



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
4th Floor, GST Bhavan, 380015



फा.सं. STC/4-28/KB/O&A/2017-18

DIN- 20230164WS000000D9F8

आदेश की तारीख: Date of Order: 29.12.2022

जारी करने की तारीख: Date of Issue : 04.01.2023

द्वारा पारित /**Passed by: Shri Shravan Ram , JOINT COMMISSIONER**

मूल आदेश सं./**Order-In-Original No.: 57/CGST/Ahmd-South/JC/SR/2022-23**

यह प्रति उस व्यक्ति लिए (जिनके) जिसके,को (यों) यह आदेश जारी किया गया है,उमके व्यक्तिगत (उनके) नि लिए के उपयोग:शुल्क प्रदान की जाती है ।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त, (अपील)केंद्रीय जीएसटी,केंद्रीय जीएसटी भवनअहमदाबाद,आंबावाड़ी, -प्रारूप को 15 एस.टी.-4 में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00- only.

उक्त अपील दो प्रतियों में प्रारूप सं.एस.टी.-4 में दाखिल की जानी चाहिए । उसपर केंद्रीय उत्पाद शुल्क, 2001,नियमावली (अपील)के नियम के 3उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसके साथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ चाहिए, होनी प्रतिलिपि प्रमाणित की आदेश उस एक से उसमें) जिसके विरुद्ध अपील की गई है -/2.00 रु जिसपर प्रति अन्य की आदेश उक्त अथवा (का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त के शुल्क में (अपील)7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका शुक्तान करके अपील की जा सकती है ।

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

संदर्भ/Reference : कारण बताओ सूचना फा.सं. STC/4-28/KB/O&A/20-21 dated 24.09.2020, M/s K.B. Zaveri, GF-9/10, Pariseema complex, C.G. Road, Navrangpura, Ahmedabad-380009.

Brief facts:

M/s K B Zaveri, GF-9&10, Pariseema Complex, C. G. Road, Navrangpura, Ahmedabad-380009, (*herein after referred to as 'the assessee' or 'the said assessee '*) is engaged in manufacturing of articles of jewellery falling under CETH 7113 of Central Excise Tariff Act, 1985 and having Central Excise Registration No. AEIPP6465QEM001. The assessee is a proprietorship concern and Shri Kanchanbhai B. Patel is the proprietor of the said concern. Consequent to the issue of the Notification No.12/2017 Central Excise (NT) to 14/2017 Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers reallocating the jurisdiction of the Central Excise Officers and Trade Notice No. 001/2017 dated 16.06.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the assessee is now registered under the Jurisdiction of the Ahmedabad South Commissionerate, Central Goods and Service Tax Division-VI, Range-IV, CGST, Ahmedabad-South. The assessee is also engaged in trading of goods viz. bullion gold & silver etc.

2. Information was received that the said assessee has short paid/not paid the excise duty amount to the government exchequer. Based on the information received, an inquiry was initiated to verify the financial records of the assessee. Letter dated 12.06.2018 and 19.07.2018 were issued. In response, the assessee vide letter dated 31.07.2018 stated that Central Excise duty on Articles of jewellery was made applicable w.e.f.01.03.2016 but in March 2016, there was strike by entire industry and that in March 2016, the turnover is Nil and submitted Excise returns (ER-8) from April 2016 to June 2017, along with balance sheet and profit and loss account for 2016-17 and monthly summary of sales ledger of April to June 2017.

3. The assessee was requested vide letter dated 24.08.2018 and 26.09.2018 to submit month-wise bifurcation of sales from April 2016 to June 2017 and some other documents for the period from July 2017 onwards. In response, the assessee vide letter dated 09.01.2019 submitted the month wise details of bifurcation of turnover from April 2016 to June 2017 into manufacturing, trading and non-excisable goods along with some other sheets.

4. The assessee was again requested vide letter dated 26.03.2019 to submit Cenvat credit ledger along with purchase invoices for April 2016 to June 2017 and some other documents. In compliance, the assessee submitted Cenvat ledger i.e. month wise statement giving details on

Cenvat credit taken on input services during April 2016 to 2017 (but did not submit invoices) and Audit report for 2017-18. The assessee was again requested vide letter dated 02.07.2019 to submit Cenvat credit input service invoices from April 2016 to June 2017, along with sale ledger and trial balance. The assessee vide letter dated 02.12.2019, submitted summary of purchase, purchase return but did not submit any input service invoices on which Cenvat credit was taken.

5. It appeared that the enquiry was initiated in May 2018 and assessee was requested time and again to submit all and complete details and documents which they have failed to do so and therefore, the enquiry needs to be concluded on the basis of available records and documents without giving any more opportunity to the assessee. It appeared that on the basis of available records, M/s. KB Zaveri is engaged in manufacture of articles of gold and jewelry and trading of bullion gold and silver. Consequent to the notification No. 5/2016 - Central Excise (N.T.) dated 01/03/2016, the assessee had obtained Central Excise registration on 30/06/2016. Further, the assessee had filed their first ER-8 return for the period Apr-Jun 2016-17 & onwards from time to time. The details of clearance of excisable goods, payment of central excise duty, availment and utilisation of Cenvat credit as per Central Excise Returns filed by the said assessee are as under: -

(Amount in Rs.)

Period	Assessable value	Duty payment @1% as per Notifi No. 12/12-CE(Sr.no. 199)			Details of Cenvat credit taken and utilised		Credit reverse d under Rule 6(3) of CCR 2004
		By Cenvat credit	By Cash	Total	Credit taken	Credit utilised	
April to June 2016	0	0	0	0	0	0	0
July to Sept.2016	59392894	58035	535895	593930	232138	58035	0

Oct. to Dec.2016	110091122	25249	1075662	1100911	100998	25249	0
Jan.to March 2017	115643002	326867	829563	1156430	203450	452964	126097
Total	285127018	410151	2441120	2851271	536586	536248	126097
April to June 2017	82016555	81664	738502	820166	107624	107962	26298
Grand Total	367143573	491815	3179622	3671437	644210	644210	152395

6. On going through the balance sheet and profit & loss account and sales ledgers, the net sale for 2016-17 is **Rs.73,37,00,071/-** and for April 2017 to June 2017, is **Rs.13,04,95,725/-**. It appeared that the excisable turnover as per ER-8 is much lower than the total turnover as per books of accounts and in order to justify the lesser turnover shown in the ER-8, assessee has shown bifurcation of sales into manufacturing, trading and non-excisable good and also attached month wise sheets showing opening balance, receipts, sales and closing balance of manufacturing and trading goods.

