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आयुक्त का कार्यालय, केन्द्रीय उत्पाद शुल्क, अहमदाबाद - १  
७वीं मंजिल, केन्द्रीय उत्पाद शुल्क भवन, पोलिटेकनिक के पास, आंबावाडी, अहमदाबाद - १५  
**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,**  
7<sup>th</sup> FLOOR, CENTRAL EXCISE BHAVAN, NR. POLYTECHNIC, AMBAVADI, AHMEDABAD-15

निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा. F.No.V.52.55.60/15-154/Dem/Gopi/07

आदेश की तारीख/Date of Order:-31.01.2012  
जारी करने की तारीख/Date of Issue:- 31.01.2012

द्वारा पारित/Passed by:- राजू आयुक्त  
RAJU, COMMISSIONER

मूल आदेश संख्या/Order-In-Original No.:-03/COMMISSIONER/RAJU/AHD-I/2012

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

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, O-20, मेघाणीनगर, न्यु मेन्टल हॉस्पिटल कम्पाउन्ड, अहमदाबाद-380 016 को सम्बोधित 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, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

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 प्रतियों 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 सम्बंधित सभी दस्तावेज भी चार प्रतियों 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.



Contd.....

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम 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 35 बी 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 1.00 रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

8. अपील पर भी रु. 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।  
Appeal should also bear a court fee stamp of Rs. 4.00.

**विषय:- कारण बताओ सूचना:**

**Sub:- Show Cause Notice F.No.V.52.55.60/03-19/06-07/Div.IV/DA, dated 08.05.2007, issued to M/s. Gopi Synthetics Pvt. Ltd. for demanding Central Excise duty amounting to Rs.2,72,12,546/- issued by the Commissioner, Central Excise, Ahmedabad-I - regarding:**

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## **Brief Facts of the case:**

1. M/s. Gopi Synthetics Private Limited, Narol-Vatva Road, Narol, Ahmedabad (here-in-after referred as "the noticee"), at the material time having Central Excise Registration No. AAACG7683GST001 and were engaged in the processing of cotton and Man Made Fabrics falling under Chapter Heading No. 52, 55 and 60 of the First Schedule to Central Excise Tariff Act, 1985. They were using Grey Fabrics, Dyes, color, Chemicals, Packing material etc. as inputs, for manufacture of cotton and Man Made Fabrics and were availing the benefit of Notification Nos.29/2004-CE and 30/2004-CE both dated 09.07.2004.

2.1 The Central Government in exercise of powers conferred by sub section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) issued two Notifications No.29/2004-CE and Notification No.30/2004-CE, both dated 9.7.2004. The Notification No.29/2004-CE, dated 09.07.2004, exempts the excisable goods of the description specified in column (3) of the table and falling within the chapter, Heading No., or Sub Heading No. of the first schedule of the Central Excise Tariff Act, 1985, specified in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the first schedule to the Central Excise Tariff Act, as is in excess of the amount calculated specified in the corresponding entry in column (4) of the said table.

2.2 Notification No.30/2004-CE, dated 9.7.2004, stipulates that the assessee manufacturing excisable goods of the descriptions specified in the column 3 of the Table of the Chapter, Heading No., Sub-heading No of the first schedule of the Central Excise Tariff Act 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said table were exempted from whole of the duty of excise leviable thereon under the Central Excise Act " **Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs has been taken under the provisions of the Cenvat Credit Rules 2002**".



2.3 In this regard, for better appreciation and easy reference, the Notification No 30/2004-CE, dated 09.07.2004, which is the subject matter of the impugned Show Cause Notice, is reproduced below:

*"Textiles and Textile Articles — Effective rate of duty to specified goods of Chapters 50 to 63*

*In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 7/2003-Central Excise dated the 1st March 2003, published in the Gazette of India vide number G.S.R. 137(E), dated 1st March 2003, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table, from whole of the duty of excise leviable thereon under the said Central Excise Act :*

***Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002***

**The relevant columns of the Table are as under:**

Sl. No.	Chapter or heading No. or sub-heading No.	Description of goods
(1)	(2)	(3)
3.	52.04, 5205.11, 5205.19, 5206.11, 5206.12, 52.07, 52.08, 52.09	All goods
5.	54.01, 54.04, 54.05, 54.06, 54.07	All goods
6.	54.02, 54.03	Yarns procured from outside and subjected to any process other than texturing, by a manufacturer who does not have the facilities in his factory (including plant and equipment) for manufacture of yarns or textured yarn (including draw twisted and draw wound yarn) of heading 54.02 or 54.03.

