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.35/15-05/OA/2020 DIN : 20211164WT000011101A

आदेश की तारीख़ / Date of Order : 23.11.2021

जारी करने की तारीख़ / Date of Issue : 24.11.2011

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–32/2021-22

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)

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 हैंचार प्रतियों में दाखिल , 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 Notice no. VI/1(b)/Tech-57/SCN/Concord Biotech/2019-20 dated 29.01.2020 issued to M/s Concord Biotech Limited (unit-1), 1482-1486, Trasad Road, Dholka, Ahmedabad-387810.

BRIEF FACTS OF THE CASE:

M/s Concord Biotech Limited (Unit-I), 1482-1486, Trasad Road, Dholka, District: Ahmedabad387810 ('assessee')are engaged in the manufacture of bulk drugs falling under Chapter sub-heading Nos 35079099 and No 29420090 of the Central Excise Tariff Act, 1985. The assessee was holding a Central Excise Registration No AAACC8514GXM001 and a Service Tax Registration NoAAACC8514GSD003.

2. During the course of audit of the records of the Assessee the audit had raised the following observations for the period from January 2015 to June 2017:

A Short payment of Central Excise duty by misuse of benefit under Notfn No 43/2001-CE(NT) of 26.6.2001

3 During the verification of records by the audit, it was noticed that the assessee had cleared their finished goods namely bulk drugs to M/s Intas Pharmaceuticals ('Intas') without payment of the duty of excise by availing the benefit of Notfn No 43/2001-CE(NT) of 26.6.2001, as amended. The Notfn No 43/2001-CE(NT) of 26.6.2001 says that the assessee needs to follow the provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 ("the Concessional Rules, 2001"), as replaced by the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and other Goods) Rules, 2016, made effective from 01.04.2016 vide Notfn No 20/2016-CE(NT) of 1.3.2016("the Concessional Rules, 2016").

4 Rules 4 and 5 of the Concessional Rules, 2001 reads as under:

"Rule 4. Procedure to be followed by the manufacturer of subject goods

(1) On the basis of the application referred to in sub-rule (7) of rule 3, the manufacturer of subject goods shall avail the benefit of the exemption notification.

(2) The manufacturer of the subject goods shall record on the application the removal details, such as No. and date of invoice, description, quantity and value of subject goods and amount of excise duty paid at concessional rate.

Rule 5. Manufacturer to give information regarding receipt of the subject goods and maintain records

The manufacturer, receiving subject goods, shall maintain a simple account indicating the quantity and value of subject goods, the quantity of subject goods consumed for the intended purpose, and the quantity remaining in stock, invoice wise and shall submit a monthly return in Return at Annexure-II to the said Assistant Commissioner or Deputy Commissioner by the tenth day of the following month".

5 Rules 4 and 5 of the Concessional Rules, 2016 reads as under:

"4. Information by applicant manufacturer to obtain benefit.

(1) An applicant manufacturer shall provide an information in duplicate in the Form I to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be (hereinafter referred to as the Assistant Commissioner or Deputy Commissioner) and the Assistant Commissioner or Deputy Commissioner shall forward one copy of the information to the jurisdictional range Superintendent of the supplier manufacturer.

(2) The applicant manufacturer shall number the information filed under sub-rule (1) in each financial year.

(3) The applicant manufacturer may either provide separate information in respect of each of the supplier manufacturer of subject goods or provide combined information for multiple supplier manufacturers with details of each of them in Form I.

(4) The applicant manufacturer shall provide the information from time to time to receive subject goods in quantities commensurate with expected consumption in the manufacturing process for a period of one year or less.

(5) The applicant manufacturer shall execute a general bond with surety or security:

Provided that it shall be sufficient to provide a letter of undertaking by an applicant manufacturer against whom no show cause notice has been issued under sub-section (4) or sub-section (5) of section 11A of the Act or where no action is proposed under any notification issued in pursuance of rule 12CCC of the Central Excise Rules, 2002 or rule 12AAA of the CENVAT Credit Rules, 2004.

(6) The applicant manufacturer shall forward a copy of information duly signed by his authorised signatory, to the supplier manufacturer for procuring subject goods.

5. Procedure to be followed by supplier manufacturer of subject goods.

(1) The supplier manufacturer shall avail the benefit of this notification on the basis of information received by him under sub-rule (6) or rule 5.

(2) The supplier manufacturer shall maintain record of information received under sub-rule (1) on the basis of which goods have been removed, the removal details, such as number and date of invoice, description, quantity and value of subject goods and amount of excise duty paid at concessional rate and retain the same in his records.

6 It was observed from Rules 4 & 5 of the Concessional Rules, 2001 and 2016 that the assessee was required to follow the proper procedure in order to clear excisable goods without payment of duty to Intas. It appeared that the assessee was not able to provide the information received from the applicant manufacturer on the basis of which they had removed excisable goods without payment of duty. It also appeared that the assessee had cleared bulk drugs to Intas without having proper documents namely Form I, totally valued at Rs 28,84,98,730/ during the period from 2016-17 to June 2017. The duty of excise not paid had been worked out to Rs 3,60,62,341/- (details as per Annexure 'A' to this notice).

7 Query memos were raised on the assessee on 5.8.2019 and 18.11.2019 asking for the worksheet showing the clearance made under Notfn

No 43/2001-CE(NT) dated 26.6.2001 as also the evidence for fulfilment of its condition. The assessee under their reply dated 12.8.2019 and 19.11.2019 had produced few copies of Form ARE 2 and paper trails of exports done by Intas. They had also produced a declaration filed by Intas on 20.8.2019 saying that the bulk drugs Mycophenolate Mofetil API supplied by the assessee between April 2016 to June 2017 had been used in manufacture of formulations for export. However, the assessee was not able to substantiate the clearance of bulk drugs to Intas without payment of duty by providing evidentiary documents.

8 It therefore appeared that the assessee had contravened the provisions of Notfn No 43/2001-CE(NT) of 26.6.2001 read with the Concessional Rules, 2001 and 2016 as they had failed to provide appropriate and proper documents for clearing bulk drugs to Intas without payment of duty.

9 Since they had not provided the relevant documents for necessary verification of the conditions to be fulfilled for claiming the exemption under Notfn No 43/2001-CE(NT) of 26.6.2001 read with the Concessional Rules, 2001 and 2016, it therefore appeared that they had wrongly claimed the benefit of exemption under Notfn No 43/2001-CE(NT) of 26.6.2001 as they had failed to follow the appropriate procedures under the Concessional Rules, 2001 and 2016, It also appeared that the assessee had willfully suppressed the material facts from the revenue with an intent to evade the payment of the duty of excise. It, therefore, appeared that the duty of excise amounting to Rs 3,60,62,341/- was required to be demanded and recovered from the assessee under the provisions of Section 11A(4) of the Central Excise Act, 1944 ('Excise Act') by invoking the extended period of time of 5 years. It also appeared that the assessee was liable to pay interest under the provisions of Section 11AA of the Excise Act. It further appeared that the assessee had willfully suppressed the material facts and had an intent to evade the payment of duty by not following the requisite procedures and therefore, the assessee appeared liable for penal action under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 25 of the Central Excise Rules, 2002('Excise Rules').

B Short payment of the duty of excise by misusing the benefit of Notfn No 10/1997-CE of 1.3.1997, as amended

10 During the course of verification of records, it was noticed that the assessee had cleared their finished goods namely bulk drugs to various

customers, without payment of the duty of excise, by availing the benefit of Notfn No 10/1997-CE of 1.3.1997, as amended by Notfn No 16/2007-CE of 1.3.2007.

11 The relevant text to Notfn No 10/1997-CE dated 1.3.1997 is reproduced below:

"In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (3) of the Table below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from the **whole of the duty of excise** leviable thereon which is specified in the said Schedule, when supplied to the institutions specified in the corresponding entry in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table.

TABLE

S.No.	Name of the Institutions	Description of the goods	Conditions
(1)	(2)	(3)	(4)
1.	Public funded research institution or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories and spare parts of goods specified in (a) above and consumables; (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches. (d) Prototypes	(i) If the institution – (a) is a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and produces a certificate to that effect from an officer not below the rank of a Deputy Secretary to the Government of India in the concerned department to the manufacturer at the time of clearance of the specified goods; or (b) is registered with the Government of India in the Department of Scientific and Industrial Research and the manufacturer produces at the time of clearance, a certificate from the Head of the institution in each case, certifying that the said goods are

			required for research purposes only. (ii) The aggregate value of prototypes received by an institution does not exceed fifty thousand rupees.
2.	Non-commercial research institutions, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories and spare parts thereof and consumables; (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches. (d) Prototypes	(i) the institution is registered with the Govenment of India in the Department of Scientific and Industrial Research; (ii) an officer not below the rank of a Deputy Secretary to the Government of India in the said Department certifies in each case that the institution is not engaged in any commercial activity and that the said goods are required for research purposes only; (iii) the goods are covered by a Pass-book issued by the said Department; (iv) the aggregate value of goods received under this exemption by an institution does not exceed rupees two crores in the case of consumables, rupees fifty thousand in the case of prototypes and rupees five crores in other cases, in a financial year".

12 The text of Notfn No 10/1997-CE of 1.3.1997, as amended by Notfn No 16/2007-CE of 1.3.2007, reads as under:

"In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 10/97-Central Excise, dated the 1st March, 1997 which was published in the Gazette of India, Extraordinary, vide number G.S.R.116(E) of the same date, namely :-

In the said notification, in the TABLE, for S. No.2 and the entries relating thereto, the following S. No. and entries shall be substituted, namely:-

TABLE

S. No.	Name of the Institutions	Description of the goods	Conditions
(1)	(2)	(3)	(4)
"2.	Research institution, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts and consumables; (c) computer software, Compact Disc-Read only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) prototypes	(1) The institution – (i) is registered with the Government of India in the Department of Scientific and Industrial Research; (ii) Head gives a certificate in each case of clearance of goods, certifying that the said goods are essential for research purposes and will be used for the stated purpose only. (2) The aggregate value of prototypes received by an institution does not exceed fifty thousand rupees in a financial year. (3) The goods falling under (1) and (2) above shall not be transferred or sold by the institution for a period of five years from the date of installation".

13 It appeared from the text of the Notification that the goods could have been cleared without payment of duty to Institutions specified at Sr No 1 and 2 to the notification mentioned above, subject to prescribed conditions. The assessee had not produced any documents to show that the clearances were made to such institutions as detailed in the notification. They had not shown any documents evidencing the compliance of any of the procedures laid down, in order to avail the exemption benefit. Accordingly, it appeared that the exemption under this Notification was not available to the assessee. It, therefore, appeared that the assessee had wrongly availed the benefit of Notfn No 10/1997-CE of 1.3.1997, as amended by Notfn No 16/2007-CE of 1.3.2007.

14 It was seen that the assessee had cleared bulk drugs valued at Rs 47,00,000/- to various customers (details as per Annexure 'B' to this notice), without payment of central excise duty.

15 The query memo was raised on the assessee under a communication dated 5.8.2019 seeking the worksheet for clearance made for claiming exemption under Notfn No 10/1997-CE dated 1.3.1997, as amended as also the evidence for fulfilment of its conditions. The assessee under their reply dated 12.8.2019 had produced sample copies of buyer's registration with the Department of Scientific and Industrial Research but however, they have not produced the accompanying documents to show the clearances were made to the Institutions detailed in the notification and had not substantiated by evidence that they had followed the requisite procedures laid down in the notifications.