7. It appeared that the assessee has not submitted any evidence in the form of invoices etc. towards trading or non-excisable sales and their balance sheet also shows the turnover under the heading "sales" and the sheets submitted by the assessee are not supported by any documentary evidence and even are not self-certified. Therefore, it appeared that the contention of the assessee for sale of trading or non-excisable goods is not acceptable. Further, It appeared that the definition of traded articles covered under the notification no. 34/2016-CE (NT) dated 26.07.2016, which is reproduced as under:

[(1) "traded articles" means articles, on which appropriate duty (including nil duty) has already been paid at the time of their sale for the first time.]

8. Whereas the above definition provides that in case of the sales of traded articles of jewelry, the duty on the same should have been paid at

the time of their first sale. The assessee has declared/mentioned sale of traded articles in his submissions, it appeared that the same are sale of articles of jewelry on which the excise duty is applicable but the assessee has failed to provide any documentary evidence as to whether appropriate duty (including nil duty) was paid on the same at the time of their first sale. The assessee has been given ample opportunities to allow them to provide the required documents to the department but time and again, the assessee has shown non-compliance and utter disregard to the communications of the department. Since the assessee has not submitted any documents to prove that the appropriate duty had been paid in case of sale of traded articles, it appeared that the said sale of traded articles is not as per the law and it appeared that said sale is subject to excise duty and the assessee has failed to declare the same and pay the excise duty on such sale.

9. It appeared that the assessee has done short declaration of excisable goods in their ER-8 returns as compared to their sale as per books of accounts, as detailed above and wrongly claimed the benefit under trading of goods without having any proper documents. Therefore, the excise liability of the assessee for the period from April 2016 to June 2017 is worked out as under: -

(Amount in Rs.)

Period	Sales as per balance sheets and profit & loss account/sales ledgers	Assessable value as per ER-8	Differential turnover	Excise duty @1 % payable of differential turnover
1	2	3	4 (i.e.2 - 3)	5
2016-17	733700071	285127018	448573053	4485731
April 17 to June 17	130495725	82016555	48479170	484792
Total	864195796	367143573	497052223	4970523

10. Therefore, it appeared that the assessee has short paid central excise duty of **Rs.49,70,523/-** during the period from April 2016 to June 2017 and the same is required to be recovered from them.

11. It further appeared as per the excise returns, the assessee has availed and utilized Cenvat credit of **Rs.6,44,210/-**. It further appeared that the assessee has declared his turnover as excisable, non-excisable and traded goods, therefore, it is imperative to verify eligibility of Credit under each and every invoice and as to utilisation as to whether it is exclusively used in excisable or in non-excisable goods or is commonly used in both excisable and non-excisable goods as the law provides for different treatment for each case. The assessee was time and again requested to submit the input service invoices but they have not submitted any invoices without which the verification as regards to genuineness and availability of Cenvat credit could not be verified by the Department and therefore, it appeared that no such invoices are available with them. It further appeared that the assessee has mentioned in the ER-8 about following the provisions of Rule 6 (3) of Cenvat Credit Rules 2004 but they have not submitted any working and documentary evidence in this regard. Therefore, it appeared that the Cenvat credit of **Rs.6,44,210/**availed and utilized by the assessee is not admissible to them and is required to be recovered from them.

12. Whereas from the facts mentioned in the foregoing paras, it appeared that the said manufacturer has contravened the provisions of:

(a) Section 3 of the Central Excise Act, 1944, in as much as they failed to levy and collect duty;

(b) Rule 4, 5, 6 of the Central Excise Rules, 2002, in as much as they have failed to determine/discharge/assess the Central Excise duty on the goods;

(c) Rule 8 of the Central Excise Rules, 2002, in as much as they failed to make the payment of duty within due date;

(f) Articles of Jewellery (Collection of Duty) Rules, 2016, notified by Notification no. 34/2016-CE (NT) dated 26.07.2016, in as much as they failed to follow the conditions stipulated therein;

(g) Notification no. 12/2012-CE dated 17.03.2012 as amended, in as much as they failed to fulfill the conditions stipulated therein and pay the duty.

(h) Rule 2, 3, 4, 6 and 9 of Cenvat Credit Rules, 2004 in as much as they have not explained and submitted the invoices and evidences towards their

eligibility and utilisation in the manufacture of excisable goods or exempted goods or in both commonly, no proof as regards to payment to the service providers and did not submit the records required to be maintained.

13. From the Accounts and ER-8 returns of the relevant period, it appeared that the said assessee had cleared goods without payment of duty and failed to assess and pay the central excise duty liability as they had declared less home clearances of articles of gold & jewelry in their ER-8 Returns filed during 2016-17 to June 2017. Thus, they suppressed the sales of excisable goods i.e. articles of gold & jewelry and deliberately not declared the entire production/turnover of excisable goods in ER-8 Returns filed by them with intent to evade payment of Central Excise duty. Further, the investigation also reveals that the assessee has shown in the unauthenticated and un-substantiated sheets the sale of articles of jewelry as traded goods/non-excisable goods but have failed to produce any documentary evidence which indicate the excise duty was paid on such traded goods at the time of their first sale as per the Articles of Jewellery (Collection of Duty) Rules, 2016, notified by notification no. 34/2016-CE (NT) dated 01.03.2016 or it is not payable at all. Thus they have deliberately suppressed the sales of excisable goods under the guise of traded goods/non-excisable goods and failed to declare the same in the ER-8 returns with intent to evade the payment of excise duty. The deliberate efforts leading to nonpayment of the correct amount of Central Excise duty is in utter disregard to the requirements of law and breach of trust deposited on them. The said assessee is liable to pay the total Central Excise duty of **Rs.49, 70,523/-**, which has been short/not paid by them and the Cenvat credit of **Rs.6,44,210/-**, wrongly availed and utilized by them during the period from April, 2016 to June 2017, and the same is required to be recovered from them in accordance with the provisions of Central Excise Act, 1994 and the rules made there under.

