


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. V.23/15-05/OA/2017

आदेश की तारीख / Date of Order : 23.07.2020

जारी करने की तारीख / Date of Issue : 23.07.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-14-15/2020-21

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

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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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

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

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

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

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

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

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहाँ 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 1.00 रूपया 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.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show-Cause-Notice SCN No. V.23/15-05/OA/2017 dated 06.03.2017 and SCN no. V.23/15-18/OA/2018 dated 04.05.2018 issued to M/s. Anil Bioplus Ltd.(formerly known as M/s Anil Biochem Ltd.), Anil Road, Bapunagar, Ahmedabad,

Brief facts of the case:

M/s. Anil Bioplus Ltd. (formerly known as M/s Anil Biochem Ltd.), Anil Road, Bapunagar, Ahmedabad, (hereinafter referred as 'the assessee') are engaged in the manufacturing of finished products viz 'Calcium Gluconate, Enzymes, Flavors' falling under Chapter No. 29, 35 & 33 respectively to the First Schedule of Central Excise Tariff Act, 1985 (herein after referred to as the 'CETA, 1985') and is holding Central Excise Registration No. AABCA6331JXM001. The assessee also availed the benefit of Cenvat credit facility as per provisions of the Cenvat Credit Rules, 2004 (herein after referred to as the 'CCR, 2004').

2. The assessee was manufacturing excisable goods viz. Calcium Gluconate, Enzymes, Flavours falling under Chapter 29, 35 and 33 of the CETA, 1985 respectively, which are chargeable to duty, and clearing the same on payment of appropriate amount of Central Excise duty leviable thereon. The assessee had also manufactured 'Bio Feed' falling under Chapter Sub Heading 23099010/90 of the CETA, 1985, and cleared the same without payment of duty as the said goods are chargeable to NIL rate of duty as per the CETA, 1985.

3. During the course of audit conducted for the period October 2013 to March 2016, based on the balance sheets of the assessee, it was revealed that they had manufactured & cleared goods viz. "Products of Fermentation and Biological Agents" which were neither reflected in their Central Excise returns nor had they declared/intimated the same to the department.

4. Further, it was noticed that the assessee had not maintained separate records in case of availment and utilization of input cenvat credit and for this purpose periodical show cause notices were served by the department for clearing Bio-feed, an exempted product for non maintenance of separate records under Rule 6 of the CCR, 2004. The details of the show cause notices demanding Central Excise duty is as under:

Sl. No.	SCN HQ/Div. F.No. & Date	SCN Date	SCN issuing authority	Period Covered	Amount of duty demanded (Rs.)
1	V.23/3-20/Dem- Anil Bio/09-10	24-02-2010	Asst. Commr.	Jan-09 to Mar-09	Rs.51375/-
2	V.23/ 3-5 / Dem-Anil Bio/10-11	26-05-2010	Asst.Commr.	Apr-09 to Mar-10	Rs.3,34,053/-
3	V.29/3-18/Dem- Anil-Biochem/10- 11	18-04-2011	Asst.Commr.	Apr-10 to Sep-10	Rs. 1,98,841/-
4	V.23/3-4/Dem-Anil Bioplus/11-12	02-11-2011	Asst. Commr.	Oct-10 to Mar-11	Rs. 2,17,268 /-
5	V.35/ 3-9/ Dem-Anil Bio/11-12	05-05-2012	Asst. Commr.	Apr-11 to Jun-11	Rs. 2,87,968/-
6	V.23/3-02/Dem- Anil Bioplus/12-13	19-07-2012	Asst. Commr.	Jul-11 to Dec-11	Rs. 4,85,362/-
7	V.35/3-7/ Dem-Anil Bioplus/12-13	07-01-2013	Asst. Commr.	Jan-12 to Jun-12	Rs.1,91,821/-
8	V.35/15- 45/OA/2013	05-08-2013	Addl Commr.	Jul-12 to Dec-12	Rs.7,09,169/-
9	V.35/03-II/Dem- Anil Bioplus/13-14	19-11-2013	Asst. Commr.	Jan-13 to Jun-13	Rs.1,44,901/-
10	V.35/15- 49/OA/2014	23-06-2014	Addl Commr.	July-13 to Mar-14	Rs.5,94,210/-
11	V.35/03-20/Dem- Anil Bioplus/14-15	18-12-2014	Asst. Commr.	Apr-14 to Sep-14	Rs.68,400/-
12	V.35/03-06/Dem- Anil Bioplus/15-16	24-06-2015	Asst. Commr.	Oct-14 to Mar-15	Rs.81,720/-