*Explanation, - For the purposes of this exemption, "manufacture of yarns" means manufacture of filaments of organic polymers*



		<p>produced by processes, either:</p> <p>by polymerization of organic monomers, such as polyamides, polyesters, polyurethanes, or polyvinyl derivatives; or</p> <p>(b) by chemical transformation of natural organic polymers (for example cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.</p>
7.	5402.10, 5402.41, 5402.49, 5402.51, 5402.59, 5402.61, 5402.69	Nylon filament yarn or polypropylene multifilament yarn of 210 deniers with tolerance of 6 per cent.
8.	55.05	<p>All goods, except such goods which arises during the course of manufacture of filament yarns, monofilaments, filament tows or staple fibres or manufacture of textured yarn (including draw twisted and draw wound yarn) of heading Nos. 54.02, 54.03, 55.01, 55.02, 55.03 or 55.04.</p> <p><i>Explanation.</i> - For the purposes of this exemption, "manufacture of filament yarns, monofilaments, filament tows or staple fibres" means manufacture of filaments or staple fibres of organic polymers produced by processes, either :</p> <p>(a) by polymerization of organic monomers, such as polyamides, polyesters, polyurethanes, or polyvinyl derivatives; or</p> <p>(b) by chemical transformation of natural organic polymers (for example cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.</p>
9.	55.08, 55.09, 55.10, 55.11, 55.12, 55.13, 55.14	All goods
10.	55.06, 55.07	Staple fibres procured from outside and subjected to carding, combing or any other process required for spinning, by a manufacturer who does not have the facilities in his factory (including plant and equipment) for producing goods of heading Nos. 55.01, 55.02, 55.03 and 55.04.
13.	58 (except 5804.90, 5805.90, 58.07, 5808.10)	All goods



*(Handwritten signature)*

2.4 Government of India, Ministry of Finance, Department of Revenue, (Tax Research Unit) New Delhi, vide Circular No.795/28/2004-CX., dated 28.7.2004, issued from F. No. 345/2/2004-TRU, with reference to issue No. 1 that whether a manufacturer of Textiles or textile articles avail full exemption under Notification No.30/2004-CE as well as clear similar or dissimilar goods on payment of duty under Notification No.29/2004-CE simultaneously, has clarified that Notification No.29/2004-05-CE (Prescribing optional duty at the rates of 4% for pure cotton goods and 8% for other goods) and No.30/2004-CE (prescribing full exemption) is independent Notifications and there is no restriction on availing both simultaneously. However, **the manufacturer should maintain separate books of account for goods availing of notification No.29/2004-CE and for goods availing of notification No. 30/2004-CE.**

2.5 Notification No.30/2004-CE dated 9.7.2004 is very specific about the non-availment of Cenvat credit, at input stage for availing duty exemption. The CBEC had further clarified that both the Notifications are independent and there is no restriction on availing both simultaneously provided that the manufacturers should maintain separate books of accounts for goods availing of Notification No.29/2004-CE and for goods availing of notification No.30/2004-CE.

3. During scrutiny of ER.1 returns submitted by the said noticee for the period July, 2004 to May, 2005, it was observed that the noticee had started availing benefit of both notifications with effect from July, 2004. It was also observed that the noticee had started availing benefit of both the aforesaid notifications simultaneously, with effect from July, 2004. It was also observed that duty payment particulars shown in the table 4 & 5 of ER.1, did not tally with the duty payment made on fabrics cleared under Notification No.29/2004, and therefore, on oral inquiry from the noticee it was revealed that the said difference was because they were reversing the credit taken on the inputs used in exempted goods.



4 It appeared that the noticee on the hand, were taking credit and on the other hand were reversing the Cenvat credit availed on the inputs used in the manufacture of exempted final product and at the same time intimated the Range Superintendent as well as the Divisional Office that they were maintaining separate account for manufacture of dutiable and exempted goods. The condition of the Notification No.30/2004-CE, dated 09.07.2004, clearly provides that no Cenvat Credit of inputs can be availed on the goods cleared without payment of duty. Thus, availing Cenvat credit first and subsequent reversal disqualifies the noticee from availing the exemption under Notification No.30/2004-CE, dated 09.07.2004. Further the noticee vide their letter dated 13.03.2006 intimated that they were maintaining separate account for all the inputs including the inputs color and chemicals in a private register as there was no prescribed proforma or format in Central Excise Rules for calculation of reversal of Cenvat credit and they were debiting the Cenvat equivalent to Cenvat attributed on color and chemicals used in the manufacturing of goods cleared under Notification No.30/2004-CE, dated 09.07.2004.