13.1 The Government has from the very beginning placed full trust on the manufacturers/service providers and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. Further, a manufacturer/service provider is not required to maintain any statutory or separate records under the provisions of the Finance Act and Rules made there under, as considerable amount of trust is placed on them and private records maintained by them, for normal business purposes are accepted, practically for all the purposes. All these operate

on the basis of honesty of the said assessee; therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences, it appeared that the said assessee has knowingly availed ineligible Cenvat Credit with intent to evade payment of Service Tax. The deliberate short-payment of tax by availing and utilising ineligible Cenvat Credit and suppression of ineligible Cenvat credit and value of non-taxable activities are in utter disregard to the requirements of law. This act and omission on the part of the assessee is a breach of trust deposited on them, and are certainly not in tune with government's efforts in the direction to create a voluntary tax compliance regime. In the case of *M/s. Lalit Enterprises* [2010 (17) STR 370 (Tri Chennai)], it was held that *in the light of the fact that verification of the records resulted in the Department coming to know that the assessee did not disclose receipt of service charges, therefore, five years' period has been correctly invoked and applied against the assessee as the case falls within the proviso to Section 7 3 (1) of the Finance Act, 1994 and the demand is not barred by limitation.* In the case of *M/s Mahavir Plastics* [2010 (255) ELT 241(Tri Mumbai)], it has been held that *if facts are gathered by department in subsequent investigation, it is not correct to say that the relevant facts were known to the department during the period of dispute, in such a situation, the decisions of the Apex Court cited by the Id. Counsel would not be of any avail to the assessee.*

14. It is needless to emphasize that the Central Excise Act and Rules have been rationalized over a period of time and Self Removal Procedure; Self-assessments etc. have been introduced by the Government. Even the clearance limit of filing the declaration for exemption from registration has been increased from time to time with a clear expectation by the govt. that manufacturers honestly follow the same and comply with the requirement of law. Therefore, Central Excise Act/Rules create an absolute liability when any provision is contravened or there is a breach of trust placed on the manufacturer. Further it is well settled law that the onus to avail the correct benefits of any exemption notification lies with the assessee itself. All these acts of contravention on the part of the said assessee appear to have been committed by reason of willful misstatement, suppression of facts and contraventions of the provisions of Central Excise Act, 1944 and rules framed there under with an intent to evade the payment of Central Excise duty and therefore, the said duty not paid, amounting to **Rs.49,70,523/-** appear to be recoverable from them under the provisions

of Section 11A(4) of the Central Excise Act, 1944 and the wrongly availed and utilised Cenvat credit, amounting to **Rs.6,44,210**/appear to be recoverable from them under the provisions of Rule 14(I)(ii) of Cenvat Credit Rules 2004 read with Section **11 A(4)** of the Central Excise Act, 1944, by invoking the extended period of five years. It also appeared that the assessee was liable for mandatory penalty under the provisions of Section **11 AC(I)(c)** of the Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 and Rule 15 of Cenvat Credit Rules 2004. Also interest at the prescribed rate under the provisions of Section **11 AA** of the Central Excise Act, 1944 read with Rule 14(I)(ii) of Cenvat Credit Rules 2004 for the period, appeared to be recoverable from the said assessee.

15. Further, it appeared that on account of all the above narrated acts of commission and omissions on the part of the assessee, they have rendered themselves liable for penalty under the following provisions of the Central Excise Act, 1944, Central Excise Rules, 2002 and Cenvat Credit Rules, 2004, as amended:

Section 11 AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002, for failure to pay due central excise duty, with intent to evade the same. Rule 15 of Cenvat Credit Rules 2004.

16. The above discussions amply demonstrate that the assessee has suppressed the facts and contravened the provisions of the Central Excise Act, 1944, the Central Excise Rules, 2002 and the Cenvat Credit Rules, 2004 as specified above and as such the consequences shall automatically follow. The Hon'ble Supreme Court has settled this issue in the case of M/s Dharamendra Textile Processors [2008 (231) E.L.T. 3 (S.C.)] and further clarified in the case of M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)]. Hon'ble Supreme Court has said that the presence of malafide intention is not relevant for imposing penalty and mens-rea is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Therefore, the assessee is liable for penalty under Section 11 AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002, for failure to pay due central excise duty, with intent to evade the same. The assessee is also liable for penalty under Section 11 AC of Central Excise Act, 1944 read with Rule 15 of the Cenvat Credit Rules, 2002, for wrongly availing the Cenvat Credit and thus failed to pay due central excise duty, with intent to evade the same.

17. The above provisions have been kept in force in the GST era vide Sections 142 & 174 of the Central Goods and Service Tax Act, 2017. Relevant provisions under the Central Goods and Service Tax Act, 2017, are as under:

Section 174.

(1) -----;

(2) *The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-*

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts, or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed,

(1) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

Section 142 (8) (a) *where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;*

18. Hence, M/s. K B Zaveri, GF-9&10, Pariseema Complex, C.G.Road, Navrangpura, Ahmedabad-380009 (Proprietor Shri K.anchanbhai B. Patel) were called upon to show cause to the Joint/Additional Commissioner, CGST, Ahmedabad South, having his office at OST Bhavan, Nr Government Polytechnic, Ambawadi, Ahmedabad-380015, as to why:-

(i) Central Excise duty amounting to **Rs.49,70,523/-** (Rs. Forty-Nine Lakh, Seventy Thousand, Five Hundred and Twenty-Three only), should not be demanded and recovered from them, invoking extended period, under the provisions of sub-section (4) of Section 11A of the Central Excise Act, 1944;

(ii) Penalty in terms of the provisions of Section 11AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 should not be imposed on them;

(iii) The interest at the applicable rate in force from time to time should not be demanded and recovered from them on the Central Excise duty amount mentioned at (i) above from the due date of its payment till the actual date of payment of duty under Section 11AA of the Central Excise Act, 1944;