5. Further, Rule 6 of the Cenvat Credit Rules, 2004 reads as under,

(1) *the Cenvat Credit shall not be allowed on such quantity of input used in or in relation to the manufacture of the exempted goods or for provision of exempted services, or input service used in or in relation to the manufacturer of the exempted goods and their clearance up to the place of removal or for provision of exempted services, except the circumstances mentioned in sub rule 2 (provided that the Cenvat Credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacturer of goods cleared without payment of the*

duty under the provisions of that rule.)

Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2 - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

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

- (a) *the receipt, consumption and inventory of inputs used*
 - (i) *in or in relation to the manufacture of the exempted goods;*
 - (ii) *in or in relation to the manufacture of the dutiable final products excluding exempted goods.*

- (iii) *for the provision of the exempted services;*

- (iv) *for the provision of output services excluding exempted services,*

and

- (b) *the receipt and use of Input Services -*

- (i) *in or in relation to the manufacture of exempted goods and their clearance up to the place of removal;*

- (ii) *in or in relation to the manufacture of the dutiable final products excluding exempted goods and their clearance up to the place of removal;*

- (iii) *for the provision of the exempted service; and*

- (iv) *for the provision of output services excluding exempted service, and shall take Cenvat Credit only on inputs under sub clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) & (iv) of clause (b).*

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

- (i) *pay an amount equal to 5 or 6 percent of value of the exempted goods and exempted services; or*

- (ii) *pay an amount as determined under sub-rule (3A); or*

- (iii) *maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub rule (2), take CENVAT credit only on inputs under sub clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub rule (3A) in respect of input services. The provisions of sub clauses (i) and (ii) of clause (b) and sub clauses (i) and (ii) of Clause (c) of sub rule (3A) shall not apply for such payment.*

6. Also, as per provision of sub rule 3 of Rule 6 of the Cenvat Credit Rules, 2004, the said assessee is required to choose any one of the following option in case of reversal of the Cenvat Credit.

- (i) *pay an amount equal to five or six percent of value of the exempted goods and exempted services; or*

- (ii) *pay an amount as determined under sub-rule (3A); or*

- (iii) *maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub rule (2), take CENVAT credit only on inputs under sub clauses (ii) and (iv) of said clause (a) and pay an*

amount as determined under sub rule (3A) in respect of input services. The provisions of sub clauses (i) and (ii) of clause (b) and sub clauses (i) and (ii) of Clause (c) of sub rule (3A) shall not apply for such payment.

7. Further, Sub Rule (3A) of Rule 6 of CCR, 2004 reads as under;

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

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

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

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

(i) the amount equivalent to CENVAT Credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT Credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods (and their clearance up to the place of removal) or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value dutiable and exempted goods manufactured and removed, during preceding financial year and G denotes total CENVAT credit taken on input services during the month;

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

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

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

during the financial year minus H;

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

(d) of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition © and the aggregate amount determined and paid as per condition (b), on 01 before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) -----

(f) -----

(g) -----

(h) -----

(i) -----

8. As discussed above, it appeared that the said assessee had neither maintained separate records in case of the availment and utilization of the Cenvat Credit on Inputs nor followed procedure as prescribed in the Sub Rule 3A of Rule 6 of the CCR, 2004 and therefore, the said assessee had only one option i.e. to pay an amount equal to five or six percent of value of the exempted goods.

9. Further, vide Notification No. 6/2015 C.E (N.T) dated 01-03-2015, an explanation was inserted below sub-rule (1) of Rule 6 of the CCR, 2004, as follows :-

"Explanation 1: For the purpose of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non excisable goods cleared for a consideration from the factory."