16 Since they had not provided the relevant documents for necessary verification of the conditions to be fulfilled for claiming the exemption under Notfn No 10/1997-CE(NT) of 1.3.1997, as amended by Notfn No 16/1997-CE(NT) of 1.3.1997, it appeared that they had wrongly shown the clearances made under Notfn No 10/1997-CE(NT) of 1.3.1997, as amended by Notfn No 16/1997-CE(NT) of 1.3.1997 despite not following the appropriate procedures and providing valid documents for availing the benefit of exemption. It appeared that the assessee had willfully suppressed the material facts from the revenue with an intent to evade the payment of the duty of excise. It, therefore, appeared that the duty of excise amounting to Rs 5,87,500/- was required to be demanded and recovered from the assessee under the provisions of Section 11A(4) of the Excise Act by invoking the extended period of time of 5 years. It also appeared that the assessee was liable to pay interest under the provisions of Section 11AA of the Excise Act. It further appeared that the assessee had willfully suppressed the material facts and had an intent to evade the payment of duty by not following the requisite procedures and therefore, the assessee appeared liable for penal action under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 25 of the Excise Rules.

C Non reversal of cenvat credit on inputs involved in control/quality control/batch samples

17 During the verification of records, it was noticed that the assessee had kept control samples, quality control samples and batch samples of their final products namely bulk drugs till their expiry period, under existing laws concerning drugs and pharmaceuticals. The samples had been destroyed by the assessee after their expiry period. It appeared that the inputs used in these samples were not used in the manufacture of finished goods cleared from their

factory. Accordingly, it appeared that the cenvat credit involved on inputs involved in the control/quality/batch samples was required to be reversed.

18 The relevant text to Rule 2(k) of the Cenvat Credit Rules, 2004 ('Cenvat Rules') is reproduced below:

"[(k) "input" means –

(i) all goods used in the factory by the manufacturer of the final product"

19 It is clear from the text of Rule 2(k) of the Cenvat Rules that the inputs received in the factory should be used for the manufacture of final products. In the present case, it appeared that the inputs had not been used in the manufacture of final products cleared from their factory. Accordingly, it appeared that the cenvat credit of inputs availed on these samples was not eligible and was required to be reversed. The cenvat credit involved on the inputs had been worked out to Rs 6,66,172/- (details as per Annexure C to this notice).

20 The query memo was sent to the assessee on 5.8.2019 seeking the detailed worksheet of cenvat credit involved in the inputs used in the quality control samples. The assessee under their reply dated 12.8.2019 (RUD 5) had not agreed with the objections.

21 It, therefore, appeared that there was a contravention of the provisions of Rule 2(k) of the Cenvat Rules read with the provisions of Rule 3(1) of the Cenvat Rules as they had failed to use the inputs in the manufacture of their finished products and had wrongly claimed the cenvat credit involved on such inputs.

22 It appeared that they had suppressed the material facts of not using the inputs in the manufacture of finished goods. It appeared that there was an intent to evade the payment of the duty of excise. It, therefore, appeared that the duty of excise amounting to Rs 6,66,172/- was required to be demanded and recovered from the assessee under the provisions of Section 11A(4) of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules by invoking the extended period of time of 5 years. It also appeared that the assessee was liable to pay interest under the provisions of Section 11AA of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. It further appeared that the assessee had suppressed the material facts and had an intent to evade the payment of duty by not using the inputs in the

manufacture of their finished goods and therefore, the assessee appeared liable for penal action under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 15(2) of the Cenvat Rules and Rule 25 of the Excise Rules.

D Wrong availment of cenvat credit on Rent-a-cab services

23 During the verification of their inward credit ledgers of transportation, freight and carting, it was noticed that the assessee had availed cenvat credit on the services provided by M/s AS Travelling Agency relating to Rent-a-Cab Services.

24 The relevant text to Rule 2(l) of the Cenvat Rules is reproduced as under:

"[(l) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods"

25 A plain reading of the above definition of input services clearly indicated that only those services that were directly used for providing output service would be eligible for Cenvat Credit. Further, the definition of input services laid down in Rule 2(l) of the Cenvat Credit Rules, 2004 excludes the services provided by way of renting of motor vehicle services.

26 The exclusion clause of Rule 2(l)(B) of the Cenvat Credit Rules, 2004 was explicit in saying that credit of service tax paid on services used for rent-a-cab/renting of motor vehicle would not be available. Accordingly, it appeared that the assessee was not eligible for the cenvat credit on rent-a-cab services.

27 The query memo was sent to the assessee on 5.8.2019, saying that the services were not input services for them. The assessee under their reply dated 12.8.2019 (RUD 5) did not agree with the audit objection.

28 It appeared that the assessee had contravened the provisions of:

- Rule 2(l) of the Cenvat Credit Rules, 2004 read with the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004 as they had wrongly availed the cenvat credit which were ineligible under the exclusion clause of the Rule;

29 It appeared that the assessee was fully aware that the Cenvat credit availed by them in respect of services used in relation to rent-a-cab were under the exclusion clause and were not eligible to them. The assessee had not disclosed to the department that they had availed cenvat credit which was not eligible to them and had in turn, suppressed the material facts. It appeared that the wrongly availed cenvat credit amounting to Rs 6,21,388/-(Annexure D to the notice) was to be recovered from the assessee by invoking the extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994/Section 11A(4) of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004. The assessee was also liable to pay interest as per the proviso to Section 75 of the Finance Act, 1994/Section 11AA of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004. It appeared that they have suppressed the material facts from the department and hence, the assessee was also liable for penal action under the provisions of Section 78(1) of the Finance Act, 1994/Section 11AC(1)(c) of the Excise Act read with Rule 15(2)/15(3) of the Cenvat Rules and Rule 25 of the Excise Rules.

30 The assessee subsequently had reversed the cenvat credit amounting to Rs 6,21,388/- (Rs 1,95,398/- and Rs 4,25,940/-), under a protest letter dated 6.9.2019 (Annexure 'E' to the notice).

31 As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre consultation with the adjudicating authority was granted on 20.1.2020. Mr Mayur Kansara, Manager Finance and Mr Viral Jani, Sr Manager, Accounts & Finance appeared for the assessee on 20.1.2020. They furnished further written reply on 20.1.2020.

32 The assessee, in their replies filed vide their letter dated 12.8.2019, 19.11.2019 and 20.01.2020 submitted their submissions on audit observations. With respect to the objection relating to Notfn No 43/2001-CE(NT) of 26.6.2001, it was stated that Mycophenolate Mofetil was specified at Sr No 72 of List No 4 to Notfn No 12/2012-Cus dated 17.3.2012 and also as per Sr No 108(A) to Notfn No 12/2012-CE dated 17.3.2012, the drugs specified in List 3 or List 4 are exempted. The rulings in the case of Astrik Laboratories reported at 2009 (233) ELT 372(T), Aurobindo Pharma at 2009 (247) ELT 206(T) and Dr Reddy's Laboratories Ltd at 2010 (251) ELT 447(T) were cited. In respect of the objection relating to clearances under Notfn No 10/1997-CE, as amended, the rulings in the case of Bangalore Genei Pvt Ltd reported at 2010 (261) ELT 1079(T), R K Control Instruments Pvt Ltd at 2012 (279) ELT 451(T), Auto Aircon (India) Ltd at 2016 (33) ELT 558(T) and Blue Star Ltd at 2016 (336) ELT 190(T) were cited. In respect of the para relating to samples, it was contended that the Tribunal had consistently held that duty could not be demanded on quality control samples. It was further stated that control samples were excisable goods and were not exempted from duty of excise. For the objection relating to availment of cenvat credit on rent-a-cab services, it was argued that the cenvat credit was availed in respect of transportation provided to their employees. The ruling of Interplex Electronics India Pvt Ltd reported at 2015 (39) STR 578(Kar) was cited.

33. It appeared from the text of the Notification No 12/2012-CE dated 17.3.2012, as amended (Sr No 108) that the exemption was subject to condition 2 to the same notification. The condition clearly specified that the procedure laid down in the Concessional Rules 2001 had to be followed. It was observed that the assessee had not followed the provisions of Concessional Rules 2001 and Concessional Rules 2016 and therefore, the audit had observed that the argument made was not justified. In the case of Astrix Laboratories Ltd, the assessee had followed the procedure under the

Concessional Rules and therefore, the benefit was allowed. The cases of Aurobindo Pharma Ltd and Dr Reddy's Laboratories also placed reliance on the ruling in the Astrix Laboratories Ltd case. It appears that in the present case, the assessee had not followed the provisions of the Concessional Rules 2001 and Concessional Rules 2016 and therefore, the rulings in all the 3 cases were distinguishable. The rulings in the case of Bangalore Genei Pvt Ltd Ltd, R K Control Instruments Pvt Ltd, Auto Aircon (India) Ltd and Blue Star Ltd, there were case where there were documents evidencing clearances to institutions and certificates issued by the authorities of that institution. In the present case, there was a lack of documents shown by the assessee evidencing the clearance of their goods to prescribed institutions and compliance of the appropriate procedure prescribed in Notfn no 10/1997-CE dated 1.3.1997, as amended. The audit had observed that contentions of the assessee were not justified. In respect of the issue on availment of cenvat credit on keeping samples, it appeared that Rule 2(k) of the Cenvat Rules was explicit. It allows cenvat credit only on inputs used by the manufacturer for producing finished goods which is not the case here. It was also stated that the inputs had not been used for the production of finished goods in the case of these samples and therefore, the contention raised was not justified. For the objection on rent-a-cab services, the provisions of Rule 2(l)(B) of the Cenvat Rules were explicit in saying that cenvat credit would not be available. The ruling of Interplex Electronics Pvt Ltd deals with the issue of input cenvat credit prior 2011 where the definition was different. The audit therefore had observed that the contentions made by the assessee were not justified.

35 Therefore, the Show Cause Notice No..VI/1(b)/Tech-57/SCN/ Concord Biotech/ 2019-20 was issued to M/s Concord Biotech Limited (Unit-I), 1482-1486, Trasad Road, Dholka, District: Ahmedabad 387 810 by the Commissioner, CGST Audit, Ahmedabad and assessee were called upon to show cause to the Principal Commissioner/Commissioner of Central Tax, Ahmedabad North Commissionerate, having his office at 1st floor, 'Custom House' Building, Near All India, Old Gujarat High Lane, Navrangpura, Ahmedabad 380009 as to why:

(i) the central excise duty amounting to Rs 3,60,62,341/- (Rupees Three crores sixty lacs sixty two thousand three hundred forty one)(details as per Annexure 'A' to this notice) (RUD 3), should not be demanded and recovered from them for the clearance of bulk drugs to Intas, under the provisions of Section 11A(4) of the Excise Act;

(ii) the central excise duty amounting to Rs 5,87,500/- (Rupees Five lacs eighty seven thousand five hundred only)(details as per Annexure 'B' to

this notice) (RUD 3), should not be demanded and recovered from them for the clearance of bulk drugs to various customers, under the provisions of Section 11A(4) of the Excise Act;

(iii) Interest should not be charged and recovered from the assessee under the provisions of Section 11AA of the Excise Act on the proposed demand at (i) and (ii) above;

(iv) penalty should not be imposed on the assessee, under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 25 of the Excise Rules on the proposed demand at (i) and (ii) above;

(v) the cenvat credit amounting to Rs 6,66,172/- (Rupees Six lacs sixty six thousand one hundred seventy two only) (Annexure C to the notice), should not be disallowed and recovered from the assessee, under the provisions of Section 11A(4) of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules;

(vi) interest should not be charged and recovered from the assessee, under the provisions of Section 11AA of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the proposed recovery at (v) above;

(vii) penalty should not be imposed on the assessee, under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 15(2) of the Cenvat Rules and Rule 25 of the Excise Rules;

(viii) the cenvat credit amounting to Rs 6,21,388/- (Rupees Six lacs twenty one thousand three hundred eighty eight only) (Annexure D to this notice), should not be disallowed and recovered from the assessee, under the provisions of Section 11A(4) of the Excise Act/proviso to Section 73(1) of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. As the assessee have paid the total amount of Rs 6,21,388/- under protest(Annexure E to the notice), they are required to show cause as to why the said amount of Rs 6,21,388/- should not be adjusted and appropriated against the proposed recovery of cenvat;

(ix) the protest letter dated 6.9.2019for reversal of cenvat credit amounting to Rs 6,21,388/- should not be vacated;

(x) interest should not be charged and recovered from the assessee, under the provisions of Section 11AA of the Excise Act/Section 75 of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the proposed recovery at (viii) above;

(xi) penalty should not be imposed on the assessee, under the provisions of Section 11AC(1)(c) of the Excise Act/Section 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(2)/15(3) of the Cenvat Rules, respectively and Rule 25 of the Excise rules on the proposed demand at (viii) above.

