownership of the said goods), which were still lying at their premises. However, no Central Excise duty was paid on such clearances. The assessee had also reduced the Inventory of such Tools/Moulds as is reflected in their financial records. Further, the assessee had also recovered Sales tax. Recovery of consideration in the form of Invoices and recovery of sales tax shows that effective sale had been taken place. Thus, the assessee had 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. Ford India Pvt. Ltd. The same is therefore required to be recovered under the provisions of Rule 3(5A)(a)of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, with appropriate interest and penalty, on the same.

4. Therefore, the assessee had 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.Ford India Pvt. 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. During the course of pre-scn consultation vide their letter dated 12.01.2018, the assessee interalia contended that the question of payment of duty/reversal of Cenvat Credit on such tools on which CENVAT credit has been availed would arise only when such used CENVAT capital goods are physically removed to customer.

7. The said contention of the assessee is not tenable in view of the fact that as mentioned supra the assessee had already cleared the goods to M/s. Ford India Pvt Ltd, which were further used by them for manufacture of automotive parts. However during the period 2015-16 & 2016-17, the assessee had sold the Tools/Moulds lying at their premises to M/s. Ford India Pvt. Ltd under Commercial Invoices by charging VAT but without charging Central Excise Duty and the capital goods were removed from their premises to M/s. Ford India.Therefore, it is wrong to say that physical removal of goods had not taken place and therefore the provisions of Rule 3(5) were not attracted, more so when the capital goods were removed to the job workers premises way back in 2014 and therefrom the same were transferred to M/s. Ford India Pvt Ltd under Sales invoices in 2015-16 & 2016-17.

8. Therefore, M/s. Grupo Antolin India Private Limited, Survey No.30, Paiki 1, Naranpura, Sanand, Near Khoda Fire College, Sanand Viramgam Highway, Ahmedabad were called upon to show cause as to why:

i. Central Excise duty of **Rs.3,57,54,657/-**(Rs. Three Crores Fifty Seven Lakhs Fifty Four Thousand Six Hundred and Fifty Seven Only) should not be demanded and recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(4) of Central Excise Act, 1944 ;

ii. Interest at appropriate rate should not be charged and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA of Central Excise Act, 1994 ;

iii. Penalty should not be imposed upon them 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.

9. DEFENCE REPLY:

The assessee filed their defence reply to the above mentioned Show Cause Notice, vide their letter dated 21.1.2019 and additional submissions dated 15.3.2021wherein, they interalia stated as under:

A On the preliminary aspects

1. They are engaged in manufacture of Motor Vehicle parts for M/s. Ford India Private Limited, falling under Chapter 87 of the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAACA6730GEM009
2. They had received purchase orders from our customer viz. M/s Ford, to manufacture certain components and for which they requested the appellant to purchase moulds so that it can be used for further manufacturing of components.

3. They had in turn placed purchase order on vendors for such tools and bought capital goods "from various parties and during the relevant period, they had taken cenvat credit to the tune of Rs. 2,14,03,051/- was availed by them. They had enclosed copies of purchase orders placed on tool vendors and the details of excise invoices on which they had availed the cenvat credit in terms of Rule 3 r/w Rule 4 of Cenvat Credit Rules 2004.

4. Subsequently, they had raised commercial invoices on the Customer viz. Ford India Pvt. 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.

5. The aspect that the said Cenvat Capital goods viz. tools which has been sold to Customer viz. M/s Ford India Pvt. Ltd. have not been physically removed to them, is also evidenced by the fact that the said tools are still being put to use for manufacture by them Only 10 % of the tools have been put to use for production at their vendors premises, to whom the said tools has been cleared to them on 4 (5)(b) challan as per CCR 2004, as they are producing child parts for their final assemblies, which are again cleared to the same customer viz. Ford India Pvt. Ltd.,. They also enclosed a Chartered Engineer's certificate in this regard.