10. From the paras supra, it also appeared that the assessee, at no point of time disclosed to the department in any manner that they had manufactured and cleared the product viz- "Products of Fermentation and Biological Agents" in the periodical returns submitted by the assessee to the jurisdictional Range Officer. This fact came to the notice of the department at the time of audit only.

11. Further it appeared that the Superintendent, Central Excise, AR-IV, Division-II, Ahmedabad-II vide letter F.No. AR-IV/Audit Corres/14-15 dated 28.07.2016, 04.10.2016 and 25.10.2016 had requested the assessee to inform why the clearances of the goods viz. "Products of Fermentation and Biological Agents" were not reflected in ER-1 returns and also to furnish the details of clearances of the goods. The assessee had not submitted the details of clearances of goods viz. "Products of Fermentation and Biological Agents".

12. Further, Summons under Section 14 of the Central Excise Act, 1944 (herein after referred to as the 'CEA, 1944') was issued vide F.No. AR-IV/Anil Ltd/2016-17 dated 16.11.2016 to Shri Vishad Jagasheth, General Manager of the assessee to appear on 21.11.2016. Shri Vishad Jagasheth appeared on 21.11,2016 to give the statement before the Superintendent, Central Excise, AR-IV, Division-II, Ahmedabad - II wherein Shri Vishad Jagasheth stated that he was working in M/s Anil Bioplus Ltd. from the year 2003 onwards. He further stated that the goods viz. "Products of Fermentation and Biological Agents" are non-excisable and agreed to furnish the details of clearances within a week and agreed to show these clearances in ER-1 returns from now-onwards.

13. Further, the assessee did not furnish the details of clearances as per the statement made by Shri Vishad Jagasheth and vide its letter dated 03.12.2016 reiterated that the details of clearances are in balance sheets itself. However as the exact details of clearances could not be obtained from the balance sheets, Shri Vishad Jagasheth, General Manager of M/s Anil Bioplus Ltd was summoned by the Superintendent, Central Excise, AR-IV, Division-II, Ahmedabad - II vide F.No. AR-IV/Audit-Corres/2014-15 dated 17.01.2017 to appear on 19.01.2017. However, Shri Vishad Jagasheth did not appear on 19.01.2017. However, a letter dated 16.01.2017 was received from the assessee furnishing the year-wise details of the goods viz. "Products of Fermentation and Biological Agents" from the balance sheets without furnishing the complete details of clearances of the said product. Further, another summons vide F.No. AR-IV/Audit- Corres/2014-15 dated 19.01.2017 was served to Shri Vishad Jagasheth to appear on 23.01.2017. Shri Vishad Jagasheth in his statement recorded under section 14 of the CEA, 1944 stated that the goods viz. "Products of Fermentation and Biological Agents" are nothing but "Biofeed" and also submitted the detailed process chart of biofeed and also stated that the process of manufacturing of the biofeed had not changed in the last five years. He further assured to provide the details of clearances of the goods viz. "Products of Fermentation and Biological Agents" by 27.01.2017. However no submissions were made in this regard.

14. The details of demand raised and Balance amount on which demand to be raised for the goods viz. "Product of Fermentation and Biological Agents" for the period 2011-12 to 2015-16 as per the assessee's letter dated 16.01.2017 is as under:

Financial Year	Amount as per Balance sheet (Rs. In Lakhs)	Amount as per ER-1 (Rs. In Lakhs)	Demand already raised on the amount as per ER-1 (Rs. In Lakhs)	Balance amount on which demand to be raised	Amount equal to 5% for the F.Y 2011-12 & amount equal to 6% for the 2012-13 to 2015-16 difference in Lakhs
2011-12	2744.54	159.20	159.20	2585.34	129.27
2012-13	4132.12	158.34	158.34	3985.66	238.43
2013-14	6388.38	111.24	111.24	6277.14	376.63
2014-15	7554.16	25.02	25.02	7529.14	451.75
2015-16	5978.44	14.76	0	5978.44	358.71
	Total		1554.79		

15. Thus, it appeared that the assessee had deliberately suppressed material information from the department to fraudulently avail the Cenvat Credit and therefore it appeared that in the instant case all essential ingredients exists to invoke the extended period as provided under Section 11 A(4) of the CEA, 1944.