(iv) Wrongly availed and utilised Cenvat credit, amounting to **Rs.6,44,210/-** (Rs. Six Lakh, Forty Four Thousand, Two Hundred & Ten

Only) should not be demanded and recovered from them, invoking extended period, under the provisions of Rule 14(I)(ii) of Cenvat Credit Rules, 2004 read with Section 11 A(4) of the Central Excise Act, 1944;

(v) Penalty in terms of the provisions of Section 1 IAC of Central Excise Act, 1944, read with Rule 15(2) of Cenvat Credit Rules, 2004 should not be imposed on them; and

(vi) The interest at the applicable rate should not be demanded and recovered from them on the Cenvat credit amount mentioned at (iv) above from the due date of its payment till the actual date of payment of duty under Section 11 AA of the Central Excise Act, 1944 read with Rule 14(1)(ii) of Cenvat Credit Rules, 2004.

19. The Noticee has filed written submissions on 06.11.2020 which is reproduced below:

Reply in relation to demand raised:

Our total turnover during March, 2016 to June, 2017 is as under:

Period	Total Turnover (including trading and non-excisable turnover) [i.e. Sales-Sales Return] (in Rs.)
March, 2016	NIL.(due to nationwide strike by entire jewellery industry)
April, 2016 to March 2017	73,37,00,071/- [74,16,34,787/- Sales (-) 79,34,716/- Sales Return]
April to June, 2017	12,89,86,305/- [13,04,95,661/- Sales (-) 15,09,356/- Sales Return]

Though all the documents in relation to trading turnover, details of opening stock as on 01.03.2016 with all supporting evidences are submitted to concerned superintendent during investigation we are herewith once again submitting all necessary details along with supporting evidences.

No excise duty payable on sale of finished goods lying in stock as on 29.02.2016:

Relevant extract of Circular No. 1045/33/2016-CX dated 26.07.2016 is reproduced as under:

Para 2:

"2. The Sub-Committee in its report has examined in detail excise duty liability on stock on 29th February, 2016 and has given its recommendations on the issue. Accordingly, it is hereby clarified that:

i. All jewellery manufactured and removed, on or before February 29, 2016, from the premises of the job workers or any other premises where such articles of jewellery were manufactured, and

(a) lying at different premises (including branches) of the principal manufacturer, or

(b) sent on approval to potential customers,

will not be liable to excise duty. Furthermore, no stock declaration is required to be filed by a jeweller for this purpose with the jurisdictional central excise authorities."

Meaning thereby, finished goods lying in stock as on 29.02.2016, is not subjected to excise duty upon their sale and therefore the same is to be considered as traded goods.

As on, 29.02.2016, our closing stock was as under:

IISN	Description	Closing stock as on 29.02.2016 to be considered as trading stock (in grams)	Manufactured during March, 2016 (in grams)	Closing stock as on 31.03.2016 as per Audit Report (in grams)
7113 19 30	18 CT diamond studded jewellery	10500.00	-	10500.00
7113 19 40	18 CT + 22CT Jewellery set with other stones	121967.61	2014.93	123982.54
7113 19 90	Platinum Jewellery	182.21	-	182.21

Stock summary of March, 2016 is attached as **Annexure-A** in which the opening stock as on 01.03.2016 is as per above table and closing stock is tallied with audit report as on 31.03.2016. Audit report for the FY 2015-16 is also attached as **Annexure-B** to verify the correctness of stock declared as above. Meaning thereby, it is very clear from legal provision & relevant facts that stock lying as on 29.02.2016 as per above is to be considered as traded goods and excise duty is not liable to be paid on sale of such goods. Also note that there was no sale during March, 2016 due to nationwide strike declared by All India Gems and Jewellery Association.

OPTIONAL SCHEME for payment of excise duty adopted by us:

Relevant extract of rule-12 of Articles of Jewellery (Collection of Duty) Rules, 2016 as notified by Notification No.: 34/2016-CE (NT) dated 26.07.2016 is reproduced as under:

"12. Optional scheme. -

(1) Notwithstanding anything contained in sub-rule (1) of rule (7) or sub-rule (3) of rule (8), the manufacturer, or principal manufacturer, as the case may be, dealing in both manufactured and traded articles, may also pay excise duty on his first sale value, by treating his first sales during a month solely as sale of manufactured articles, if the quantity of such sales during the month is less than or equal to the opening stock of

manufactured articles at the start of such month, at his own option, by giving a written declaration to the excise authorities having jurisdiction by the 28th day of February of the previous financial year:

Provided that for the financial year 2016-17, such written declaration may be given to the Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, having jurisdiction, by the 31st day of July, 2016:

Provided further that for the period beginning from 1st March, 2016 to 31st March, 2016 such declaration may be given by the 31st day of July, 2016:

(2) An option given under sub-rule (1) shall be valid for whole of the financial year for which it is given :by the manufacturer or the principal manufacturer, as case may be'.

(3) For availing the optional scheme under sub-rule (1) a manufacturer or principal manufacturer, as the case may be, shall maintain, -

a) a record containing the stock details of manufactured articles and traded articles separately for silver studded articles; gold or platinum articles studded with diamonds; and other gold or' platinum articles, on weight or caratage basis;-and

b) a record of the value of such traded articles separately at their purchase prices.

(4) The opening stock, sales and closing stock of three types of articles, referred to in sub-rule {3}; shall be calculated separately for assessing the excise duty payable during a month.

(5) The sales in excess of opening stock of manufactured articles, during a month shall be deemed to be sale out of the opening stock of traded articles on which no excise duty shall be payable.