DEFENCE REPLY:

36. The assessee vide their letter dated 02.03.2020 submitted their written submission to SCN, wherein they inter alia submitted as under:

- that the Notification No.43/2001 dated 26.6.2001 grants exemption from payment of duty when the goods are to be exported, in other words, since the goods are supposed to be exported, duties should not be levied on such goods so that taxes are not exported;

- that they had produced copies of Form ARE-2 and paper trail to show that the goods, which they had supplied to M/s. Intas Pharmaceuticals were exported by M/s. Intas. Therefore, they were eligible to claim exemption from payment of tax. They had noted that the only reason why the benefit of this notification was proposed to be denied to them was that they had not followed the prescribed procedure as laid down under the Notification thereby violated the conditions for availment of such Notification for not producing Form-I. It is submitted that the non-submission of Form-I was merely a technicality and a subject matter of procedure on the basis of which the substantive right of exemption cannot be denied even when such technicality or procedure is not followed.
- That they would like to submit that the only important factor to be considered for granting exemption of Notification No.43/2001 dated 26.6.2001 was that the goods had to be exported and submission of Form-I was merely a technicality when the exports as such by M/s. Intas were not being doubted and especially when they had shown substantial compliance to the Notification by proving that the goods were exported, by submitting Form ARE-2 and paper trails to substantiate their claim of export.
- That they relied on case of M/s. Mangalore Chemicals and Fertilizers Ltd. reported at 1991 (55) ELI 437 (SC), whereby the Supreme Court has laid down that non-compliance of procedure itself is not a ground for denial of a right if other conditions are fulfilled, which is the case here. The Supreme Court has taken a view that there are conditions, some may be substantive, mandatory and based on considerations of policy and some others may belong to the area of procedure. It may be erroneous to attach equal importance to the observations of all conditions irrespective of the purpose they were intended to serve. The Court observed that because of technical formalities not being followed, the rights conferred and given under the statute cannot be denied. They also cited the court

laws and stated that the similar view were taken in the case of M/s. Thermax Pvt. Ltd. reported at 1992 (61) ELT, 352 (SC) and in the case of M/s. Wood Papers Ltd. reported at 1990 (47) ELT 500 (SC). The Hon'ble Larger Bench of the CESTAT also relied on these case, in the case of Beach Candy Hospital and Research Centre reported at 2000 (118) ELT 271 (LB). Therefore they submitted that that in the present case when the goods are exported and such export has not been doubted by the Revenue authorities, then the benefit of Notification No.43/2001 is available to them inasmuch as merely not submitting Form-I would result in a procedural violation and not a violation of mandatory conditions of the Notification.

- Their case was a case of export of goods and in cases of export of goods, taxes cannot be levied because the legislature has enacted laws whereby exports are not intended to be taxed under the-statute. They cited various case laws The decision of the Hon'ble CESTAT in the matter of American Dry Fruits is reported at 1992 (61) ELT 709 ; Alfa Garments reported at 1996 (86) ELT 600;Sigma Pneumatics Pvt. Ltd. reported at 2017 (353) ELT 245

- That, it is clear that since the export of these goods is not under doubt and they have proven beyond doubt that these goods were exported and therefore, the demand on the grounds raised in the show cause notice would not be sustainable

- They cited the decision of tribunal in Chanmunda Pharma Machinery P. Ltd. reported in 2009 (244) ELT 49, that the refund was allowed only on the ground that the goods were proved to be exported; tribunal referred the cases in the matter of Birla VXL Ltd reported in 1998 (99) ELT 387 and Modern Process Printers 2006 (204) ELT 632(G.O.1), while deciding the above appeal. In a recent order in Appeal No.280 to 281/2010(Ahd-II)CE/CMC/Commr(A) dated 16.12.2010 passed by Commissioner (Appeals), Ahmedabad in the matter of Inductotherm (India) Pvt. Ltd., the Commissioner (Appeals)has set aside the duty demand on the ground that if the goods were exported under bond instead of letter of undertaking the duty cannot be demanded under section 11 A.

- They accordingly requested to drop the demand of Rs. 3,60,62,341/-.

- As regards demand of Rs. 5,87,500/- for not complying with conditions of Noti. No. 10/97-CE dated 01.03.97 as amended by notification 16/2007 -CE dated 01.03.2007, they stated that clearances were made

to three parties M/s. BDR Pharmaceuticals, M/s. Obicular Pharma and M/s. Sava Healthcare Ltd which were registered with the department of Scientific and Industrial Research and that such parties had specifically asked them to supply them bulk drugs, which had to be used by them for scientific and research purposes. They are hereby attaching copies of the certificate of registration of such parties, they had substantially complied with the requirement of the conditions of Notification no.10/1997 as amended by Notification No.16/2007 dated 1.3.2007 inasmuch as they had all the documents to show and prove that the bulk drugs cleared by them were cleared to institutions affiliated with the department of Scientific and Industrial Research. They requested to drop the proposal of demanding duty of Rs.5,87,500/- in the interest of justice.

- As regards the demand of Rs.6,66,172/- for non reversal of Cenvat credit involved in sample which were destroyed on its expiry, they stated that the departments' view was erroneous inasmuch as such dispute has already been decided in number of cases by the Hon'ble CESTAT. In the case of Biddle sawyer Ltd. reported at 2004 (168) ELT 119 the Hon'ble Cestat has categorically held that Cenvat credit of the inputs which are utilized for producing quality control samples is eligible to an assessee inasmuch as quality control samples are mandatory to be kept and-quality control testing is also a necessity for manufacturing drugs. The same decision was followed in respect of Krebs Biochemicals and Industries Ltd. reported, at 2007 (220) ELT 170. The similar views were taken in Krebs Biochemicals and Industries Ltd. reported, at 2007 (220) ELT 170. Timex Watches reported at 2016 (343) Ell 677 has held that when inputs are used for processing and assembling of goods and such inputs become waste during the process of manufacture, Cenvat credit on such inputs cannot be denied, which The Hon'ble Allahabad High Court confirmed in the case of Timex Watches Ltd. reported at 2018 (10) GSTL 425. Therefore, it is submitted that it is a settled legal position that just because inputs are used in quality control testing would not debar them from taking Cenvat credit of such inputs inasmuch as quality control testing and quality control samples are an integral part of manufacturing pharmaceutical bulk drugs They have availed cenvat credit which is legally admissible to them and therefore, they have requested to drop the demand of Rs.6,66,172/ in the interest of justice.

- As regards availment of Cenvat of Rs. RS.6,21,388/- on Rent-a-cab service and its denial by the department for it being in exclusion list of

definition of input service, they stated that they had been mentioning such availment in their statutory returns as well as in their Cenvat register. The Hon'ble Gujarat High Court in the case of Transpek Industries Lt. reported at 2018 (12) GSTL 29 has held that rent a cab services which are used by companies to transport their employees are eligible for Cenvat credit under. Rule 2(1) of the Cenvat Credit Rules, 2004, inasmuch as it is an integral part of manufacturing activity. The Hon'ble Karnataka High Court has in the case of Stanzen Toyotetsu India Pvt. Ltd. reported at 2011 (23) STR 444 has also held that Cenvat credit of rent a cab services is available to an assessee. Such views have also been taken by the Rajasthan High Court in Mangalore Cement Ltd. reported at 2018 (9) GSTL 17 and the Hon'ble Allahabad High Court in the case of HCL Technologies. reported at 2015 (37) STR 716.

- Further more, there is no specific reference to "Rent a Cab Service" under Rule 2(l) of the Cenvat Credit Rules, and it is not specifically laid down under Rule that "Rent a Cab Service" was not an input service for allowing Cenvat credit. They understand that such service utilized by them in relation to providing taxable output service was in the nature of input service, and such service utilized by them for their employees who had worked on Projects on which they had paid service tax was legally available to them.

- Clause (B) of Rule 2(l) refers to "Services provided by way of renting of a motor vehicle .....", and therefore services of renting of a motor vehicle (which may include Rent a Cab service also) are excluded under this clause; but it is also clarified under this clause itself that all services provided by way of renting of a motor vehicle were not excluded. Such services, in so far as they relate to a motor vehicle which is not a capital goods, are excluded.

- They had utilized taxies/cabs taken on hire for sending and transporting their employees, engineers and executives to sites where manufacturing activity was undertaken by them. Taxies and cabs so taken on hire were directly utilized in relation to providing their output services, on which service tax is paid by them. In their case, rent a cab service was provided by the Operators by using their vehicles. The services provided by the Operators by way of renting of their motor vehicles had been utilized by them for transporting engineers etc. for executing the projects and related works. Thus, the services provided by the operators using their own vehicles do not relate to a motor vehicle which was not a capital

goods; but the services provided by the operators are input services used by them for execution of the projects and related works, which is their output service.

- the services provided by way of renting of a. motor vehicle by Operators relate to providing output services by them, and therefore Rent a Cab service in such cases was undoubtedly an input service used by a provider of output service for providing an output service as specifically referred to in Rule 2(l) (i) of the Cenvat Credit Rules. Their action of taking and utilizing Cenvat credit of Rent a Cab Service was therefore perfectly legal and valid. Rent a Cab service utilized by them was not a service in so far as it was related to a motor vehicle which was not a capital goods. This exclusion is therefore not applicable in their case.

- They cited case in respect of Marvel Vinyls Ltd. reported in 2017 (49) STR 424 (Ti.-Del.)while examining the issue in view of the exclusion clause introduced w.e.f. 1-4-2011 had observed while allowing credit, that a person who was receiving the input services of renting of immovable property can never avail Cenvat credit of duty paid on the motor vehicles and as such motor vehicle can never be a capital good to the recipient of the said services, that the motor vehicle will always be a capital goods or otherwise for the person who is providing the services under the category of renting of motor vehicle, that as such the expression - "which is not a capital goods appearing. in the said exclusion clause would require examination vis-a-vis the service provider and not vis-a-vis the services recipient", that the interpretation of the lower authorities that motor vehicle are not capital goods for the services recipient cannot be appreciated inasmuch as motor vehicles are admittedly capital goods in terms of the Rule 2(A) of Cenvat Credit Rules and main part of the definition for input service says that input service means any service used by a provider of output service for providing an output service, that the provision of output service would not have been possible with engaging the services of cabs and the credit would therefore be admissible in the present case, the Motor Vehicles provided as cabs are definitely capital goods for the cab operators within the meaning of Rule 2(a) of the Cenvat Credit Rules, 2004. Therefore, rent a cab service provided by cab operators and used by the appellant is not covered under the exclusion clause "B" provided under Rule 2 (l) of the cenvat credit rules, 2004.