6. After introduction of GST, the provisions of CGST Act, 2017 r/w CGST Rules, 2017 provides for special circumstances to retain the credit taken earlier only with a condition to pay the credit back only on physical removal of such capital goods after reducing 5 % per quarter from the date of original invoice or transaction value under which said used old cenvat capital goods are sold whichever is higher. Hence, even on the account of introduction of GST the credit availed do not get lapsed and the liability to pay applicable GST is there only when such cenvat capital goods are physically removed.

SECTION 18. Availability of credit in special circumstances. — (1) Subject to such conditions and restrictions as may be prescribed —

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher :

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

RULE 40. Manner of claiming credit in special circumstances. —

(2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input

tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

7. Since they had not effected the physical removal of such Cenvat Capital goods to the customer viz. Ford India ...., they had admittedly raised Commercial Invoices on the said Customer, by only charging VAT. Hence, the question of raising any Central excise invoice u/r 11 of Central Excise Rules 2002 read with Rule 3 (5) of CCR 2004 by charging or paying Central Excise duty or by reversal of Cenvat Credit do not arise at all.

8. Even the provisions of Rule 3(5A) (a) of the Cenvat Credit Rules, 2004, which has been referred in the impugned show cause notice has no application to the issue in question, due to the reason that it is admittedly not a case of Rule 3(5A) (a) as it covers a situation where - " (a) If the capital goods, on which CENVAT credit has been taken, **are removed after being used..:" and as there is no removal of goods , the question of demand of duty / reversal of cenvat credit is not correct.**

9. Hence, the department has erred in issuing the impugned show cause notice no. 14/2014 dated 07/07/2014 based on audit objection by wrongly proposing to demand asking Central Excise duty of Rs.3,57,54,657/- under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A (4) of Central Excise Act, 1944 and also by wrongly proposing to levy Interest under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA of Central Excise Act, 1994 and also by wrongly proposing to levy 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.

B **On the aspect of erroneous allegation on facts and on law in the impugned show cause notice** :

10. With reference to **para 3.2 of the impugned show cause notice**, wherein it has been alleged that they have removed the excisable / capital goods without discharging proper Central Excise duty in terms of Rule 3(5A) (a) of the Cenvat Credit Rules, 2004.the said provision has been 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.

11. With respect to the above, they submitted that the averment made in the impugned show cause notice that they have removed the excisable / capital goods, is factually not correct, for the reason that, **they have not physically removed the goods and hence the question of preparing Central Excise Invoice u/r 11 of CER 2002 is not the requirement of Central Excise law at all and such removal as envisaged in the provisions of Rule 3(5A) (a) of the Cenvat Credit Rules, 2004 is also with reference to physical removal of cenvat capital goods.**

12. Hence, when the impugned cenvat capital goods have not been physically removed then the question of charging / paying duty / reversal of cenvat credit do not arise and thus there is no merit in law whatsoever, in the allegation made in the impugned show cause notice that they had not removed the cenvat capital goods without discharging proper Central Excise duty in terms of Rule 3(5A) (a) of the Cenvat Credit Rules, 2004. The

allegation made in the show cause notice based on audit note is only a wishful thinking of the department and based on an erroneous understanding of law, which is not backed up by any provisions of law and thus the impugned show cause notice merits to be set aside on this ground alone.

13. They further submitted that the allegation made at Para 3.3 of the impugned show cause notice that they having sold the Tools/Moulds to M/s. Ford India Pvt. Ltd., after removal from their factory, were liable to pay the amount as per Rule 3(5A) of the Cenvat Credit Rules, 2004, is also patently and manifestly wrong , for the reason that firstly there is no physical removal of impugned cenvat capital goods so as to attract any Central excise levy or reversal of Cenvat Credit and **secondly, there is no provision of law, which seeks payment of Central excise duty or reversal of cenvat credit, only for the reason that such tools have been sold,** despite the fact that there is no physical removal of such Capital goods and the department have not adverted any provisions of Central excise law or Cenvat Credit Rules 2004 which demands payment of duty on capital goods on sale of such goods without physical removal. Hence, on this ground also the impugned show cause notice merits to be set aside.