{6} If the sales during a month are in excess of the sum total of the opening stock of the manufactured articles and opening stock of traded articles, then such excess sales shall first be deemed to be that of manufactured articles received during that month and the balance, if any, shall be deemed to be that of traded articles received during the month

(7) If the sales during a month are less than the opening stock of manufactured articles, then , the balance stock of manufactured articles shall be carried forward and the opening stock of manufactured articles for the succeeding month shall be the sum total of such carried forward stock of manufactured articles and quantity of manufactured articles received from the job worker's premises or manufactured, during the month. "

· Meaning thereby, following points are relevant as per above rule:

1. Excise duty is payable only on sale of manufactured goods

2. In this scheme, separate records of manufactured goods is required to be kept and upon sale it will be presumed that first sale is made from such manufactured goods. Accordingly, the most significant part is to identify quantity of manufactured goods during a particular month based on which calculation of excise duty can be made by considering first sale from such goods only I

3. Intimation to range superintendent is required to be given regarding opting of such scheme

4. No separate sale register (trading sale register and manufacturing sale register) is required to be maintained because at the end of month calculation is to be done liability of excise based on total quantity manufactured during preceding month.

5. Hierarchy to derive sale value of manufactured goods as per Rule-12 discussed above is as under:

(i.) Firstly, opening stock of manufactured goods is to be considered as sales

(ii.) The sales, in excess of above, shall be deemed to be sale out of the opening stock of traded goods on which 110 excise duty shall be payable

(iii.) If the sales are in excess of the sum total of the opening stock of manufactured as well as traded goods, then such excess sales shall be deemed to be that of manufactured goods received during that month and **the balance**, if **any**, shall be deemed to be that of traded goods received during the month

6. Example of the same is as under:

March, 2016			
Particulars	Manufactured Stock (in gram)	Trading Stock (in gram)	Total Stock (in grams)
Opening stock as on 01.03.2016	NIL [by virtue of circular no. 1045/33/2016-CX dated 26.07.2016 discussed above]	1000	1000
Inward during month	100	50	150
Sale during month= 130 grams	Nil [As no opening stock of manufactured stock]	130	130
Closing Stock	100	920	1020

April, 2016			
Particulars	Manufactured Stock (in gram)	Trading Stock (in gram)	Total Stock (in grams)
Opening stock as on 01.04.2016	100	920	1020
Inward during month	120	50	170
Sale during month= 130 grams	100	30	130
Closing Stock	120	940	1060

In the above example, we need to calculate the sale value of first 100 grams based on first consecutive sales invoices and on such sale value we need to pay excise duty. For instance, sale value of first 100 grams sold is Rs. 3,00,000 and balance 30 gram is Rs. 90,000 then we need to pay Excise duty @ 1% on 3,00,000/- only by considering this as manufactured turnover and not on total 3,90,000/-.

Acknowledgement copy of intimation given to range office regarding opting for payment of Central Excise duty under "optional scheme" is attached herewith as **Annexure-C**. Further, detailed working of manufactured sales and trading sales is as per Annexure-D attached herewith with all supporting documents to justify quantity manufactured and sales during the month along with its sale value. Summary of the same is as under:

FY 2016-17					
Turnover					
Months	Manufacturing [18CT +22CT Gold Jewellery]	Trading [18CT +22CT Gold Platinum Jewellery]	Non-Excisable		Total
			24 CT Gold/Bullion	Loose diamonds	
April	6866901	3989319	147250	0	11003470
May	946737	15534687	547040	0	17028464
June	6317118	7772673	248947	375000	14713738

July	13393300	28739000	473033	250000	42855333
August	5561515	44289750	32957	100000	49984222
September	26901250	6103741	157000	0	33161991
October	44049597	88320448	12055098	168665	144593808
November	54533181	10866000	1706243	0	67105424
December	12609254	53000872	4080857	0	69690983
January	54485630	85044448	1878015	0	141408093
February	33310725	67809973	1159514	0	102280212
March	29003075	15137342	357227	3310033	47807677
Total	287978283 [Incl. 1% Excise or 285127013 [Excl. Excise]	426608253	22843181	4203698	741633415
Less: Sales Return					7934716
Add: Round off difference					1372
Turnover as per Audit Report					733700071

April-June, 2017					
Turnover					Total
Months	Manufacturing [18CT +22CT Gold Jewellery]	Trading [18CT +22CT Gold Platinum Jewellery]	Non-Excisable 24 CT Gold/Bullion	Loose diamonds	
April	23031318	1218949	2399527	0	26649794
May	37107963	1033626	9806346	6137931	54085866
June	22697439	25752267	1310359	0	49760065
Total	82836720 [Incl. 1% Excise or 82016554 [Excl. Excise]	28004842	13516232	6137931	130495725
Less: Sales Return					1509357
Add: Round off difference					62
Turnover as per Audit Report					128986306

Detailed working of above table is already attached in Annexure-D in which calculation is made as per optional scheme discussed supra. As an evidence manufacturing inward stock register is attached herewith as **Annexure-D** based on which total quantity during a particular month can be derived. A sample 24CT bullion issue voucher along with 22CT readymade manufacturing receipt voucher is also attached as **Annexure-E** to substantiate the mechanism for calculation of manufactured jewellery.

Further, Central Excise duty @ 1% is imposed only on sale of manufactured articles of jewellery and not imposed on sale of traded articles of jewellery, 24CT gold /bullion as well as on loose diamond. Month wise sale register from April, 2016 to June, 2017 is attached herewith as Annexure-D in which bifurcation of total turnover is segregated into sale of jewellery liable to excise duty and non excisable sale namely 24CT and loose diamond sale.

Few sample sale invoices of 24CT gold are attached herewith as **Annexure-F** which can be verified with sale register given in **Annexure-E**. Further, few sample sale invoices of loose diamond are also attached herewith as Annexure-G which can be verified with sale register given in **Annexure-E**.

Furthermore, we have attached herewith readymade jewellery purchase register along with few sample invoices as **Annexure-H** to substantiate our stand that we are

also engaged in trading of readymade jewellery on which excise duty is not applicable. Under optional scheme as mentioned supra, we are paying excise duty by considering our first sales from opening manufactured stock irrespective of actual sale of jewellery from any of the stock.

Accordingly, it is very clear from the above facts and figures along with all relied upon documents attached herewith that our turnover consists of manufacturing turnover, trading turnover as well non-excisable turnover [24CT gold + loose diamond]. Out of which we are liable to pay excise duty only on manufacturing turnover. Though all the above documents were already submitted to departmental officer during inquiry, the departmental officer having pro-revenue mindset and with gross negligence on 'verification of documents and internal departmental shifting of file, issued the Show Cause Notice on entire turn over ignoring all the workings, calculations and submissions made by us.