5. It also appeared that the noticee had taken Cenvat credit on all the inputs, including grey fabrics received in the factory and the same were used in the manufacturing of Cotton and Man Made Fabrics [MMF], and the processed finished fabrics were cleared against payment of Central Excise duty under Notification No. 29/2004-CE, dated 09.07.2004, and without payment of Central Excise duty under Notification No. 30/2004-CE, dated 09.07.2004, simultaneously; that the noticee had not maintained any separate records of inputs used in the manufacturing of exempted goods and dutiable goods and these vital facts were not informed or intimated to the Central Excise department; that they were debiting pro-rata amount of Cenvat credit, showing as duty in the ER.1 monthly returns, filed with the Central Excise department, for the goods cleared during the month without payment of Central Excise duty under Notification No. 30/2004-CE, dated 09.07.2004, which was incorrect under the proviso of Central Excise Act/Rules; that the noticee was aware of Board's Circular No. 795/28/2004-CX, dated 28.07.2004, under which it has been clarified the issue and were directed to maintain the separate records for availing the benefit of both notifications simultaneously; that they had not maintained such separate records, which were mandatory in



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nature. Further it appeared that the claim of the noticee for maintenance of separate accounts for fabrics was not correct, as they have failed to furnish the list of records as required under Rule 22(2) of the Central Excise Rules, 2002, so as to indicate, separate account of goods was maintained. The noticee had not maintained separate records for receipt of all inputs being used in the manufacture of the exempted finished goods, subsequently cleared without payment of duty, under the provision of Notification No.30/2004-CE, dated 09.07.2004, and therefore has mis-stated and suppressed the facts willfully with an intention to evade the duty. Further the noticee was asked to give statement under Section 14 of the Central Excise Act' 1944 vide summons dated 06.03.2006, 04.04.2006, 24.04.2006, 08.06.2006, 29.06.2006, but every time they failed to appear for one or other reasons. The noticee neither appeared nor gave any written reply in pursuance to summon dated 18.07.2006. In view of the above, the noticee willfully avoided giving statement and every time gave flimsy grounds, for not attending the investigation proceedings. Further, the noticee intimated vide their letter dated 13.03.2006, that they were maintaining separate books of account for all input in the private register and were debiting Cenvat equivalent to color and chemical used in the manufacture of goods cleared under Notification No. 30/2004 dated 09-07-2004. It appeared that the claim of the noticee for the maintenance of separate accounts for all inputs was not correct as they have failed to furnish the list of records, as required under Rule 22(2) of Central Excise Rules'2002, so as to indicate that, separate account was maintained and if separate records were maintained, there appeared to be no necessity to debit subsequently Cenvat equivalent. Further it appeared that the noticee was debiting CENVAT equivalent to the credit taken on color and chemicals in the manufacture of goods cleared under Notification 30/2004, which clearly disqualify them to avail the benefit of exemption notification 30/2004, as this notification was very specific about the non-availment of Cenvat credit, on inputs for availing duty exemption.

6. On scrutiny of monthly ER-1 returns submitted by the noticee for the period from July, 2004 to May, 2005, it appeared that the said noticee had cleared 1,62,90,420 L.Mtrs. Processed fabrics valued at Rs.47,14,41,124/- falling under Chapters 52, 54, 55 and 60 of Central Excise Tariff Act, 1985, attracting total Central Excise duty





to the tune of Rs. 2,72,12,546/- [BED + Ed. Cess] as detailed in Annexure "A" to the Show Cause Notice by contravening the condition of Notification No.30/2004-CE, dated 9.7.2004 and the clarificatory Circular issued by the CBEC. Thus the noticee is liable to pay the duty on the aforesaid quantity of fabrics cleared without payment of duty.

7. It also appeared that the noticee have contravened the provisions of Rule 22(2) of the Central Excise Rules, 2002, in as much as they have failed to furnish the list of all the records prepared or maintained by them for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods, including inputs and capital goods, and thereby they rendered themselves liable to penalty under the provisions of Rule 27 of the Central Excise Rules, 2002.