- They relied on the The Hon'ble Gujarat High Court's judgment given in the matter of Dynamic Industries reported in. 2014 (35) S.T.R. 674 (Guj.) wherein it has been held in para 18 of the judgment that the definition of the term 'input service', as already noticed, is coined in the phraseology of "means and includes". Portion of the definition which goes with the expression means, is any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal. This definition itself is wide in its expression and includes large number of services used by the manufacturer. Such service may have been used either directly or even indirectly. To qualify for input service, such service should have been used for the manufacture of the final products or in relation to manufacture of final produce or even in clearance of the final product from the place of removal. The expression 'in relation to manufacture' is wider than 'for the purpose of manufacture'. The words 'and clearance of the final products from the place of removal' are also significant. Means part of the definition has not limited the services only upto the place of removal, but covers services used by the manufacturer for the clearance of the final products even from the place of removal. It can thus be seen that main body of the definition of term 'input service' is wide and expansive and covers variety of services utilized by the manufacture. The Hon'ble High Court has on such interpretation held that by no stretch of imagination can it be stated that, outward transportation service would not be a service used by the manufacturer for clearance .of final products from the place of removal. In view of this principle laid down by the Hon'ble Gujarat High Court as regards the cenvat scheme with reference to Rule 2(1) of the Cenvat Rules, the basis on which the show cause notice has been issued is unsustainable.
- That the Hon'ble Gujarat High Court has in the case of Dynamic Industries Ltd. reported at 2014 (307) ELT 15 and M/s. Ultratech Cement 2014 (302) ELT 334 has held that when an assessee declares all the relevant details inside the statutory returns and Cenvat register, then suppression with an intent to evade the payment of tax cannot be alleged on the assessee and resultantly the extended period of limitation can not be invoked. The Hon'ble CESTAT, Ahmedabad in the case of Sterlite Telelink reported at 2014 (312) ELT 353 has held that when all the details are mentioned in the ST-3 Returns, just because the Audit officers found out during statutory audit would not mean that the assessee had intention to evade the payment of tax and therefore, the extended period of limitation cannot be invoked in such circumstances.

The Hon'ble CESTAT, Hyderabad in the case of Musaddilal Projects Ltd. reported at 2017 (4) GSTL 401 has held that when the issue is about availment of Cenvat credit, the issue becomes interpretational in nature and when an assessee discloses the details of the credit availed in ST-3 Returns, investigation conducted by DGCEI which would not unearth anything extra, cannot be held as a ground of suppression with an intent to irregularly avail credit and therefore since the credit has been availed under a bonafide belief, the extended period of limitation cannot be invoked. In the facts of the present case, they had disclosed the availment of Cenvat credit of rent a cab services in their statutory returns and Cenvat register and just because the Audit officers conducted the audit later does not mean that the extended period of limitation can be invoked in the facts of the present case.

- the entire show cause notice is time-barred, inasmuch as all the details of availment of relevant notifications, and credit were mentioned in their statutory returns and there was no suppression on their part with intent to evade payment of tax and therefore, the invocation of the extended period of limitation is illegal and unauthorized in the facts of the present case, in light of judicial decisions of the High Courts and the CESTAT referred to by them.
- Even in cases where certain information was not disclosed as the assessee was under a bonafide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by the Hon'ble Supreme Court in the landmark cases of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) ELI 195 (SC) and 1989 (40) ELT 276 (SC).
- the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture V/s CCE, Chandigarh reported in 2007 (216) ELT 177 (SC), considered what is "suppression", and it is held by the Hon'ble Supreme Court with regard to the proviso to Section 11 A of the Central Excise Act, 1944, that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty. In the case of Messrs Jaiprakash Industries Ltd. reported in 2002 (146) ELT 481 (SC) also, the Hon'ble Supreme Court has held that a bonafide doubt as to non-dutiability of goods was sufficient for the assessee to challenge the demand on the point of limitation. Thus, it is a totally settled legal position that extended period of limitation by invoking proviso to the main Section for demanding duty or tax beyond the normal period of limitation would be justified only when the assessee knew about the duty/tax liability and still however, he did not pay the

duty/tax and deliberately avoided such payment, and it was only in such a situation where suppression of facts on part of the assessee could be justifiably alleged by the Revenue. However, mere failure in giving correct information would not be a case where the Revenue can invoke extended period of limitation.

- The proposal to impose penalties under Section. 11AC(1)(c) of the Excise Act/Section 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(2)/15(3) of the Cenvat Credit Rules also deserves to be vacated as there is no justification in demand of duty leveled against them in this case. There is no cogent and reliable evidence in support of the charges leveled in the show cause notice and therefore, no penalty would be justified on the basis of charges so leveled, merely on assumptions and presumptions. There is no violation of any nature committed by them. They have also not committed breach of any Rules with an intent to evade payment of duty. In this view of the matter, no penalty could be justifiably imposed on them in law.
- Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT (J159) has held that penalty should not be imposed merely because it was lawful to do so.
- that there is no justification in the show cause notice and the proposals leveled therein, arid therefore, they have requested to withdraw this show cause notice in the interest of justice.

PERSONAL HEARING

37. The assessee was granted personal hearing on 22.09.2021 to present their case. Shri Amal P. Dave, Advocate and Shri Sudhanshu Bissa, Advocate appeared for personal hearing on behalf of the assessee, wherein, they reiterated the contention/ arguments raised by them in their written submission made earlier. They also referred to submission made vide their letter dated 18th September 2021, as well as made references to various case laws in support of their contention/averments.

DISCUSSION AND FINDINGS:

38. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 02.03.2020, documents submitted and oral submission made by the assessee during the personal hearing.

39. On going through the SCN, I find that the Commissioner, CGST Audit, has issued SCN on the basis of audit observations raised during the audit of records of the assessee, covering the period from January 2015 to June 2017. Based on the audit observations, the SCN proposes demand on four different issues. Accordingly, I would take up issues one by one as appearing/ figuring in the subject SCN for adjudication.

40. Short payment of Central Excise duty by misuse of benefit under Notfn No 43/2001-CE(NT) of 26.6.2001

40.1 I find that the SCN has alleged that the assessee had cleared their finished goods namely bulk drugs to M/s Intas Pharmaceuticals ('Intas') without payment of the duty of excise by availing the benefit of Notfn No 43/2001-CE(NT) of 26.6.2001, as amended. The Notfn No 43/2001-CE(NT) of 26.6.2001 says that the assessee needs to follow the provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 ("the Concessional Rules, 2001"), as replaced by the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and other Goods) Rules, 2016, made effective from 01.04.2016 vide Notfn No 20/2016-CE(NT) of 1.3.2016 ("the Concessional Rules, 2016"). It is observed in the SCN that during the period from 2016-17 to June 2017, the assessee had cleared bulk drugs valued at Rs 28,84,98,730/ to Intas without payment of duty claiming exemption of duty of Rs. 3,60,62,341/- under Notification 43/2001-CE(NT) without following the conditions/ provisions laid down thereunder.

40.2 I find that the main contention of the assessee in this regard, is that the Notification No.43/2001-CE(NT) dated 26.6.2001 grants exemption from payment of duty when the goods are to be exported.It was also contended that mere non submission of Form-I as stipulated, was a technicality when the exports as such by M/s. Intas were not being doubted and especially when they had shown substantial compliance to the Notification by proving that the goods were exported, by submitting Form ARE-2 and paper trails to substantiate their claim of export.

At this juncture, I would like to examine the legality of the issue involved in light of the provisions of Notification.. which is re-produced below.

"Notification: 43/2001-CE(NT) dated 26-06-2001

Inputs for manufacturing/processing of export goods — Procurement without payment of duty — Conditions, safeguards and procedures

In exercise of the powers conferred by of sub-rule (3) read with sub-rule (2) of rule 19 of the Central Excise (No. 2) Rules, 2001, the Central Board of Excise and Customs hereby notifies the conditions, safeguards and procedures for procurement of the excisable without payment of duty for the purpose of use in the manufacture or processing of export goods and their exportation out of India, to any country except Nepal and Bhutan, namely :-

(i) the manufacturer or the processor intending to avail benefit of this notification shall register himself under rule 9 of the Central Excise No. 2) Rules, 2001;

(ii) provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 shall be followed, mutatis mutandis;

(iii) the manufacturer or processor shall, while filing declaration under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, also declare ratio of input and output and rate of duty payable on excisable goods to be procured without payment of duty;

(iv) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall also verify the correctness of the ratio of input and output and other particulars mentioned in the declaration filed before commencement of export of such goods. He may, if necessary, call for samples of finished goods or inspect such goods in the factory of manufacture for verifying the declarations. He shall, after being satisfied about the correctness of declarations, countersign the application in the manner specified in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;

.....

vi) the goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure and the procedures specified in Ministry of Finance (Department of Revenue) notification No. ..../2001-Central Excise (N.T.), dated 26th June, 2001 or in notification No. ..../2001-Central Excise, dated 26th June. 2001 shall be followed."

40.3 Further, as per Rule 8 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016, which was inserted thereunder vide Notification No. 22/2016-CE(NT), references in any rule, notification, circular, instruction, standing order, trade notices or other order to the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 and any provision thereof shall be construed as references to the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016.

40.4 Further, Rule 19 of Central Excise Rules, 2002 allows export of the goods without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises subject to the conditions, safeguards and procedure as may be specified by the notification by the Board. The notification 43/2001-CE(NT) has been issued under Rule 19(2) and Rule 19(3) of Central Excise Rules 2002.

40.5 From the reading of notification 43/2001-CE(NT) dated 26.06.2021, it is evident that the notification notifies the conditions,

safeguards and procedures for procurement of the excisable goods without payment of duty for the purpose of use in the manufacture or processing of export goods and their exportation out of India. Accordingly, applicant manufacturer who intends to avail the benefit under this notification, has to apply to jurisdictional Assistant /Deputy Commissioner in Information in Form-1 (in duplicate) under; has to furnish bond or undertaking; has to declare input/output ratio and other particulars in Form–I or expected consumption in manufacturing process, before starting the export.

40.6 The notification (supra) also mandates the application of provisions of the Concessional Rules 2016*mutatis mutandis* for procurement of excisable goods without payment of excise duty, for manufacturing /processing of export goods. Accordingly, rules framed under the Concessional Rules 2016 have to be followed by the manufacturer who intends to avail of the benefit of procuring the excisable goods without payment of duty for manufacture or processing of goods for the purpose specified in that notification. The Rule 4 of the Concession Rules 2016, prescribes procedures for applicant manufacturer who intends to receive goods for specified purpose, which includes application to jurisdictional Assistant /Deputy Commissioner (JAC/JDC) in Information in Form -1 (in duplicate), one copy of which is to be forwarded to jurisdictional Range Superintendent of supplier manufacturer by JAC/JDC, furnishing of bond or undertaking, declaring of input/output ratio and other particulars in Form–I or expected consumption in manufacturing process, providing Form-I to supplier manufacturer duly authenticated by them, etc before starting of export. The Rule 5 of the Concessional Rules 2016 prescribes the procedures to be followed by the supplier manufacture of the subject goods. Accordingly to Rule 5, the supplier manufacturer shall avail the benefit of the notification on the basis of information (Form-I) received by the assessee i.e. the supplier manufacturer shall remove the subject goods without payment of duty to the applicant manufacturer on the basis of Form-I supplied by the applicant manufacturer.