16. On verification of the records of the assessee, it had been noticed that the assessee did not maintain separate accounts for raw material used in the manufacture of dutiable and exempted goods as per Rule 6(2) of the Cenvat Credit Rules, 2004. It had been further noticed that they had not paid 5% / 6% on the value of the exempted goods i.e. on "Products of Fermentation and Biological Agents" / Bio Feed falling under Ch. 23099010/90 of the CETA, 1985. During the period from 2011-12 to 2015-16, the assessee cleared Bio Feed valued at Rs. 26797.64 Lakhs as per the assessee's letter dated 16.01.2017. Since, the assessee had not maintained separate account/inventory regarding receipt and disposal of inputs used in such goods, the assessee are liable to pay 5%/6% on the value of such goods cleared from 2011-12 to 2015-16 as per Rule 6(3)(i) of the Cenvat Credit Rules, 2004; which comes to Rs. 1554.79 Lakhs. Thus, the above acts of contravention on the part of the said assessee appeared to have been committed by reasons of willful misstatement, suppression of facts and contravention of the provisions of CCR, 2004 with an intent to evade payment of an amount equal to 5% / 6% of the value of the exempted goods. Therefore, it appeared that an amount of Rs.

1554.79 Lakhs for the period 2011-12 to 2015-16, as shown above, payable under the provisions of Rule 6(3)(i) of the CCR, 2004, but not paid by the said assessee, is required to be demanded from the said assessee under the provisions of Rule 14 of the CCR, 2004, read with the Explanation III to Rules 6(3) to 6(3D) of the CCR, 2004, read with Section 11A(4) of the CEA, 1944 by invoking extended period of limitation of five years instead of normal period of one year.

17. All the above acts of contravention on the part of the said assessee appeared to have been committed by reasons of wilful mis-statement, suppression of facts and contravention of various provisions of the said act and rules made there under with an intend to evade payment of the amount equal to five or six percent of the value of the exempted goods as discussed herein above. So, it appeared that the provisions of sub-section (4) of section 11A of the CEA, 1944, read with Rule 14 and Explanation III to Rules 6(3) to 6(3D) of the CCR, 2004, are invocable in the present case. All these contraventions on the part of the said assessee appeared to constitute the offence of the nature as describe under Rule 15(2) of the CCR, 2004 and therefore the said assessee appeared to be liable to penalty to the extent as permissible under Rule 15(2) of the CCR, 2004 read with clause (c), of Sub-Section (I) of Section 1 (AC of the CEA, 1944. Interest is also liable to be charged and recovered from the said unit under the provisions of Rule 14 of the CCR, 2004 read with Section 11AA of the CEA, 1944.

18. As part of the Dispute Resolution initiative of the department, pre show cause notice consultation was fixed on 06.03.2017. Shri Vijay Shah, DM (Excise) of M/s. Anil Bioplus Ltd. appeared for pre show cause notice consultation. At the very outset, he emphasized that "Products of Fermentation & Biological Agents" are nothing but "Bio Feed" and indistinguishable from "Bio Feed". He said that he had invoices to support & establish his contention, but when asked to produce sample copy of these invoices, he said that they are not readily available with him during the course of the personal hearing. He said that fermentation is the process of manufacture and biological agent means "Bio Feed". He said that the audit team had perhaps misunderstood the term "Fermentation & Biological Agent" and the proposed SCN appeared to have arisen from that confusion / misunderstanding.

19. Therefore M/s. Anil Bioplus Ltd. (formerly known as M/s Anil Biochem Ltd), Anil were issued SCN no. V.23/15-05/OA/2017 dated 06.03.2017, for the period 2011-12 to 2015-16, as to why:-

- (i) An amount of Rs. 1554.79 lakhs should not be demanded and recovered from them under the provisions of Section 11A of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 for contravention of the provisions of Cenvat Credit Rules, 2004 by invoking extended period of limitation as per Section 11A(4) of Central Excise Act, 1944.
- (ii) The interest at the rate prescribed should not be demanded and recovered from them under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.
- (iii) The penalty should not be imposed on them under the provisions of Section 11 AC (1) of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004 for the contraventions mentioned above.