14. It is further stated in the impugned show cause notice at Para 3.4 and para 3.7 that They had put the said Tools/moulds in question to use and issued Tax invoices in the name and address of M/s. Ford India Pvt. Ltd., Revenue Survey No.1, Village: North Kotpura, Taluka: Sanand, Dist. Ahmedabad, showing sale of the said Tools/moulds, thereby transferring the ownership of the said goods, which were still lying at our premises and that no Central Excise duty was paid on such clearances and also that they had reduced the Inventory of such Tools/Moulds as is reflected in their financial records. The department in the impugned show cause notice, has not justified their position by referring to any authority of law, as to what way the transfer of ownership of such capital goods by reducing the same from the inventory, has bearing with levy of Central Excise duty and there is no provision of law, which demands payment of Central excise duty or reversal of cenvat credit, only for the said reasons that they raised commercial tax invoice (not an excise invoice) for effecting sale of such moulds / tools and when it is the ground reality that there is no physical movement of such goods.

15. Even the department have not alleged anywhere in the impugned show cause notice that they had failed to make or issue Central Excise Invoices u/r 11 of CER 2002 for removal of impugned capital goods by physically having carried the same in any vehicle and thus have violated and contravened the said conditions of Rule 11 of CER 2002 by failure to issue Central Excise invoice and have erred in issuing only a commercial tax invoice charging VAT. Thus, non-issue of Central Excise invoice for physical removal of goods is not an allegation by way of contravention in the impugned show cause notice and thus that is not the reason for demand of duty on the impugned capital goods, which otherwise would have been the main allegation in the impugned matter.

16. The transfer of ownership and raising of commercial tax invoice for effecting sale by charging VAT has no separate implications in Central Excise law or Cenvat credit Rules 2004 and thus the demand proposed is without authority of law and hence the show cause notice merits to be set aside.

17. Further, the averment made at Para 3.7 of the impugned show cause notice that they also recovered Sales tax and that recovery of consideration in the form of Invoices and recovery of sales tax shows that effective sale has been taken place and 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. Ford India Pvt. Ltd, has no relevance and meaning in law, which is for the reason reiterated at earlier paras that recovery of consideration in the form of issue of Commercial Tax Invoices and recovery of sales tax showing effective sale has been taken place, has no role to attract Central Excise levy under CEA, 1944 or CER 2002 or under CCR 2004 and the provisions of Rule 3 (5A) of CCR 2004 is totally misplaced in the impugned show cause notice.

C Other aspects of law

18 As the impugned cenvat capital goods were meant for use in further manufacture of dutiable final product, the appellants were including the amortisation cost of such tools over and above PO price to pay excise duty on final product as per Rule 6 of Valuation Rules, 2000, and specimen invoices of enclosed at Exhibit – D.

19 The department have not caused any independent inquiry that the said tools have been physically removed to customer by providing any statement recorded from the other end to prove that the said tools have been physically received by the appellants customer, nor is there anything contrary to appellants submission that the said tools have not been physically removed which stands established by the department to prove that there is clandestine physical removal of such tools without payment of duty and in absence of the same, the impugned show cause notice issued is incorrect in law.

20 The appellants also submitted that there is no concept of deemed removal of such capital goods to charge Central Excise duty and there is no such allegation also made in the impugned show cause notice and thus the question of demand of duty do not arise.

21 They submitted that the only requirement in law as for as tool is concerned is that while making amortisation of cost of tool the sale value of tools needs to be considered for pro rata amortisation of said tool value over and above the PO price of final product and excise duty needs to be paid, which they have done meticulously and thus revenue has been fully secured even on that account, notwithstanding the fact that when the said cenvat tools have not been physically removed ,no reversal of original or part cenvat credit is warranted u/r of Rule 3(5A) (a) of the Cenvat Credit Rules, 2004.