40.7 I also find that Rule 4 of CER, 2002 provides that no excisable goods shall be removed without payment of duty unless otherwise provided.

*"**RULE 4. Duty payable on removal.** — (1) 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**:"*

From the above legal discussion, I find that for availing the benefits under Notification 43/2001-CE(NT) issued under Rule 19(2) and 19(3), the conditions, safeguards and procedures read with the Concessional Rules 2016, are required to be followed. Otherwise, the manufacturer is required to pay the applicable duty on the removal of excisable goods. I also observe that the purpose and object of the notification was to exempt the procurement goods, which were otherwise excisable to duty, and not to exempt or absolve the assessee or recipient from following the statutory requirements for manufacture of subject excisable goods. The notification was designed in such a manner to ensure an inseparable link between the supplier and recipient of the excisable goods for manufacture of specified final products.

40.8 I find that the SCN has alleged that the bulk drugs were cleared by the assessee to Intas without payment of duty under the Notification 43/2001-CE(NT) and without following the procedures as laid down in the Concessional Rules 2016 read with including without Form-I. The assessee in their defense reply has contended that the removal of the excisable goods without Form–I and without following conditions as laid down in the notification (supra) were mere procedural requirements, as the goods were ultimately exported by the recipient manufacturer. Thus, it transpires that the subject goods were cleared without Form–I and without following the conditions/ procedures laid down in the notification(supra) by the assessee as well as by Intas. I also find that the assessee itself has agreed with and has approved the allegation of SCN though they have contended that these were merely procedural violations/ infractions.

40.9 I find that the assessee has contended that the subject goods were exported ultimately by Intas (Recipient) and submitted the copy of declaration dated 20.08.2019 made by Intas, wherein Intas has declared that the subject goods were consumed/ used for manufacturing of export goods. They have also submitted copy of ARE-2 No. 416 dated 27.01.2016. However, I find that the declaration is not the prescribed or valid documents for claiming the exemption from duty and ARE-2 is not pertaining to the period covered under SCN.

40.10 From the above legal position, I find that the clearance of goods can be considered under Notification 43/2001-CE(NT), only when it is cleared on the basis of Form-I issued by the recipient. In the same way, procurement can not be considered under Notification (supra).

40.11 From the above discussion and documents available on records, it is amply clear that the assessee had cleared the bulk drugs to Intas without payment of duty, claiming the exemption from payment of duty under

notification no. 43/2001-CE(NT) dated 26.06.2021, without following the conditions, Safeguards and procedures as set out in the notification(supra) read with Concessional Rules 2016. I find that the goods manufactured at the supplier end (by the assessee) were excisable goods and if a party wants remission of duty, he has to follow certain pre-requisites, object of which is to see that the goods be not diverted or utilized for some other purpose, under the guise of the exemption notification. Detailed procedures have been laid down in the notification (supra) read with Concessional Rules 2016, so as to curb the diversion and misutilization of the subject goods which are otherwise excisable.

40.12 I find that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A person claiming exemption has to bring himself under the ambit of the notification. I also find that the mere plea that the subject goods were used in export goods by the recipient would not be sufficient to satisfy the "intended use" or the plea of "substantial compliance". A provision providing for an exemption, concession or exception, as the case may be has to be construed strictly. If exemption is available on complying with certain conditions, the conditions have to be complied with. In this regard, I rely on decision of the Supreme Court in the matter of Commissioner of C.Ex., New Delhi vs. Hari Chand Shri Gopal, reported in [2010(260)ELT3(SC)].

40.13 The similar views were also taken in the matter *Novopan India Ltd., Hyderabad* v. *Collector of Central Excise & Customs, Hyderabad* - (1994) Supp. 3 SCC 606 = 1994 (73) E.L.T. 769 (S.C.), *Rajasthan Spinning and Weaving Mills Limited, Bhilwara, Rajasthan* v. *Collector of Central Excise, Jaipur, Rajasthan* - (1995) 4 SCC 473 = 1995 (77) E.L.T. 474 (S.C.), *Commissioner of Central Excise* v. *M.P.V. & Engineering Industries* - (2003) 5 SCC 333 = 2003 (153) E.L.T. 485 (S.C.), *Commissioner of Central Excise, Trichy* v. *Rukmani Pakkwell Traders* - (2004) 11 SCC 801 = 2004 (165) E.L.T. 481 (S.C.), *Commissioner of Central Excise, Chandigarh-I* v. *Mahaan Dairies* - (2004) 11 SCC 798 = 2004 (166) E.L.T. 23 (S.C.), *Commissioner of Central Excise, Allahabad* v. *Ginni Filaments Ltd.* - (2005) 3 SCC 378 = 2005 (181) E.L.T. 145 (S.C.), *Commissioner of Customs (Imports), Mumbai* v. *Tullow India Operations Ltd.* - (2005) 13 SCC 789 = 2005 (189) E.L.T. 401 (S.C.), *Tata Iron & Steel Co. Ltd.* v. *State of Jharkhand and Ors.* - (2005) 4 SCC 272, *Sarabhai M. Chemicals* v. *Commissioner of Central Excise, Vadodara* - (2005) 2 SCC 168 = 2005 (179) E.L.T. 3 (S.C.), *State of Jharkhand and Others* v. *Tata Cummins Ltd. and Another* - (2006) 4 SCC 57, *A.P. Steel Re-Rolling Mill Ltd. etc.* v. *State of Kerala &Ors.* - (2007) 2 SCC 725, *State of Orissa and Others* v. *Tata Sponge Iron Ltd.* - (2007) 8 SCC 189,

Commissioner of Central Excise, Jaipur v. *Mewar Bartan Nirmal Udyog* - 2008 (231) E.L.T. 27 (S.C.), *State of Haryana* v.*Samtel India Ltd.* - 2008 (15) VST 176 (SC) and *G.P. Ceramics Pvt. Ltd.* v. *Commissioner, Trade Tax, Uttar Pradesh* - (2009) 2 SCC 90.

40.14 I find that the assessee has relied on various case laws in their defense, which are (i) M/s. Mangalore Chemicals and Fertilizers Ltd. reported at 1991 (55) ELI 437 (SC) (ii)M/s. Thermax Pvt. Ltd. reported at 1992 (61) ELT, 352 (SC) (iii) M/s. Wood Papers Ltd. reported at 1990 (47) ELT 500 (SC) (iv) Beach Candy Hospital and Research Centre reported at 2000 (118) ELT 271 (LB) (v) American Dry Fruits is reported at 1992 (61) ELT 709 (vi) Alfa Garments reported at 1996 (86) ELT 600 (vii) Sigma Pneumatics Pvt. Ltd. reported at 2017 (353) ELT 245 (viii) Chamunda Pharma Machinery P. Ltd. reported in 2009 (244) ELT 492 (ix) Birla VXL Ltd reported in 1998 (99) ELT 387 and Modern Process Printers 2006 (204) ELT 632(G.O.I). On going through these decisions, I find that the issue involved in the case of M/s. Manglore was a cash refund of sales tax paid on raw materials to new industry, the case dealt with different act, however, it is seen that this case also emphasizes on fulfillment of substantive conditions; as discussed in forgoing paras, in the present case, such conditions/ procedures have not been satisfied either by assessee or by recipient assessee. Hence, this case will not help the assessee. In case of M/s. Thermax, the goods were imported from outside the country, unlike the present case, where goods were manufactured and cleared without payment of duty without satisfying any condition of exemption notification by the assessee. In case of Wood Paper, I find that the court has dealt with issue of exemption when to be interpreted strictly or liberally and has also held that when the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play has to be given to it and it calls for a wider and liberal construction, I find that this case will not help the assessee, because as discussed earlier, the assessee has not brought themselves within the ambit of the exemption notification. For the same reasons, the case law of M/s. Breach Candy is not applicable. I find that the case law in respect of M/s. American and M/s. Alph are also not applicable as issue involved in this case was that the goods manufactured without licence and export was made by themselves, unlike the present case. In case of Sigma, the issue involved was that goods were cleared to Merchant Exporter/ EOUs and export was not disputed by the department, whereas issue involved in the case on hand is that the goods were cleared form the asessee's premises to another manufacturer without following the

procedures/conditions set out in the notification. The issue involved in the case of M/s. Chamunda was delay in export and thereby denial of the refund claim, which is not the case on hand. I also find that the issue involved in Birla VXL and Modern Process pertains to refund / rebate of duty paid on export goods and this issue is not akin to the present case.

40.15 I also find that plea of the assessee as to applicability of the Notification No 12/2012-CE dated 17.3.2012, as amended (Sr No 108), it is seen that the exemption of duty to the Bulk Drugs cleared was again subject to condition 2 to the same notification. The condition clearly specified that the procedure laid down in the Concessional Rules 2001 had to be followed. It was observed that the assessee had not followed the provisions of Concessional Rules 2001 and Concessional Rules 2016 and therefore, the audit had observed that the argument made was not justified. I don't find any force in the arguments put forth by the assessee in view of the above discussion and legal position.

40.16 Based on the above facts and circumstances, legal precedents, procedures and discussion, I hold that the said assessee has wrongly and illegally availed exemption under Noti. No. 43/2001-CE(NT) dated 26.06.2001, as amended, in respect of the excisable goods cleared to Intas, without following the mandatory conditions and procedural requirements of documentations and declarations prescribed thereunder, and hence the demand of Central excised duty of Rs. 3,60,62,341/- under the subject notice is sustainable. I also find Section 11AA of Section of Central Excise Act mandates that any person who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on the demand of duty of Rs. 3,60,62,341/-.

40.17. From the facts and discussion aforementioned, I find that the assessee has shown the clearance of the subject goods under Notification No. 43/2001-CE(NT) in their monthly returns, without observing the conditions, safeguard and procedures set out therein. I also find that the assessee had not made clearance on the basis of Form-1 as envisaged under Concessional Rules 2016, which was applicable *mutatis mutandis* to the notification ibid. The assessee in his reply dated 19.11.2019 to audit, has admitted the fact of non following the procedures of Concessional Rules after 2015-16. This fact was knowingly suppressed from the department. I therefore find that the assessee has mis-stated and suppressed the materials fact from the department, which displays the intention of the assessee to evade the payment of central excise duty. Moreover, the government has from the very beginning placed full trust

on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence are in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise law. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee is tantamount as willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that the such facts of contravention or non observation of conditions/procedures and non payment of excise duty, as discussed earlier, on the part of the assessee only came to the notice of the department when the audit was initiated by the department. 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 v CST Chennai,* it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under provisions of Section 11A(4) of the Central Excise Act, 1944, by invoking the extended period of time of 5 years, and demand of Central Excise duty of Rs. 3,60,62,341/- along with applicable interest under Section 11AA of Central Excise Act, is justified. And for the same reasons, the said assessee is also liable for penal action under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 25 of the Central Excise Rules, 2002.