DETAILS OF 2ND SHOW CAUSE NOTICE:

20. Further SCN no. V.23/15-18/OA/2018, dated 4.5.2018, involving Rs. 1,68,47,370/-, was issued to the assessee for the period from 2016-17 for non reversal of Cenvat Credit as per Rule 6(3) of the Cenvat Credit Rules, 2004. The said Show Cause Notice was issued on the basis of the ITR-6 obtained from the Income Tax

department and the monthly returns filed by the assessee for the period 2016-17. The facts, circumstances and contraventions of the provisions of the Central Excise Act, 1944 and the rules made thereunder and the grounds relied upon in the present notice are similar to those discussed in the earlier Show Cause Notice mentioned in Para-3 above and therefore, this notice is being issued in terms of Section 11 A (7A) of the Central Excise Act, 1944, which has been introduced in Section 91 of the Finance Act, as amended. Vide the SCN dated 4.5.2018, the assessee was called for to show cause as to why:

- (i) An amount of Rs.1,68,47,370/- (Rupees One crore sixty eight lakhs forty seven thousand three hundred and seventy only) should not be demanded and recovered from them under the provisions of Section 11A(1) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.
- (ii) The interest at the rate prescribed should not be demanded and recovered from them under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.
- (iii) The penalty should not be imposed on them under the provisions of Section 11 AC (1) of the Central Excise Act, 1944 read with Rule 15(1) of the Cenvat Credit Rules, 2004 for the contraventions mentioned above.

PERSONAL HEARING AND WRITTEN SUBMISSIONS:

21. The assessee has also not filed their reply to the above mentioned Show Cause Notices till date. Personal hearing in the above matter was fixed on 25.03.2020, 19.06.2020 and 20.7.2020. However no one appeared for the scheduled hearings. Therefore, I proceed to decide the above Show Cause Notices, on the basis of evidences available on record.

DISCUSSION AND FINDINGS

22. I have gone through the records of the case and find that the issue to be decided is whether the assessee is liable to reverse Cenvat Credit as per Rule 6(3)(i) of the Cenvat Credit Rules, 2004, or otherwise.

23. I find that the assessee was manufacturing excisable goods which are chargeable to duty, and clearing the same on payment of appropriate amount of Central Excise duty leviable thereon. During the course of audit for the period October 2013 to March 2016, based on the balance sheets of the assessee, it was revealed that they had manufactured & cleared goods viz. "Products of Fermentation and Biological Agents" which were neither reflected in their Central Excise returns nor had they declared/ intimated the same to the department. Shri Vishad Jagasheth, General Manager of the assessee, in his statement recorded on 23.01.2017, under Section 14 of the Central Excise Act, 1944, had stated that the goods viz. "Products of Fermentation and Biological Agents" are nothing but Biofeed and that the manufacturing process of Biofeed has not changed for the last five years. Biofeed falls under Chapter Sub - Heading 23099010/90 of the CETA, 1985 and the same are chargeable to NIL rate of duty as per the CETA, 1985. Thus it implies that the assessee is engaged in the manufacture of both exempted and dutiable goods. I also find that the assessee had neither maintained separate records of the availment and utilization of the Cenvat Credit on Inputs used in the manufacture of both exempted and dutiable goods.

24. Rule 6 of the Cenvat Credit Rules, 2004 reads as under,

- (1) *the Cenvat Credit shall not be allowed on such quantity of input used in or in relation to the manufacture of the exempted goods or for provision of exempted services, or input service used in or in relation to the manufacturer of the exempted goods and their clearance up to the place of removal or for provision of exempted services, except the circumstances mentioned in sub rule 2*

(provided that the Cenvat Credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacturer of goods cleared without payment of the duty under the provisions of that rule.)

Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2 - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

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

- (a) the receipt, consumption and inventory of inputs used
 - (i) in or in relation to the manufacture of the exempted goods;
 - (ii) in or in relation to the manufacture of the dutiable final products excluding exempted goods.
 - (iii) for the provision of the exempted services:
 - (iv) for the provision of output services excluding exempted services,
- and
- (b) the receipt and use of Input Services -
 - (i) in or in relation to the manufacture of exempted goods and their clearance up to the place of removal;
 - (ii) in or in relation to the manufacture of the dutiable final products excluding exempted goods and their clearance up to the place of removal;
 - (iii) for the provision of the exempted service; and
 - (iv) for the provision of output services excluding exempted service, and shall take Cenvat Credit only on inputs under sub clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) & (iv) of clause (b).

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

- (i) pay an amount equal to 5 or 6 percent of value of the exempted goods and exempted services; or
- (ii) pay an amount as determined under sub-rule (3A); or
- (iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub rule (2), take CENVAT credit only on inputs under sub clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub rule (3A) in respect of input services. The provisions of sub clauses (i) and (ii) of clause (b) and sub clauses (i) and (ii) of Clause (c) of sub rule (3A) shall not apply for such payment.

25. As per provision of sub rule 3 of Rule 6 of the Cenvat Credit Rules, 2004, the said assessee is required to choose any one of the following options in case of reversal of the Cenvat Credit.

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

determined under sub rule (3A) in respect of input services. The provisions of sub clauses (i) and (ii) of clause (b) and sub clauses (i) and (ii) of Clause (c) of sub rule (3A) shall not apply for such payment.

26. Sub Rule (3A) of Rule 6 of CCR, 2004 reads as under;

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

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

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

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

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

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

- (i) the amount of CENVAT Credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;*
- (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services - (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;*
- (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods (and their clearance up to the place of removal) or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the*

financial year, N denotes total value of exempted and taxable services provided, total value of exempted and dutiable goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on 01 before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) -----
 (f) -----
 (g) -----
 (h) -----
 (i) -----

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

28. I find that the said assessee had neither maintained separate records of the availment and utilization of the Cenvat Credit on Inputs nor followed procedure as prescribed in the Sub Rule 3A of Rule 6 of the CCR, 2004. Therefore, I find that the only option left for the assessee is to follow Rule 6(3)(i) of the Cenvat Credit Rules, 2004, i.e. to pay an amount equal to five or six percent of value of the exempted goods.

29. Further, vide Notification No. 6/2015 C.E (N.T) dated 01-03-2015, an explanation was inserted below sub-rule (1) of Rule 6 of the CCR, 2004, as follows :-

"Explanation 1 : For the purpose of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non excisable goods cleared for a consideration from the factory."

30. From the paras supra, it comes out clearly that the assessee, at no point of time disclosed to the department in any manner that they had manufactured and cleared the product viz- "Products of Fermentation and Biological Agents". They had also not mentioned the said facts in the periodical returns submitted by the assessee to the jurisdictional Range Officer. This fact came to the notice of the department at the time of audit only. The above acts of contravention on the part of the said assessee appear to have been committed by reasons of willful misstatement, suppression of facts and contravention of the provisions of CCR, 2004 with an intent to evade payment of an amount equal to 5% / 6% of the value of the exempted goods. Thus the assessee had

deliberately suppressed material information from the department to fraudulently avail the Cenvat Credit and therefore, in the instant case all essential ingredients exist to invoke the extended period as provided under Section 11A (4) of the Central Excise Act, 1944.