D On the aspect of demand for extended period and levy of penalty :

22. They have not suppressed any material fact with an intention to evade payment of duty and hence, the question of invoking extended period of demand 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 proposing 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 totally unsustainable in law.

23 As per Board Circular even department is required to carry out timely scrutiny of cenvat records of assesses documents at least on test check basis once ER 1 is filed and if at all they find any issue, they should raise such issues on time so that assesses and department both get benefitted to correct should there be errors, if any, in this regard. The department is also aware of the fact of amortisation of tool and also the entire aspect has been reflected in the books of accounts and the department have indeed taken out the point only by looking in the figures which were openly available in the books of accounts and hence the question of deliberate suppression of fact with an intent to evade duty is totally absent in the circumstances of the case and hence extended period of demand and also levy of penalty both are not sustainable in law.

24. It would be appreciated that in the impugned matter, the whole issue raised in the impugned show cause notice is one of an issue pertaining to "interpretation of law" which in fact also do not exists and hence in such an eventuality the department in no way can allege suppression of facts, when the availment of cenvat credit figures have been made available to the department in the ER 1 return filed.

25. It is also given in departmental instructions as to the manner in which the Excise authorities at the respective level would carry out scrutiny of Returns / records in the self-assessment scheme and it is our humble submission that though it is a self-assessment procedure, due verification by the department of the documents available with them and to demand for such documents if it is not sufficient to carry such scrutiny has not been discarded, which is line with the requirements of Section 11 A or Section 11 AC of CEA 1944, or else every case of error can be attributed to " suppression of fact with deliberate intent to evade" inviting demand for five years period and also 100 % penalty, which is not the purport and object of proviso to Section 11 A or Section 11 AC as "ingredients of Section 11 AC" needs to be established and demonstrated by the department, which is clearly absent in the given case and hence demand for extended

period and levy of interest and penalty is unsustainable in law.

26 They relied on the following case laws in this regard :

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., CUS. & S.T., RAIPUR Versus BHILAI STEEL PLANT- 2018 (12) G.S.T.L. 28 (Chhattisgarh)

They relied on the following decisions on limitation and penalty :

PUSHPAM PHARMACEUTICALS COMPANY Versus COLLECTOR OF C. EX., BOMBAY- 1995 (78) E.L.T. 401 (S.C)

CCE., MUMBAI-IV Vs DAMNET CHEMICALS PVT. LTD.- 2007 (216) E.L.T. 3 (S.C)

CONTINENTAL FOUNDATION JT. VENTURE Versus COMMR. OF C. EX., CHANDIGARH-I - 2007 (216) E.L.T. 177 (S.C)

CCE Vs CHEMPHAR DRUGS & LINIMENTS - 1989 (40) E.L.T. 276 (S.C)

CCE & C, AURANGABAD Vs WOCKHARDT LTD - 2009 (248) E.L.T. 517 (Tri. – Mumbai)

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

10. PERSONAL HEARING:

Personal hearing in the matter was held on 15.3.2021, wherein Shri Narayanan, Advocate and Shri Himanshu Mehta, Finance Manager, appeared before me on behalf of the assessee. The hearing was held vide virtual mode. They reiterated the contents of their written submission, dated 15.3.2020 and also cited case laws in their favour.

DISCUSSION AND FINDINGS:

11. I have gone through the records of the case, defence reply dated 21.1.2019,additional submissions dated 15.3.2021 and the submissions made by the assessee during the course of personal hearing.

12. I find that Show Cause Notice under consideration was issued demanding Central Excise duty of Rs.3,57,54,657/- on the Tools/Moulds sold to M/s. Ford India Pvt. Ltd., Sanand under the provisions of Section 11A(4) of the Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004. The said issue is based on the audit observation raised vide Revenue Para-6 of the Final Audit Report No. 2124/2017-2018 dated 2.7.2018, 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 and subsequently, they sold the Tools/Moulds to M/s. Ford India Private Limited, Sanand without payment of Central Excise duty, but on payment of 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. Ford India Pvt. Ltd., Sanand.