40.18. I also find that the assessee has contended the invocation of extended period of five years on the ground that there was no suppression or intent to evade the payment of tax or duty. They have relied on the Hon'ble Supreme Court decisions in case of (i) Padmini Products- 1989 (43) ELI 195 (SC) andChemphar Drugs & Liniments reported in -1989 (40) ELT 276 (SC) (ii)Continental Foundation Jt. Venture V/s CCE, Chandigarh reported in 2007 (216) ELT 177 (SC) (iii) Jaiprakash Industries Ltd. reported in 2002 (146) ELT 481 (SC)(iv) Hindustan Steel Limited reported in 1978 ELT (J159). On going through these judgements, I find these decisions not applicable to the instant case, as the suppression of facts and intention to evade duty by the assessee, have been clearly brought out in the SCN as well as in foregoing paras.

41. Short payment of the duty of excise by misusing the benefit of Notfn. No 10/1997-CE of 1.3.1997, as amended.

41.1 I find that the SCN has alleged that assessee had cleared their finished goods namely bulk drugs to various customers, without payment of the duty of excise, by availing the benefit of Notfn No 10/1997-CE of 1.3.1997, as amended by Notfn No 16/2007-CE of 1.3.2007. The benefit of exemption from the payment of duty was subject to the satisfaction of the conditions. It was also alleged that they had not shown any documents evidencing the compliance of any of the procedures laid down, in order to avail the exemption benefit. The SCN stated that the assessee under their reply dated 12.8.2019 had produced sample copies of buyer's registration with the Department of Scientific and Industrial Research but, they had not produced the accompanying documents to show the clearances were made to the Institutions detailed in the notification and had not substantiated by evidence that they had followed the requisite procedures laid down in the notifications. Accordingly, it was alleged that the benefit of exemption under Noti. 10/1997-CE dated was wrongly availed by the assessee. It was seen that the assessee had cleared bulk drugs valued at Rs 47,00,000/- to various customers, as detailed under, without payment of central excise duty. Therefore, the demand of Central Excise duty Rs. 5,87,500/- involved in such clearance was made under SCN

Clearance made to various party under Notification No. 10/97-CE dt. 01.03.1997

Sr. No.	Invoice No. and date	Name of Party	Product (Bulk Drug)	Qty.	Assessable Value
1	20/17.04.2017	BDR Pharmaceuticals Intl. P. Ltd.	Anidulafungin	50 gm	900000
2	66/17.05.2017	Orbicular Pharma Tech P Ltd.	Pimecrolimus	300 gm	1500000
3	385/31.08.2016	Orbicular Pharma Tech P Ltd.	Pimecrolimus	300 gm	1500000
4	639/25.11.2016	Sava Healthcare Ltd.	Milbemycin Oxide	500 gm	800000
Total					4700000

41.2 I find that the assessee in defense reply forwarded vide letter dated 02.03..2020 has stated that the clearances were made to three parties viz. M/s. BDR Pharmaceuticals, M/s. Obicular Pharma and M/s. Sava Healthcare Ltd which were registered with the department of Scientific and Industrial Research and that such parties had specifically asked them to supply them bulk drugs, which had to be used by them for scientific and research purposes. They have further stated that they were having all the documents for substantiating their claim and have stated that copy of the same have been enclosed with the reply. I also find that the assessee has submitted the same set of documents on 21.09.2021.

41.3 Having gone through the documents, I find that the assessee have enclosed the copy of all the aforementioned invoices; the copy of Certificate of Registration issued by the Department of Scientific and Industrial Research (i) No. TU/IV-RD/3737/2016 dated 01.04.2016 issued to M/s. BDR Pharmaceuticals Intl. P Ltd. (ii) No. TU/IV-RD/3338/2015 dated 01.04.2016 issued to M/s. Orbicular Pharma Tech P Ltd. (multiple copies of the same certificate have been submitted); and Certificate dated 15.05.2017 of M/s. M/s. Orbicular Pharma Tech P Ltd. (multiple copies) and Certificate dated 15.04.2017, issued in terms of Condition 1(ii) of Sr. No. 1 or 2 of Notification 10/97-CE dated 01.03.1997.

41.4 A plain reading of the Notification No.10/91-CE, make it clear that it is conditional notification. It is seen that the conditions specified against Sr.No. 1 and 2 of notification stipulates the registration of Research Institutes(other than a Hospital) with Department of Scientific and Industrial Research and Head of such institutes shall give a certificate in each case of clearance of goods, certifying that the said goods are essential for research purposes and will be used for the stated purpose only. I find these conditions are substantive in nature and must be satisfied scrupulously. Relying again on the decisions of Hon'ble Supreme Court *in re* Commissioner of C.Ex., New Delhi vs. Hari Chand Shri Gopal, reported in [2010(260)ELT3(SC)], I find that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession and has to bring himself under the ambit of the notification.

41.5 Having considered the documents submitted by the assessee, I find that only two cases of clearance appearing at Sr.No. 1 and 2 of the above table are covered by the documents. In respect of Sr. No. 3, the certificate of the institutes has not been submitted by the assessee. In respect of M/s. Sava Health Care Ltd (Sr.No. 4), the assessee has not produced the Registration Certificate with Department of Scientific and Industrial Research and Certificate issued by the Institutes for essentiality as per the condition of the notification. In view of these material facts on hand, I find that the conditions of the Notification No. 10/97-CE are satisfied in respect of case 1 and 2 of the above table, and in respect of case 3 and 4, the conditions are not satisfied. I therefore, partly disallow the demand in respect of case at Sr. No. 1 and 2 of the table above and hold the demand in respect of cases at Sr. No. 3 and 4 of the table as justified. I hold that the assessee is liable to pay the central excise duty on bulk drugs cleared amounting to Rs. 23,00,000/- out of total clearance of Rs. 47,00,000/-, without payment of duty under the notification ibid. The Central excise duty of Rs. 2,87,500/- out of total demand of Rs. 5,87,500/- is

thus, liable to be paid by the assessee under the provisions of Section 11A(4) of Central Excise Act. I also hold that the assessee is not liable to pay the Central Excise duty of Rs. 3,00,,000/- out of total demand of Rs. 5,87,500/-. I also find Section 11AA of Central Excise Act mandates that any person who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on the demand of duty of Rs. 2,87,500/-.

41.6 As discussed aforementioned, in the regime of liberalization and self assessment, full trust is reposed on the assessee by the government for compliance of statutory provisions. All these create absolute liability on the assessee when any provisions of statute is contravened. Such contravention on the part of the assessee tantamount to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that the such facts of contravention or non observation of conditions/procedures and nonpayment of excise duty, as discussed above, on the part of the assessee only came to the notice of the department when the audit was initiated by the department. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under provisions of Section 11A(4) of the Central Excise Act, 1944, by invoking the extended period of time of 5 years, and demand of Central Excise duty of Rs. 2,87,500/- along with applicable interest under Section 11AA of Central Excise Act, is justified. And for the same reasons, the said assessee is also liable for penal action under the provisions of Section 11AC(1)(c) of the Central Excise Act read with the provisions of Rule 25 of the Central Excise Rules, 2002.

42. Non reversal of cenvat credit on inputs involved in control/quality control/batch samples

42.1 In this regard, I find that the SCN alleged that the assessee had taken and preserved for quality control samples and batch samples of their final products namely bulk drugs till their expiry period, under existing laws concerning drugs and pharmaceuticals. Subsequently, the samples had been destroyed by the assessee after their expiry period. Thus, it was alleged that since the inputs involved in the samples were not used in the manufacture of finished goods cleared from the factory, cenvat credit was required to be reversed. It was observed as a contravention of the provisions of Rule 2(k) of the Cenvat Rules read with the provisions of Rule 3(1) of the Cenvat Rules. Accordingly, the demand of the cenvat credit of Rs 6,66,172/- involved in the inputs was raised.

42.3 I find that the issue for determination before me is whether the assessee is eligible to take cenvat credit on inputs used in manufacture of quality control samples or otherwise; the subject samples were not cleared but were subsequently destroyed by the assessee.

42.4 The assessee in his defense reply dated 02.03.2020 has contended that the such issue has already been decided in number of cases by the Hon'ble CESTAT/ High Court. They have relied on decision of the tribunal in case of (i) M/s. Biddle sawyer Ltd. reported at 2004 (168) ELT 119 (ii) M/s. Krebs Biochemicals and Industries Ltd. reported, at 2007 (220) ELT 170 (iii) M/s. Timex Watches reported at 2016 (343) ELT 677 (iv) the Hon'ble Allahabad High Court in the case of M/s. Timex Watches Ltd. reported at 2018 (10) GSTL 425.

42.5 On going through the decision relied upon by the assessee, I observe that the issue involved in these case is different than the issue involved in the case in hand. I find that issue in the matter of M/s. Biddle sawyer Ltd. and M/s. Krebs Biochemicals and Industries Ltd dealt with the quantity used in testing of RM, which is not the case here; and in case of M/s. Timex Watches Ltd., issue pertained to the period prior to Cenvat Credit Rules 2004 coming into existence. Since issue involved are not akin to the issue involved in the present case, I find these decisions to be not applicable in the subject case.

42.6 In order to have more clarity on the issue, I draw support from the CBEC's Excise Manual of Supplementary Instructions 2005 dated 17.05.2005. Chapter 11 contains the instructions and guideline with respect to samples. The relevant excerpt of instructions/ guidelines are reproduced as under:

"2 Categorization of samples.

2.1 The sample can be categorized, as follow:

(i) Trade samples sent to customers for trail; or trade samples for free distribution to public/ ultimate consumer;

(ii) Samples for test purposes;

.....

3.2 Samples for test purposes

3.2.1 The samples of this category will generally include:-

(i) Samples drawn by in house laboratory for testing quality and adherence to product specifications,.....

.....

(iv).....

3.2.2. The assessee is required to maintain a proper account of receipts and the utilization of samples in the test, in the laboratory. The removal shall be in the same manner as the good are removed for home consumption, the manufacture shall prepare invoice under Rule 11 of the said Rules and make issue entries for goods (sample) in the Daily Stock Account. Appropriate duty shall be paid by the assessee on these sample before their removal for their test purposes unless otherwise exempted by a duty exemption notification.

3.3 Samples for other purposes

3.3.1 Where samples are required for the purpose specified at (iii), (iv) and (v) of paragraph 2.1 above, the procedure specified at paragraph 3.2 shall be followed. However, it is clarified that when a manufacturer preserves the sample of their products for some period for investigation or complaints, if any, no duty should be charged on these samples considering that the goods remain within the factory. Duty shall be charged, unless exempted by a notification, once the samples are cleared form the factory. If at any time the manufacturer desires to destroy these samples, procedure specified in Rule 21 of the said Rules shall be followed.

42.7 Plain reading of the above instructions makes it clear that even in this case Rule 21 is applicable to the present case, as destruction of the samples have taken place after the expiry date of the samples. Accordingly, the assessee was supposed to seek remission of the duty on destruction of the sample and to follow the procedure. I find that it is not forthcoming from the records available whether the assessee had sought the remission of duty on the samples while destroying or otherwise.

42.8 I find that till insertion of new Rule 3(5)(c) to Cenvat Credit Rules 2004, vide Notification 33/2007-CE(NT) dated 07.09.2007, there was no specific provision with regard to reversal of cenvat in case remission of duty was sought or destruction of RM/Finished goods was to be done. Such issues were being dealt/governed by the instructions/ guideiine issued by the department. Now, new Rule inserted specifically provides for reversal of cenvat credit under such situations, attributable to inputs contained in the manufactured goods.