Reconciliation of turnover and tax payable from above given details with Form ER-8:

Based on all the above submissions, following reconciliation is made:

Period	Manufacturing Turnover as per optional scheme	Tax payable @ 1% [B]	Manufacturing turnover as per form ER-8 [C]	Tax paid as per Form ER-8 [D]	Diff. in manufacturing turnover [E] = A-C	Diff. in tax payable [F] = B-D
March, 2016	0	0	0	0	0	0
FY 16-17	28,51,27,018	28,51,271	28,51,27,018	28,51,271	0	0
April-June, 17	8,20,16,555	8,20,166	8,20,16,555	8,20,166	0	0

Copy of Form ER-8 for-above mentioned period is attached herewith as Annexure-1.

As regards recovery of CENVAT credit availed and utilised worth Rs. 6,44,210/-:

Under para 11 of Show Cause Notice, the CENVAT credit has been disallowed mainly on following 3 grounds:

1. To ascertain whether used for excisable goods or non-excisable goods or for common use.
2. Non- submission of Cenvat credit invoices.
3. Non-submission of working for reversal of CENVAT Rule-6(3) as per Cenvat Credit Rules, 2004.

Reply in relation to ground 1 above:

Relevant extract of Notification No. 12/2012-CE dated 17.03.2012 as amended from time to time is as under:

Sl.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1) 199	(2) 7113	(3) (I) Articles of Jewellery (II) Parts of Articles of Jewellery (III) Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire	(4) 1% 1% NIL	(5) 16 16 52A"

Condition no. 16 is as under:

"If the said excisable goods are manufactured from inputs or capital goods on which appropriate duty of excise leviable under the First Schedule to the Excise Tariff Act or additional duty of customs under section 3 of the customs Tariff Act, 1975 (51 of 1975) has been paid and **no credit of** such excise duty or additional duty of customs on **inputs or capital goods** has been taken by the manufacturer of such goods (and not the buyer of such goods) under rule 3 or rule 13 of the CENVAT Credit rules, 2004."

Furthermore, relevant extract of press release issued by Ministry of Finance dated 04.03.2016 is reproduced as under:

*"In this year's Budget, a nominal excise duty of 1% [without input tax credit] and 12.5% [with input tax credit] has been imposed on articles of jewellery. **Even for this nominal 1% excise duty, manufacturers are allowed to take credit of input services, which can be utilised for payment of duty on jewellery.**"¹¹*

Meaning thereby, CENVAT credit of only input services is allowed to be availed against output liability of Central Excise duty payable @ 1% on sale of articles of jewellery manufactured by taxpayer. Accordingly, we have availed and utilised CENVAT credit of input services only and not availed any CENVAT credit of inputs or capital goods. Further, CENVAT credit of all- input services availed is common in nature and we have reversed the proportionate credit as prescribed under Rule-6(3) of Cenvat credit Rules, 2004. CENVAT credit register enlisting invoices along with amount of credit availed has been attached herewith as **Annexure-J**.

Reply in relation to ground 2 above:

Photocopy of all the invoices of input services on which CENVAT credit is availed are attached herewith as **Annexure-K** as separate box file.

Reply in relation to ground 3 above:

Acknowledgment copy of intimation letter submitted to range superintendent for Reversal of CENVAT Credit attributable for Exempted goods and exempted services under Rule 6(3A) of CENVAT Credit Rule, 2004 is attached herewith as **Annexure-L**.

Further, working for reversal of CENVAT credit under Rule 6(3) of Cenvat credit rules, 2004 is attached herewith as an **Annexure-M** along with required supporting documents.

20. Personal hearing: - A personal hearing was offered to the Noticee and Shri Meht Jadawala, C.A appeared before the undersigned on 21.10.2022 and reiterated the reply submitted by them on 06.11.2020.

Discussion and findings: -

21. I have carefully considered the facts of this case and the submissions made by the Noticee.

22. The moot point before me to decide is-

(a) whether the Central Excise duty amounting to **Rs. 49,70,523/-** (Rs. Forty-Nine Lakh, Seventy Thousand, Five Hundred and Twenty-Three only), is liable to be recovered from Noticee along with interest and penalty and

(b) Whether the wrongly availed and utilized Cenvat credit, amounting to **Rs 6,44,210/-** (Rs. Six Lakh, Forty-Four Thousand, Two Hundred & Ten Only) should be demanded and recovered from them.

23. At the onset, I will take the issue of para 22 (a); Articles of jewellery made of precious metal, classifiable under CTH 7113 was liable to Central Excise duty at the rate of 1% adv, by virtue of Notification No. 12/2016-CE dated 01.03.2016, subject to the condition that no credit of inputs and Capital goods used in the manufacture has been taken. Following the above Notification, the Noticee, being a manufacturer as well as trader of articles of jewellery made of precious metal, took Central Excise registration on 01.06.2016. An enquiry into alleged short payment of duty was initiated against the Noticee and on the basis of documents submitted, a demand for Central Excise duty of Rs 49,70,523/-, for the period 2016-17 and 2017-18 (Upto June, 2017) was raised on the Noticee. Cenvat credit amounting to **Rs 6,44,210/** is also demanded in the Show Cause Notice.

24. In their defence submissions, the Noticee contested that during the period 2016-17 and from April, 2017 to June, 2017, their total turnover including trading and non-excisable items was Rs 73,37,00,071/- and Rs 12,89,86,305/- respectively. In terms of Circular No. 1045/33/2016-CX dated 26.07.2016, there was no Central Excise duty on the jewellery lying in stock as on 29.02.2016; that they had opted for the optional scheme for payment of duty under rule 12 of "Articles of Jewellery (Collection of Duty)

Rules, 2016", introduced under the Notification No. 34/2016-CE (NT) dated 26.07.2016.

They have given a detailed month wise turnover of-

- i) manufactured gold jewellery,
- ii) trading sale of gold and platinum jewellery and
- iii) sale of non-excisable items such as 24 Ct gold bullion and loose diamonds.