13. I find that the assessee was engaged in manufacture of Motor Vehicle parts for M/s. Ford India Private Limited, falling under Chapter 87 of the Central Excise Tariff Act, 1985.They had received purchase orders from their customer viz. M/s Ford, to manufacture certain components and for which they purchased moulds so that it can be used for further manufacturing of components. They had in turn placed purchase orders on vendors for such tools and bought capital goods from various parties and availed cenvat credit on such capital goods.Subsequently, they had raised commercial invoices on the Customer viz. Ford India Pvt. Ltd. for sale of such tools, which they claimed did not involve any physical movement of such tools to the customer premises. The said commercial invoices were raised only to effect sale of such tools to their customer by charging VAT on the said commercial invoices.

14. Rule 3(5A)(a) of the Cenvat Credit Rules, 2004;

(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.

14.1 Thus it has been alleged in the Show Cause Notice that, the assessee, having sold the Tools/Moulds to M/s. Ford India Pvt. Ltd.,after removal from their factory,were liable to pay the amount as per Rule 3(5A) of the Cenvat Credit Rules, 2004.

15. I find that the main contention in the instant case is whether the tools, dies and moulds procured by the assessee from vendors, on which CENVAT credit had been availed by them and subsequently sold to M/s. Ford India Pvt. Ltd., were actually removed from their factory premises and whether an amount equal to Central Excise duty leviable on transaction value was required to be paid by the assessee under the provision of per Rule 3(5A) of the Cenvat Credit Rules, 2004.

16. I find the issue under dispute has arisen based on the fact that commercial invoices were raised by the assessee to effect **"sale"** of such tools/moulds to their customer by charging VAT on the said commercial invoices.

17. 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;*

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

19. 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:"

20. I find that the assessee had got tools, dies and moulds manufactured from the third parties/vendors, 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 got manufactured from the third parties. They had only disputed that, in view of the provisions of Rule 8 of the Central Excise Rules, 2002 the Central Excise duty was payable only when the tools, dies and moulds had been removed from the factory premises.

Rule 8. Manner of payment. – stipulates as under:

"(1) 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,....."

21. 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.

22. I find from the above submissions of the assessee also that the assessee had got the tools, dies and moulds manufactured from third parties and thereafter the said tools, dies and moulds were sold to M/s. Ford India Pvt. Ltd. without payment of Central Excise duty. These tools/moulds were then received back in their factory for use for production of parts and components. This practice had been adopted by the assessee for convenience and commercial requirements of M/s. Ford India. I have also examined the copy of invoices produced by the assessee with their written submissions. I find the said invoices were not issued as per the prescribed Rule 11 of the Central Excise Rules, 2002. Even though the VAT/Sales Tax payable on such removal was mentioned in the invoices, the other details of applicable Central Excise duty, details of transportation, etc have not been shown in such invoices. However, as discussed in the forth coming paras, there are enough documents evidences on record, to prove that there was movement of goods and that the said tools/moulds were actually removed from the premises of the assessee.

22.1 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:"*

23. The assessee as per their own submission has admitted that tools have been put to use for production at their premises, to whom the said tools has been cleared to them on 4 (5)(b) challan as per CCR 2004, as they are producing child parts for their final assemblies, which are again cleared to the same customer viz. Ford India Pvt. Ltd. This fact is also certified by their Chartered Engineer.

24. 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."*

25. I find that the assessee had to pay the duty leviable on tools, dies and moulds got manufactured from the third party in the manner provided in Rule 8.

26. 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."*

27. 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.

28. In view of the above, I find that the assessee had removed the tools, dies and moulds which were got manufactured by the third parties, to M/s. Ford India Pvt. 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.