42.9 In this regard, I would like to refer to the CBEC's (Board) Circular No. 907/27/2009-CX dated 07.12.2009 wherein Board had clarified the matter. For reference, I would reproduce the relevant texts of para 2 of the circular as follows.

"As far as finished goods are concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability

to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods."

42.10 I would further like to refer to the CBEC's (Board) Circular No. 930/20/2010-CX dated 09.07.2010, wherein the Board had again while dealing with similar matter, clarified the matter. For reference, I would reproduce the relevant texts of para 2 of the circular as follows.

"As per the provisions of Rule 21 of Central Excise Rules, 2002, remission of duty before removal can be claimed on any goods lost or destroyed by natural causes or unavoidable accident, claimed by manufacturer to be unfit for consumption or marketing. The said remission is granted subject to the condition of reversal of cenvat credit taken on inputs used in the final product, as per the Circular No. 800/33/2004-CX dated 01-10-2004. Rule 3(5C) was also inserted in CENVAT Credit Rules, 2004, w.e.f 07-09-07, to specifically provide for the same.

42.11 According to the above instructions/ circulars, I find that this case is squarely covered under Rule 21 of Central Excise Rules, 2002. From the records available, it is not forthcoming whether the assessee while destroying the samples, had sought remission of the duty involved in the samples or otherwise. I find that even if the assessee did not apply for remission of duty in respect of goods destroyed, Rule 3(5)(C) of the Cenvat Credit Rules 2004 shall be applicable. In this regard, I rely on the decision of the tribunal in respect of M/s. INTAS PHARMACEUTICALS LTD vs. CCE,, A'bad-II reported in [2017 (347) E.L.T. 330 (Tri. - Ahmd.)], wherein the tribunal held that *Amended provisions of Rule 3(5C) of Cenvat Credit Rules, 2004 shall applicable even if assessee not applied for remission of duty in respect of goods destroyed.* The relevant text is reproroduced as follows:

5. I find that undisputedly the appellant had destroyed the finished goods viz. pharmaceutical products being unfit for human consumption. The learned Commissioner (Appeals), after detailed analysis of the facts, observed that the input credit cannot be refunded to the appellant. The findings of the learned Commissioner (Appeals) are as follows :-

> *"6. I find that the first contention of the assessee is that the expired medicines are classifiable under chapter sub-heading 3006 92 00 as waste pharmaceuticals therefore, they can remove the same without getting remission permission and the question of reversal of Cenvat credit does not arise and hence Notification No. 33/2007-C.E. (N.T.), dated 7-9-2007 is not applicable to their case. I find that the provisions of Rule 21 of the Central Excise*

Rules, 2002 is attracted in the present case as the appellant by their own admission has destroyed the waste pharmaceutical, same being expired medicine unfit for consumption of human being and therefore, the Appellant were required to have applied for the remission permission from the jurisdictional Central Excise authorities. Therefore, as per the remission permission granted by the jurisdictional authorities, the appellant should have remitted the duty payable on such goods. Therefore, I find that by not applying for remission of duty the appellant has contravened the provisions of Rule 21 of Central Excise Rules, 2002.

42.12 I also find that the tribunal affirmed the same views in the case of INTAS PHARMACEUTICALS LTD Versus COMMISSIONER OF C. EX., AHMEDABAD-II reported in 2018 (360) E.L.T. 141 (Tri. - Ahmd.).

I also draw support from the decision of Hon'ble Hight Court of the Gujarat in the matter of Shree Ram Multi -Tech Ltd vs. CCE & Customs reported in [2016 (331) E.L.T. 348 (Guj.)], where in the High Court referring to its earlier Larger Bench decision held *"that prior to insertion of Rule 3(5C) ibid w.e.f. 7-9-2007, no provision existed for reversal of credit in duty remission cases, but thereafter reversal of credit required in terms of specific legislative mandate".*

42.13 It is not disputed that the sample of manufactured goods/ final products were drawn and preserved, the same were not cleared to the market but were destroyed subsequently by the assessee after expiry date of the samples; and it is also inferred that no excise duty was paid on such destruction. Therefore, from the above legal position and as discussed at length, the reversal of the Cenvat Credit as demanded in the SCN was required to be made by the assessee. I therefore hold that by not reversing the Cenvat Credit of Rs. 6,66,172/-, the assessee has wrongly availed the Cenvat Credit attributable to the inputs contained in the subject samples and such availment of Cenvat Credit is in contravention of Rule 3(1) of the Cenvat Credit Rules, 2004. Therefore, I hold the demand of Cenvat Credit amounting to Rs. 6,66,172/- as sustainable. The assessee is, thus, liable to pay the same under the provisions of Section 11A(4) of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules. I also find that the provisions of Section 11AA of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules mandates that any person who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on Cenvat Credit of Rs. 6,66,172/-.

42.14 As discussed aforementioned, in the regime of liberalization and self assessment, full trust is reposed on the assessee by the government for

compliance of statutory provisions. All these create absolute liability on the assessee, when any provisions of statute is contravened. Such contravention on the part of the assessee tantamount to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such facts of contravention or non observation of conditions/procedures and non reversal of Cenvat Credit, as discussed above, on the part of the assessee only came to the notice of the department when the audit was initiated by the department. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under provisions of Section 11A(4) of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules, by invoking the extended period of time of 5 years, and demand of Cenvat credit amounting Rs. 6,66,172/- along with applicable interest under Section 11AA of Central Excise Act, is justified. And for the same reasons, the said assessee is also liable for penal action under the provisions of Section 11AC(1)(c) of the Central Excise Act read with the provisions of Rule 15(2) of the CenvatRules andthe provisions of Rule 25 of the Central Excise Rules, 2002.

43. Wrong availment of cenvat credit on Rent-a-cab services

43.1 On this issue, I find that the SCN has alleged that the assessee had availed cenvat credit amounting to Rs 6,21,388/- on the services provided by M/s AS Travelling Agency relating to Rent-a-Cab Services. It was observed in the SCN that assessee was not eligible for the cenvat credit of service tax paid on Rent-a-Cab/ renting of motor vehicle for the subject service being in the exclusion clause of Rule 2(l)(B) of the Cenvat Credit Rules, 2004. Thus, it was alleged that the subject service was not input service for the assessee and was in contravention of Rule 2(l) of the Cenvat Credit Rules, 2004 read with the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004. The SCN has stated that the assessee has paid the Cenvat Credit amounting to Rs 6,21,388/- under protest, therefore, the amount paid should be recovered and appropriated by vacating the protest.

43.2 I find that the issue for determination with me is that whether the assessee is eligible to take cenvat credit on service tax paid on Rent-a-Cab/ renting of motor vehicle service or otherwise.

43.4 In find that the assessee in his defense has contended that they had been mentioning such availment in their statutory returns as well as in their Cenvat register They understand that such service utilized by them in relation to providing taxable output service was in the nature of input service, and such service utilized by them for their employees who had worked on

Projects on which they had paid service tax was legally available to them. They have further contended that the services provided by the Operators by way of renting of their motor vehicles had been utilized by them for transporting engineers etc. for executing the projects and related works. Thus, the services provided by the operators using their own vehicles do not relate to a motor vehicle which was not a capital goods; but the services provided by the operators are input services used by them for execution of the projects and related works, which is their output service. Therefore the services provided by way of renting of a motor vehicle by Operators relate to providing output services by them, and therefore Rent a Cab service in such cases was undoubtedly an input service used by a provider of output service for providing an output service as specifically referred to in Rule 2(l) (i) of the Cenvat Credit Rules. Their action of taking and utilizing Cenvat credit of Rent a Cab Service was therefore perfectly legal and valid. Rent a Cab service utilized by them was not a service in so far as it was related to a motor vehicle which was not a capital goods. This exclusion is therefore not applicable in their case.

43.5 I find that the contention of the assessee is not tenable in view of the facts that the service provided by way of renting of a motor vehicle, have been specifically excluded from the definition of "Input service" as per exclusion clause (B) under clause (l) of Rule 2 of the Cenvat Credit Rules 2004, which defines "input service". The definition of "input service" available in Rule 2(l) of Cenvat Credit Rules, 2004 is reproduced as follows:

"[(l) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

***[but excludes],** -*

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods"

43.6 From the above definition, it is quite clear that exclusion clause has overriding effect over the scope of the definition, whatever included in the exclusion clause gets excluded from the scope of 'means' and 'inclusive' parts of the definition of input service. In view of this, the contention of use of service for providing output service as well as for movement of their staff to project sites, make them eligible to cenvat credit on service tax paid on *services provided by way of renting of a motor vehicle,* is not sustainable in law. I also find that the contention of the assessee that the exclusion clause relates to the operators who provide the output service by way of renting of the motor vehicles is not applicable to their case, is not sustainable in view of the facts that the definition does not provide or stipulates such distinction.

43.7 In their support, the assessee has relied on the Tribunal's decision in respect of M/s. Marvel Vinyls Ltd. reported in 2017 (49) STR 424 (Ti.-Del.) wherein the tribunal held *that the exclusion is only in respect of that motor vehicle which is not a capital goods. However, he has not extended the benefit to the assessee by observing that the same is not a capital goods for the appellant. A person who is receiving the input services of renting of immovable property, can never avail Cenvat credit of duty paid on the motor vehicles and as such motor vehicle can never be a capital good to the recipient of the said services. The motor vehicle will always be a capital goods or otherwise for the person who is providing the services. For service provider falling under the category of renting of motor vehicle the motor vehicle would always be a capital goods. As such the expression - "which is not a capital goods appearing in the said exclusion clause would require examination vis-à-vis the service provider and not vis-à-vis the services recipient." As such the interpretation of the lower authorities that motor vehicle are not capital goods for the services recipient cannot be appreciated inasmuch as motor vehicles are admittedly capital goods in terms of the Rule 2(A) of Cenvat Credit Rules.* In this context, I find that that prior to the amendment w.e.f., 1.4.2011, Rent-a-cab services could be covered under 'input service' as per the definition as it existed during the period up to 31.03.2011.However, w.e.f., 1.4.2011, Notification No. 3/2011-C.E. (N.T.), dated 1-3-2011 has substituted the definition of 'input service', wherein clause (B) of the definition would be applicable to the Rent-a-cab services which initially read as follows:

"(B) Specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods or;"

The services which are mentioned in exclusion clause (B) are as follows:

- Rent-a-Cab operator services (o)
- Supply of tangible goods (zzzzj)

Consequent to amendment of clause (B), it appears that 'Rent-a-cab services' falling under sub-clause (o) would get excluded only when the motor vehicle is not a 'capital good'.

Subsequently, the above referred sub-clause (B) was substituted by sub clause (B) and (BA) vide Notification No.18/2012-CE (NT) dated17.03.2012. Further these two sub-clauses were amended vide NotificationNo.28/2012-CE (NT) dated 20.06.2012 w.e.f., 1.7.2012 and the exclusion relating to 'cab services' contained in sub-clause (B) reads as follows:

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

It is clear from the above that the exclusion of 'cab services' has been retained even after the above referred amendments and it appears from the last amendment w.e.f., 1.7.2012 that the intention of this clause is to exclude 'renting of motor vehicle' in so far as they relate to a motor vehicle which is not a capital goods.