31. Thus I conclude that the assessee had not maintained separate accounts for raw materials used in the manufacture of dutiable and exempted goods as per Rule 6(2) of the Cenvat Credit Rules, 2004. Since, the assessee had not maintained separate account/inventory regarding receipt and disposal of inputs used in such goods, the assessee are liable to pay 5%/6% on the value of the exempted goods i.e. on "Products of Fermentation and Biological Agents" cleared from 2011-12 to 2015-16 as per Rule 6(3)(i) of the Cenvat Credit Rules, 2004; which amounts to Rs. 1554.79 Lakhs. Therefore, I hold the amount of Rs. 1554.79 Lakh for the period 2011-12 to 2015-16, demanded vide SCN dated 6.3.2017, is payable under the provisions of Rule 6(3)(i) of the CCR, 2004, under the provisions of Rule 14 of the CCR, 2004, read with the Explanation III to Rules 6(3) to 6(3D) of the CCR, 2004, read with Section 11A(4) of the CEA, 1944 by invoking extended period of limitation of five years.

32. The analogy of the above discussion is exactly applicable to the subsequent Show Cause Notice dated 4.5.2018 also. I hold that the amount of Rs. 1,68,47,370/- demanded vide SCN dated 6.3.2017, is payable under the provisions of Rule 6(3)(i) of the CCR, 2004, read with Section 11 A (1) of the Central Excise Act, 1944, under the provisions of Rule 14 of the CCR, 2004.

33. The assessee was well aware of the provisions of the Central Excise Act, 1944 and the Cenvat Credit Rules. They were engaged in the manufacture of exempted and dutiable good, and were not maintaining separate accounts for inputs used for the manufacture of dutiable and exempted products. Thus they were liable to pay an amount equal to 5 or 6 percent of value of the exempted goods and failed to do so. From the above discussion, it is clear that the Cenvat Credit has been wrongly availed and utilised by the assessee and therefore, I order that Interest be recovered under Section 11AA of the Central Excise Act, 1944 on the same. The above act of the assessee has also made them liable to penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004.

34. In light of the above discussion, I pass the following order:

ORDER


A: SCN No. V.23/15-05/OA/2017 dated 06.03.2017, for the period 2011-12 to 2015-16,

- (i) I order that amount of Rs.1554.79 lakh should be recovered from the assessee under the provisions of Section 11A of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 for contravention of the provisions of Cenvat Credit Rules, 2004 by invoking extended period of limitation as per Section 11A(4) of Central Excise Act, 1944.
- (ii) The interest at the rate prescribed is ordered to be recovered from them under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.
- (iii) I impose a penalty amounting to Rs.1554.79 lakh on them under the provisions of Section 11 AC (1) of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004.

B: SCN no. V.23/15-18/OA/2018, dated 4.5.2018, involving Rs. 1,68,47,370/-, for the period 2016-17.

- (iv) I order that the amount of Rs.1,68,47,370/- (Rupees One crore sixty eight lakh forty seven thousand three hundred and seventy only) should be recovered from the assessee under the provisions of Section 11A(1) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 for contravention of the provisions of Cenvat Credit Rules, 2004.
- (v) The interest at the rate prescribed is ordered to be recovered from them under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.
- (vi) I impose a penalty amounting to Rs.1,68,47,370/- (Rupees One crore sixty eight lakh forty seven thousand three hundred and seventy only) on them under the provisions of Section 11 AC (1) of the Central Excise Act, 1944 read with Rule 15(1) of the Cenvat Credit Rules, 2004.
- (vii) I give the option of benefit of reduced penalty @ 25% of the penalty if the entire amount as per point (iii) and (vi) is paid along with interest and the reduced penalty so determined, is paid within 30 days from the receipt of the this order.

35. The SCN No. V.23/15-05/OA/2017 dated 06.03.2017 and SCN no. V.23/15-18/OA/2018 dated 4.5.2018 are hereby disposed off in above manner.


(Dr. BALBIR SINGH)
COMMISSIONER
CENTRAL GST & C.EX.
AHMEDABAD NORTH.

F. No.:V.23/15-05/OA/2017

Dated: 23.07.2020

By Regd. Post AD/Hand Delivery/ S.P.A.D

To
M/s. Anil Bioplus Ltd.
(formerly known as M/s Anil Biochem Ltd.),
Anil Road, Bapunagar,
Ahmedabad,

Copy to:

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner CGST, Division-II, Ahmedabad- North.
3. The Superintendent, CGST, AR-IV, Division-II, Ahmedabad- North.
- ✓ 4. Guard File