29. I also find that the submissions of the assessee are contradictory in nature, as on the one hand they submitted that the tools, dies and moulds got manufactured by them from third party and sold to M/s. Ford India Pvt. Ltd. were not removed from their factory premises, whereas on the other hand, they had submitted that as per the Purchase orders of such tools, dies and moulds, they sold such tools, dies and moulds to M/s. Ford India Pvt. Ltd.,who in turn supplied the same to them to be used for production of parts and components of motor vehicles as required by M/s.Ford India Pvt. Ltd..The assessee as per their own submissions,submitted that so far as the tools, dies and moulds got manufactured by them for M/s. Ford India was concerned, they were following a practice, whereby they get the tools, dies and moulds manufactured from third parties and sell the same to M/s. Ford India. In other words, they received these tools, dies and moulds after the same had been sold to M/s. Ford India. The assessee vide their written submissions has admitted that impugned cenvat capital goods were meant for use in further manufacture of dutiable final product and that they were including the amortisation cost of such tools over and above PO price to pay excise duty on final product as per Rule 6 of Valuation Rules, 2000.The fact that the assessee was including the amortisation cost of tools/moulds in the cost of their final products, implies that the said tools/moulds have been sent back by M/s. Ford India P.Ltd, even after being sold to them by the assessee.In view of the above, I find that the tools, dies and moulds, got manufactured from third parties and sold to M/s. Ford India Pvt. Ltd., were actually removed from their factory premises without payment of an amount equal to duty leviable on the transaction value.

30. I have examined the certificate dated 25.3.2019, issued by the Chartered Engineer and Consultant, M/s. Joshi & Associates, on behalf of the assessee. I find that the Chartered Engineer has interalia certified as under:

(i) The physical existence of tools,as per the enclosed Annexure -1

The company (the asssee) has removed some of the tools to their vendors for producing child parts and are dispatched to M/s.Ford India P. Ltd.

(ii) Some tools have been used by their vendors for producing child parts which are used in the assessee's final assemblies supplied to M/s. Ford India Pvt. Ltd.

31. The assessee had already submitted in their written submissions that upon approval of such tools, dies and moulds, they sell such tools, dies and moulds to M/s. Ford India Pvt. Ltd. who in turn supply the same to them to be used for production of parts and components of motor vehicles sold to M/s. Ford India Pvt. Ltd. The reason for the tools, dies and moulds lying in the factory is clear from this submission of the assessee. I also find that the learned Chartered Engineer vide the above certificate has not thrown any light on the fact the invoices issued by the assessee for sale of tools/moulds, on which only VAT was paid.I find that after the capital goods have been removed from the premises of the assessee, the said goods were now in possession of M/s. Ford India P. Ltd., which is clearly evident from the Annexure-I enclosed along with the said Certificate.This clearly substantiates that the owner of the said tools/moulds, after removal from the premises of the assessee, is now M/s. Ford India P.Ltd.. I find that the Chartered Engineer's Certificate is incomplete in nature and merely emphasises the facts narrated by the assessee and further, they have also chosen to remain silent about the reversal of Cenvat Credit on removal of goods from their premises, for which there are enough

documentary evidences available on record. I find that as the assessee had already submitted in their written submissions that upon approval of such tools, dies and moulds, they sell such tools, dies and moulds to M/s. Ford India Pvt. Ltd. who in turn supply the same to them to be used for production of parts and components of motor vehicles. The amortization of the value of tools, dies and moulds into the value of the final products manufactured and sold by the assessee is evidence enough to show that the tools/moulds were returned back to the assessee by M/s. Ford India P. Ltd., a fact which has been admitted by the assessee in their submissions also.