For understanding this, it is relevant to examine the meaning of 'capital goods' as per Rule 2(a) sub-clauses (B) and (C) which read as follows:

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

(i) providing an output service of renting of such motor vehicle; or
(ii) transportation of inputs and capital goods used for providing an output service; or
(iii) providing an output service of courier agency;

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -

(i) transportation of passengers; or
(ii) renting of such motor vehicle; or
(iii) imparting motor driving skills;

43.8 I observe that the credit on 'renting of motor vehicle' would be available only to those service providers who are entitled to avail CENVAT credit on motor vehicles as capital goods. All other assessee who are not qualified to avail credit on motor vehicle as capital goods are not entitled to avail input service credit on 'renting of motor vehicle'. It is seen that the CENVAT credit on 'renting of motor vehicles' has been restricted to all except the 'service provider' who have got the motor vehicle registered in their name and using the vehicle for transportation of passengers or renting of motor vehicle or imparting motor driving skills. Therefore, in the case of manufacturers and services providers (neither being cab operator nor having motor vehicles registered in their name) they are not eligible to avail CENVAT

credit of service tax paid on transportation services received from cab operators or tour operators. Hence, the Cab operators / Tour operators would be eligible for credit on 'renting of motor vehicle' provided the said vehicles are registered in their own name and they are providing the above mentioned services. In this regard, I place reliance on the tribunal's decision *in re M/s Bombay Dying And Manufacturing Ltd. [2018 (363) ELT 1107 (Tri-Mumbai)], M/s. Kalyani Maxion Wheels Ltd. [2019 (366) ELT 918 (Tri-Mumbai), and M/s Herrenknecht India P Ltd. [2019 (28) GSTL 243 (tri-Chennai)]* wherein the tribunal has disallowed the cenvat credit in respect of Rent-A-Cab service pertaining to the period after 01.04.2011. As regard meaning of 'inclusion' and 'exclusion', I draw support from the decision taken by the tribunal in re M/s. HEAVY ENGINEERING CORPORATION LTD[1990 (49) E.L.T. 531 (Tribunal -Cal), wherein the tribunal has held in para 7 that *what are excluded from the scope of an expression in a legal provision by such an exclusion clause are only those items mentioned specifically in the exclusion clause. This cannot be stretched by analogy to other items not so specifically mentioned, unlike an inclusion clause where the items covered by the expression would not be confined to those so included. The items included are illustrative and not exhaustive. Contrarily, the items excluded are exhaustive and not illustrative.* In view of the above decisions and legal position, I find that the case law in case of Marvel is not applicable in the present case.

43.9 I also find that the assessee has also relied on the Hon'ble Gujarat HC's order in the case of M/s. Dynamic Industries reported in. 2014 (35) S.T.R. 674 (Guj.). On going through the decision, I find that the facts and circumstance of the case are different than the case on hand. The period covered is prior to 01.04.2011 i.e. before the amendment in definition of 'Input service'. Further, the case deals with the inclusive part of the definition.

43.10 In their support, the assessee have further cited the case laws of (i) The Hon'ble Gujarat High Court in the case of Transpek Industries Lt. reported at 2018 (12) GSTL 29 (ii) Hon'ble Karnataka High Court in the case of Stanzen Toyotetsu India Pvt. Ltd. reported at 2011 (23) STR 444 (iii) the Rajasthan High Court in Mangam Cement Ltd. reported at 2018 (9) GSTL 17 (iv) and the Hon'ble Allahabad High Court in the case of HCL Technologies. reported at 2015 (37) STR 716 wherein it was held that Rent-a-cab services availed for travel of emloyees of factory in connection with manufacturing activity business are eligible to input service credit under Rule 2(l) of Cenvat Credit Rules 2004. The decision in respect of M/s. Transpek has been relied on the decisions of High Court of Gujarat in the case of M/s. Essar Oil Limited [2016(41) STR 389 (Guj). The decision in respect of M/s. HCL and M/s.

Manglam Cement have relied on the decision of M/s. Stanzen (ibid), I find that the period covered under the decisions pertains to the period before substitution of definition of 'Input service' under Rule 2(l) of Cenvat Credit Rules 2004,, with effect from 01.04.2011. After Substitution vide notification No. 03/2011-CE(NT) dated 01.03.2011 (effective from 01.04.2011), Rule 2(l) of Cenvat Credit Rules 2004, the service of 'renting of motor vehicle' were specifically excluded under sub clause in above paras. Hence, these decision relied upon by the assessee are not applicable to the present case on hand.

43.11 I find that the assessee has also forwarded the arguments on the ground of limitations and stated that that when an assessee declares all the relevant details inside the statutory returns and Cenvat register, then suppression with an intent to evade the payment of tax cannot be alleged on the assessee and resultantly the extended period of limitation can not be invoked. In this regard they have relied on the decisions of the tribunal in the matter of (i) M/s. Dynamic Industries Ltd. reported at 2014 (307) ELT 15 (ii) M/s. Ultratech Cement 2014 (302) ELT 334 (iii) M/s Sterlite Telelink reported at 2014 (312) ELT 353 and (iv) M/s. Musaddilal Projects Ltd. reported at 2017 (4) GSTL 401.On going through the decisions and facts and circumstances brought out in the SCN, I find that the SCN has clearly pointed out the suppression and intention of the assessee. I find that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. I find that in the era of self assessment full trust is reposed on the assessee by the government for compliance of statutory provisions. All these create absolute liability on the assessee, when any provisions of statute is contravened. Such contravention on the part of the assessee tantamount to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. I also find that the monthly returns are filed online and no other documents are required to be filed alongwith the returns. The assessee does not have to submit the description of the service/goods on which they have availed the credit. The responsibility of appropriate duty/tax payment as well as availment of eligible credit has been cast upon the assessee by law. In view of this discussion, the decisions relied upon by the assessee are therefore not applicable.

43.12 Therefore, from the above discussion and findings as well as legal position, I find that Cenvat Credit of Rs. 6,21,388/- on Rent-a-cab service/renting of motor vehicle is not admissible to the assessee for not being the input service for them. I therefore, hold that ,assessee has wrongly availed the cenvat credit of Rs. 6,21,388/- on Rent-a-cab service/ renting of motor vehicle, which is in contravention of Rule 3(1) / read with Rule 2(l) of the

Cenvat Credit Rules, 2004. Therefore, I hold that the demand of Cenvat Credit amounting to Rs. 6,21,388/- is sustained. The assessee is, thus, liable to pay the same under the proviso to Section 73(1) of the Finance Act, 1994/ Section 11A(4) of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules. I also find that the proviso to Section 75 of the Finance Act, 1994/ Section 11AA of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules mandates that any person who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the appropriate rate. I thus hold that the assessee is also liable to pay the interest on Cenvat Credit of Rs. 6,21,388/-. It is evident that the assessee has wrongly availed the cenvat credit on Rent-a-cab service/ renting of motor vehicle though they were not eligible to avail the credit. Further, Rule 9(5) and 9(6) of the Cenvat Credit Rules stipulates that the burden of proof of admissibility of cenvat credit shall lie upon the manufacturer or service provider who takes the credit. Availing of the inadmissible credit by the assessee were never disclosed before the department by the assessee. They suppressed the material facts of availing inadmissible credit from the department. Such facts of contravention, as discussed above, on the part of the assessee only came to the notice of the department when the audit was initiated by the department. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under the proviso to Section 73(1) of the Finance Act,1994/Section 11A(4) of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules, by invoking the extended period of time of 5 years. I hold that the demand of Cenvat credit amounting Rs. 6,21,388/- along with applicable interest under Section 75 of the Finance Act, 1944/ Section 11AA of Central Excise Act, is justified. And for the same reasons, the said assessee is also liable for penal action under the provisions of Section 78 of the Finance Act,, 1944/Section 11AC(1)(c) of the Central Excise Act read with the provisions of Rule 15(2)/15(3) of the Cenvat Rules and the provisions of Rule 25 of the Central Excise Rules, 2002. In view of the above, I hold that the reversal of Cenvat Credit of Rs. 6,21,388/- is thus liable to be appropriated by vacating the protest lodged by the assessee for not being sustainable.

44. In view of my above findings, I pass the following order.

ORDER

(i) I Confirm the demand and order recovery of Central excise duty amounting to Rs 3,60,62,341/- (Rupees Three crores sixty lacs sixty two thousand three hundred forty one)(as per Annexure 'A' to the notice) for

the clearance of bulk drugs to Intas, under the provisions of Section 11A(4) of the Excise Act;

(ii) I Confirm the demand and order recovery of the central excise duty of Rs. 2,87,500/- (Rupees Two Lacs Eighty Seven thousand and Five hundred only) and drop the demand of Rs. 3,00,000/- (Three Lacs) out of total demand of Rs 5,87,500/- (Rupees Five lac eighty seven thousand five hundred only)(as per Annexure 'B' to the notice) as per Para 41.5 above, for the clearance of bulk drugs to various customers, under the provisions of Section 11A(4) of the Excise Act;

(iii) I order to recover the Interest on the demand at (i) and (ii) above from the assessee under the provisions of Section 11AA of the Excise Act.

(iv) I impose penalty of Rs. Rs 3,60,62,341/- (Rupees Three crores sixty lacs sixty two thousand three hundred forty one) and Rs. 2,87,500/- (Rupees Two Lakh Eighty Seven thousand and Five hundred only)on the assessee, under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 25 of the Excise Rules, 2002in respect of demand at (i) and (ii) above;

(v) I disallow the cenvat credit amounting to Rs 6,66,172/- (Rupees Six lacs sixty six thousand one hundred seventy two only) (Annexure C to the notice) and order to recover the same from the assessee, under the provisions of Section 11A(4) of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules;

(vi) I order to recover the Interest from the assessee, under the provisions of Section 11AA of the Excise Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the proposed recovery at (v) above;

(vii) I impose the penalty of Rs. Rs 6,66,172/- (Rupees Six lacs sixty six thousand one hundred seventy two only) on the assessee, under the provisions of Section 11AC(1)(c) of the Excise Act read with the provisions of Rule 15(2) of the Cenvat Rules and Rule 25 of the Excise Rules;

(viii) I disallow the cenvat credit amounting to Rs 6,21,388/- (Rupees Six lacs twenty one thousand three hundred eighty eight only) (Annexure D to the notice) and order to recover from the assessee, under the provisions of Section 11A(4) of the Excise Act/proviso to Section 73(1) of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. As the assessee have paid the total amount of Rs 6,21,388/- under protest, I hereby order to appropriate the said amount of Rs 6,21,388/- against the demand;

(ix) I hereby vacate the protest lodged vide letter dated 6.9.2019 by the assessee;

(x) I order for recovery of interest from the assessee, under the provisions of Section 11AA of the Excise Act/Section 75 of the Finance Act, 1994 read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the demand at (viii) above;

(xi) I impose penalty of Rs. Rs 6,21,388/- (Rupees Six lacs twenty one thousand three hundred eighty eight only) on the assessee, under the provisions of Section 11AC(1)(c) of the Excise Act/Section 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(2)/15(3) of the Cenvat Rules, respectively and Rule 25 of the Excise rules on the proposed demand at (viii) above.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Speed Post

F.No. V.35/15-05/OA/2020 Date: .11.2021

M/s Concord Biotech Ltd (Unit I)
1482-1486, Trasad Road
Dholka
District: Ahmedabad 387 810

Copy to:

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