25. A summary of the above transactions, as submitted by the Noticee is reproduced below:

Financial Year 2016-17				
Turnover, in Rupees				
Manufacturing (18 CT + 22 CT Gold Jewellery)	Trading (18 CT + 22 CT Gold and Platinum Jewellery)	Non excisable 24 CT Gold/Bullion	Non excisable Loose diamonds	Total
28,79,78,283 including 1% Excise	42,66,08,253	2,28,43,181	42,03,698	74,16,33,415
		Less Sales return of		79,34,716

April to June, 2017				
Turnover in Rupees				
Manufacturing (18 CT + 22 CT Gold Jewellery)	Trading (18 CT + 22 CT Gold and Platinum Jewellery)	Non excisable 24 CT Gold/Bullion	Non excisable Loose diamonds	Total
8,28,36,720 including 1% Excise	2,80,04,842	1,35,16,232	61,37,931	13,04,95,725
		Less Sales return		15,09,357

26. In support of their contention, copies of Sales register, Item wise Trading Purchase Register with corresponding purchase invoices, Optional Scheme working, manufacturing inward register, 24 CT gold bullion Sales register, loose diamond sales register, retail invoices (all month wise), were submitted. The same were sent to jurisdictional division for factual verification and the Assistant Commissioner, CGST Division VI, Ahmedabad

South, vide his Verification Report F. No. CGST/WS0604/Tran-1 Misc/2022-23 dated 07.12.2022, stated that-

A. the assessee has paid Central Excise duty @ 1% on manufacture of articles of jewellery falling under Chapter 7113;

B. that the assessee has trading of gold and platinum jewellery also, (the same were purchased with payment of central excise duty @ 1%) and non-excisable item (24 CT bullion and loose diamonds) and closing stock as on 29.02.2016 (exempted as per Circular no. 1045/33/2016-CX dated 26.07.2016), for which they had not discharged central excise duty;

C. that based on the documents submitted, the Noticee had opted for optional scheme as per Rule 12 of the Articles of Jewellery (Collection of Duty) Rules, 2016 and discharged the excise duty accordingly; that the Noticee appeared to have fulfilled the conditions of the said rule and the claim made in his reply is satisfactory.

27. I have also gone through the trading purchase register submitted by the Noticee and find that there are trading purchases of 18 CT and 22 CT gold and diamond /platinum jewellery, total valued at Rs 29,27,31,452 and Rs 5,92,30,785/-, made during the period 2016-17 and from April, 2017 to June, 2017 respectively. I find the Stock Summary for March, 2016 shows they had an opening stock of 18 CT Diamond and Gold jewellery weighing 16079 grams and 24 CT gold jewellery of 116388.48 grams. Further, they have also submitted the month-wise sale of both manufacturing and trading goods of 18 CT and 22 CT gold ornaments, mentioning the quantity of ornaments in grams and also the value of sale in rupees which tallied with the value mentioned in the table above for sale of both trading and manufactured items. On a perusal of the above records which have gone into the balance sheet of the Noticee for the financial years 2016-17 and 2017-18, I find it justified the trading sale of 18 CT and 22 CT gold and diamond /platinum jewellery valued at Rs 42,66,08,253/- and Rs 2,80,04,842/- respectively, during the year 2016-17 and from April, to June, 2017, as declared by them. In terms of sub rule (1) of rule 4 of the Articles of Jewellery (Collection of Duty) Rules, 2016, excise duty is leviable on articles of jewellery classifiable under CTH 7113 on the first sale, by a manufacturer. Therefore, no excise duty was leviable on the trading sale of articles of jewellery in the hands of the Noticee.

28. Further, they have submitted the 24 CT Gold/Bullion Sales register for the year 2016-17 and April, 2017 to June, 2017. The same is listing individual sales with Bill No. and date, Account (in whose name the bill issued), and the amount in rupees. The total sale value of 24 CT Gold

/Bullion mentioned in the register for 2016-17 is Rs 2,28,43,181/- and for the period from April, 2017 to June, 2017, the value shown is Rs 1,35,16,233/-. Primary gold converted with the aid of power from any form of gold other than gold ore, concentrate or dore bar is exempted from Central Excise duty at serial no. 188 of Notification No. 12/2012-CE dated 17.03.2013. Therefore, there was no duty liability on the sale of 24 CT gold/bullion as reflected in the Sales register referred to above.

29. In view of the observations above, I find that the Noticee has correctly declared the value of manufactured gold jewellery during the period from April, 2016 to March, 2017 and from April, 2017 to June, 2017 in their ER 8 Returns cumulatively as Rs 28,79,78,283/- (including 1% excise duty) and Rs 8,28,36,720/- (including 1% excise duty) respectively and have paid the appropriate amount of duty on such clearances. They have also explained satisfactorily the trading sales and sale of non-excisable items that form a part of their turnover for the period in question. In view of the above, I conclude that there is no case for raising the demand on gross turnover value as found from the facts of this case. As the duty on manufactured articles of jewellery was already paid by them at the relevant time, there is no case for any-duty demand and there is no reason to impose any penalty on that count.

30. Regarding recovery of Cenvat Credit amounting to Rs 6,44,210/- referred to in para 22(b) above, the Noticee has submitted that they are not maintaining separate books of accounts for non-exempted goods or non-exempted services and therefore, decided to opt for sub rule (3)(ii) of rule 6 of Cenvat Credit Rules, 2004 while taking credit. On verification of the records of Service tax credit, the jurisdictional Officer reported that the Noticee had availed Cenvat credit on maintenance and repair service and insurance service on personal motor vehicle which did not appear to be input services. Relevant paragraphs from his report is reproduced below:

I. "On going through the list of invoices and copy of invoices, it is found that copy of input service invoices submitted by the assessee are in order.

II. "However, the assessee had availed Cenvat credit on maintenance & repair service and insurance service on personal motor vehicle, this services was not falling within the definition of "input Service" as defined under rule 2(1) of the Cenvat credit Rules 2004. Therefore, the credit of Rs. 74,487/- wrongly taken in the year 2017-18. The List of ineligible Cenvat credit of input service on maintenance & repair service and insurance service on personal motor vehicle are as under.