32. Further on going through the Trial Balance Sheets/Annual Reports for the F.Y. 2015-16 & 2016-17, I also find that the assessee had reduced their inventory in their Tools/Moulds Ledger to the extent of sales made during the relevant period, which is also reflected in their financial records. Further, the assessee had also recovered Sales tax. Recovery of consideration of Sales Tax in the Invoices and proportionate reduction in their inventory together imply that effective sale had taken place and goods have been removed from their premises. Thus, the assessee had 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. Ford India Pvt. Ltd. If the moulds/ tools were actually not procured by the assessee, then they could not have availed the Cenvat Credit on such Capital Goods, and if the goods were not sold to M/s. Ford India P.Ltd., they also would not have been able to avail depreciation on the said goods. The crux of the assessee's defence has been entirely based on the facts that the goods have not been physically removed from their premises consequent of its sale to M/s. Ford India P. Ltd.. I find from the examination of the invoices,that the goods have been removed under invoices, which were not issued under Rule 11 of the CER,2002; and M/s. Ford India P. Ltd. has acknowledged the receipt of the goods by way of claiming depreciation in their book of accounts. The goods were eventually sent back to the assessee through challans by M/s. Ford India P. Ltd. to enable them to avail amortization, thus evidencing the movement of goods from M/s. Ford India P. Ltd. to the assessee. I find that the assessee has deliberately not mentioned details of transportation used for the removal of goods, in order to suppress the said facts from the department and evade reversal of Central Credit under Rule 3(5A) of the Cenvat Credit Rules, 2004.

33. Lastly, the evidence of the tools/moulds being sent back to the assessee by M/s. Ford India P. Ltd., solves the obscurity the said tools/moulds are lying in the premises of the assessee even after being sold to M/s. Ford India P. Ltd.,who themselves have claimed depreciation on such tools/moulds in their book of accounts.

34. It is a known fact that under the accounting systems that the dual benefits of depreciation and availment of Cenvat Credit, cannot be availed simultaneously, therefore, both the assessee and M/s. Ford India Pvt.Ltd. have arrived at a compromising system wherein both can take benefit by misinterpreting the Central Excise law and avoid payment of Central Excise duty.

35. Thus from the entire cycle of events; the documentary evidences in terms of the sale invoices, reduction of their inventory in their Tools/Moulds Ledger to the extent of sales made during the relevant period, recovery of Sales tax, the availment of depreciation on the said goods by M/s. Ford India P Ltd., provide sufficient proof for removal of capital goods for effecting recovery of Central Excise duty. Therefore, I am left with no doubt that the assessee has tried to create a maze to evade reversal of Cenvat Credit by denying that the goods have been actually removed from their premises. Thus, I hold that the tools, dies and moulds procured by the assessee from vendors, on which CENVAT credit had been availed by them and sold to M/s. Ford India Pvt. Ltd., were actually removed from their factory premises and an amount equal to Central Excise duty leviable on the removal of such capital goods was required to be paid by the assessee under the provision of per Rule 3(5A) of the Cenvat Credit Rules, 2004. Therefore I hold that the same is required to be recovered from the assessee under the provisions of Rule 3(5A)(a)of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, with appropriate interest and penalty, on the same.

36. I find that the assessee had relied upon a series of judgments in support of their contention. I have examined these judgments and find that these judgments relied upon by the assessee are not squarely applicable to the instant case, as under:

(1) POLYPLASTICS INDUSTRIES (I) PVT. LTD. Versus COMMR. OF C. EX. & S.T., PANCHKULA- 2016 (332) E.L.T. 895 (Tri. - Del) :This case pertains to allegation by revenue for removal of moulds from factory under an invoice – since Chartered Engineer after verification of records and visiting factory, certified that the said moulds continued to be installed in factory and in running condition, therefore credit could not be denied. In this case, there was no physical removal of goods, whereas in the instant case, there was physical removal of goods.

(2) DCM ENGINEERING PRODUCTS Versus COMMISSIONER OF C. EX., JALANDHAR- 2010 (251) E.L.T. 91 (Tri. – Del: This case is different from the instant case,as it pertains to purchase of tools from its sister concern

(3) TC HEALTHCARE P. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD- 2015 (329) E.L.T. 529 (Tri. – Del) :This case pertains to recovery of cost of capital goods from foreign buyers.

(4) L.G. BALAKRISHNAN & BROS. LTD. Versus COMMISSIONER OF C. EX., TRICHY- 2016 (340) E.L.T. 708 (Tri. – Chennai): This case pertains to amount payable on capital goods under Cenvat Credit Rules, 2004 consequent upon the sale and transfer of Chain Division to a new Joint venture company and no invoice had been issued for removal of goods.

(5) COMMISSIONER OF C. EX., CUS. & S.T., RAIPUR Versus BHILAI STEEL PLANT- 2018 (12) G.S.T.L. 28 (Chhattisgarh). In this case there was no physical removal of goods, whereas in the instant case, there was physical removal of goods.

37. I find that the assessee had suppressed the material facts of removal of tools, dies and moulds to M/s. Ford India Pvt. Ltd. from their factory premises and in order to mislead the Department, they had not 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 amount 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. This 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.

38. 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 got manufactured from third party and sold to M/s. Ford India Pvt. 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 11A(4) and Section 11AA of the Central Excise Act, 1944 read with Rule 14 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.*

39. 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.

40. 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."*

41. 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 and fraud.

42. The assesse 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.

43. 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."*

44. 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."*

45. Similar view was expressed by the Hon'ble High Court of Judicature for Andhra Pradesh at Hyderabad in the case of SreeRayalaseema Hi-Strength Hypo Ltd. Versus Commr. of Cus. & 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."

46. In view of the above detailed discussion, it is evident that the assessee resorted to fraud, by not paying Central Excise Duty on Tools/moulds sold to M/s. Ford India Pvt. 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.

47. 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.

48. In view of the above discussion and findings, I pass the following order.

ORDER

i. I confirm the demand of Central Excise duty of **Rs.3,57,54,657/-**(Rs. Three Crores Fifty Seven Lakhs Fifty Four Thousand Six Hundred and Fifty Seven Only) order the same should be recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(4) of Central Excise Act, 1944 ;

ii. I order that interest at appropriate rate should be charged and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA of Central Excise Act, 1994 ;

iii. I impose penalty amounting to **Rs.3,57,54,657/-**(Rs. Three Crores Fifty Seven Lakhs Fifty Four Thousand Six Hundred and Fifty Seven Only) upon them 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.

iv. I also order that if the assessee pays the Central Excise duty confirmed above at Sl. No. (i) along with interest within thirty days of the date of communication of this order, the amount of penalty liable to be paid by the assessee 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,in terms of Section 11AC (1) (e) of the Central Excise Act, 1944.

v. Show Cause Notice No.VI/1(b)CTA/Tech-10/SCN/Grupo/2018-19 dated 20.09.2018 issued to M/s. Grupo Antolin India Private Limited, Survey No.30, Paiki 1, Naranpura, Sanand, Near Khoda Fire College, Sanand Viramgam Highway, Ahmedabad, is disposed-off in the above terms.

(Amarjeet Singh)
COMMISSIONER,
CGST & CENTRAL EXCISE,
AHMEDABAD (NORTH)

BY REGISTERED AD/HAND DELIVERY

F. No. V.87/15-52/OA/2018 Date :31.05.2021

To,
M/s. Grupo Antolin India Private Limited,
Survey No.30, Paiki 1, Naranpura,
Sanand, Near Khoda Fire College,
Sanand Viramgam Highway,
Ahmedabad - 382170

Copy to:
(i) The Chief Commissioner, Central GST, Ahmedabad.
(ii) The Deputy Commissioner, Central GST, Division III (Sanand), Ahmedabad North.
(iii) The Superintendent, Central GST, Range I (Sanand), Division III (Sanand), Ahmedabad North
(iv) Guard File