Table -A

Date	Particular	Amount	Ineligible Service Tax Cenvat Credit amount
02-04-16	L & T Insurance co. Ltd	67887	9504
29-04-16	Bajaj Allianz Gen Insu co Ltd	6588	922
25-05-16	TATA AIG Gen Insu co Ltd.	88361	12370
24-06-16	Reliance GEN Insu Co :td	1644	247
25-06-16	Nixynova Moteren P L	4709	659
05-07-16	landmark Cars P L	12914	1808
12-07-16	TATA AIG Gen Insu co Ltd.	168256	23556
26-07-16	landmark Cars P L	17240	2414
27-07-16	landmark Cars P L	12672	1774
29-07-16	landmark Cars P L	12672	1774
13-08-16	Kataria Cars P L	17686	2476
17-08-16	Reliance GEN Insu Co Ltd	5125	717
17-08-16	Reliance GEN Insu Co Ltd	5476	767
22-08-16	United India Insu Co Ltd	20000	2800
11-10-16	Reliance GEN Insu Co Ltd	3937	551
13-12-16	Emeralad Luxury Cars LLP	14608	2045
05-01-17	Bajaj Allianz Gen Insu co Ltd	821	115
20-01-17	Bajaj Allianz Gen Insu co Ltd	5284	740
28-01-17	Landmark Automobil P L	6473	906
11-02-17	Kataria Cars PL	38735	5423
27-02-17	Kiran Motors Ltd	3005	421
03-03-17	landmark Cars P L	17842	2498
	Total	531935	74487

III. Further, the assessee has provided taxable and exempted service. On going through input service invoices submitted by the assessee, it is found that the assessee is liable to reverse the common input service as per provision of Rule 6(3A) of Cenvat credit Rules 2004. The details are given as under.

Table B

S.No	Particular	2016-17	2017-18 (April 1 June 2017)
1	Total Credit Available Before reversal of cenvat credit on input service as per return	536586	107627
2	Total Ineligible Credit as per table A	74487	0
3	Net eligible Cenvat Credit available (S. No. 1 - S.No. 2)	462099	107627
4	mfg Sales	288026107	81109272
5	Total sale value	360844005	86807912
6	Eligible Cenvat Credit (in %)	79.82	93.44
7	Eligible Credit (in Value) (79.82% Of sl.no. 3 above)	368847	100564
8	Ineligible Cenvat Credit to be reversed (S.No. 3 - S.No. 7)	93252	7060

Conclusion for reversal of Cenvat Credit

Table C

(amt in Rs.)

S.No	Particular	2016-17	2017-18 (April 17 to June)
1	Total Cenvat Credit availed as per return	536586	107627
2	Ineligible Cenvat Credit on Insurance and repair & maintenance service on	74487	0
3	Ineligible credit on common input service to be reversed as per table -8	93252	7060
4	total Ineligible Cenvat Credit (S.No.2+ S.No. 3) to be reversed	167739	7060
5	Cenvat Credit already reversed as per reply of the taxpayer	126097	26298
6	Cenvat Credit to be reversed (S.No.4 - S.No. 5)/to be recovered	41642	-19238

IV. "Hence, the assessee has availed excess Cenvat Credit of Rs. 41,642/- for the F.Y. 2016-17, appeared not to be admissible and need to be reversed."

In view of the report submitted by the jurisdictional Officer as above, I find that the demand in respect of Cenvat credit of Rs 74,487/- taken in the year 2017-18 and excess availed credit of Rs 41,642/- taken in the year 2016-17 require to be upheld. It is seen that the Noticee has not given the particulars of reversal if made, in respect of the credit wrongly taken as above. Therefore, the inadmissible credit on two counts above is required to be recovered from them. Rest of the credit taken is found to be admissible.

31. The wrong and excess availment of credit has come to notice only on verification being done as a demand is raised in the Show Cause Notice. Therefore, the Noticee is liable for penalty under rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. They are also liable to pay interest while reversing the Cenvat credit wrongly taken.

32. I further find that the saving clause in Section 174(2) of the CGST Act, 2017 gives the legal sanctity to the proceedings initiated under the Show Cause Notice and this order.

33. In consideration of my above findings, I hereby pass the following Order.

O R D E R

- a) I hereby vacate the demand of Central Excise duty amounting to Rs 49,70,523/-, made in the Show Cause Notice.
- b) I hereby order to recover inadmissible Cenvat credit amounting to Rs 74,487/- and excess availed credit of Rs 41,642/- from the Noticee under rule 14 (2) of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944.
- c) I hereby vacate the demand of Cenvat credit amounting to Rs 5,28,081/-, made in the Show Cause Notice.
- d) I hereby impose a penalty of Rs. 1,16,129 under rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. In terms of Section 11AC (1) (c), if the duty credit as determined at serial number (b) above and the interest

payable thereon under section 11AA is paid within thirty days of the date of communication of this Order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty credit so determined, subject to the condition that such reduced penalty is also paid within the period so specified.

- c) I hereby order to recover interest under Section 11AA of Central Excise Act, 1944 read with rule 14(1) (ii) of Cenvat Credit Rules, 2004.

The Show Cause Notice F. No. STC/04-28/KB/O&A/2020-21 dated 24.09.2020 is accordingly disposed of.


(Shravan Ram)
Joint Commissioner
Central Tax,
Ahmedabad South

F.No. STC/04-28/KB/O&A/2020-21

Date: 29.12.2022

BY R.P.A.D./

To
M/s K.B Zaveri,
GF- 9 & 10, Pariscema Complex,
C.G Road, Navrangpura,
Ahmedabad 380 009.

Copy to:

1. The Principal Commissioner, Central Tax, Ahmedabad South.
2. The Assistant Commissioner, Central Tax, Division-VI, Ahmedabad South.
3. The Deputy/Asstt. Commissioner, Central Tax, TAR Section, IIQ, Ahmedabad South.
4. The Superintendent, Central Tax AR-IV, Div.-VI, Ahmedabad South
5. The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website
6. Guard file.