8. It appeared that the duty payment particulars shown in the ER-Is, did not match with the duty payments made on fabrics cleared under Notification No.29/2004; that details of Cenvat credit availed by the said noticee have not been shown separately for the inputs used in the manufacture of goods cleared under Notification No.29/2004-CE, as well as 30/2004-CE, both dated 09.07.2004, and the noticee has debited pro-rata credit at the end of month for the goods cleared under Notification No.30/2004-CE, dated 09.07.2004, which was in contravention of the condition stipulated in the said Notification; that the noticee was aware of the CBEC Circular No.795/28/2004-CX., dated 28.7.2004, which requires that the assessee should maintain separate books of accounts for goods availing Notification No.29/2004-CE, and goods availing Notification No. 30/2004-CE, both dated 09.07.2004, and the noticee intimated that they were maintaining separate accounts for all inputs used in the manufacture of exempted goods under Notification No. 30/2004-CE, dated 09.07.2004. Whereas, the pro-rata credit reversal at the end of the month clearly indicates that the noticee has not maintained separate books of accounts for inputs used in the manufacture of exempted goods cleared on payment of duty under Notification no. 29/2004-CE and goods cleared under exemption Notification No. 30/2004-CE, dated 09.07.2004 and has willfully mis-stated these facts to the department. Thus, it appeared that the said noticee has mis-stated the facts and contravened the provisions of the Notification



issued under the Central Excise Act, 1944 with an intent to evade payment of central Excise duty and therefore, the duty worked out in Annexure "A" to the Show Cause Notice was required to be demanded and recovered from the said noticee by invoking extended period of 5 years under the proviso to Section 11A(1) of the Central Excise Act, 1944. For the same reasons, they appeared to be liable for penalty under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 (1) of the Central Excise Rules, 2002. Furthermore, the goods cleared under Notification No. 30/2004-CE, dated 09.07.2004, in contravention of the condition of the Notification, as enumerated therein before, appeared to be liable for confiscation under Rule 25 (1) (a) (b) & (d) of Central Excise Rules, 2002.

9. In view of the facts narrated above, M/s. Gopi Synthetics Private Limited, Narol-Vatva Road, Narol, Ahmedabad, were issued a Show Cause Notice bearing F.No.V.52,55,60/03-19/06-07/ Div.IV/DA, dated 08.05.2007, calling upon them to show cause to the Commissioner, Central Excise, Ahmedabad-I as to why :

- (i). The Central Excise Duty of Rs.2,72,12,546/- [BED + Ed. Cess] as per "Annexure-A" to the Show Cause Notice should not be demanded and recovered from them invoking the extended period of 5 years under the proviso of Section 11A (1) of the Central Excise Act, 1944.
- (ii). Penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 (1) of Central Excise Rules, 2002 should not be imposed on them for the contravention as mentioned above.
- (iii) Interest on the duty confirmed should not be recovered from them under Section 11AB of Central Excise Act, 1944.
- (iv) Penalty under Rule 27 of the Central Excise Rules 2002, should not be imposed on them for the contravention as mentioned above.
- (v) Goods in question should not be confiscated under Rule 25 (1) of the Central Excise Rules, 2002. However the goods are not available for confiscation.



10. Being aggrieved by the Order in Original , the said noticee have filed appeal before the Hon'ble CESTAT, Ahmedabad wherein the CESTAT while relying upon the judgement of the Hon'ble Gujarat High Court in the case of CCE V/s. Ashima Dyecot Ltd. reported at 2008 (232) ELT 580 (Guj) and the in the case of CCE, Ahmedabad V/s. Maize products reported at 2008 (89) RLT 211) (Guj.) have set aside the impugned order and remanded the matter to the Commissioner for fresh decision in light of the law declared by Hon'ble High Court of Gujarat on the disputed issue vide Order No. A/1818-1822/WZB/AHD/2010 & S/1274-1278/WZB/AHD/2010 dated 12.10.2010 and CESTAT Order No. M/1043/WZB/AHD/2011, dated 07.06.2011. They also directed that the appellants are at liberty to piace before the Commissioner their submissions as regards quantum of input credit so reversed by them.

### **Defence Reply:**

11.1 The noticee in their repiy to the Show Cause Notice dated 30.05.2007, has inter-aiaa, submitted that:-

- (i) Instead of not taking Cenvat credit, they had taken the Cenvat credit, but at the end of each and every month, the total amount of Cenvat credit taken on inputs used in the manufacture of exempted goods was debited, thus, it tantamount to no credit taken.
- (ii) No credit was taken on the grey fabrics used for manufacture of exempted goods. It was oniy for color and chemicals, where quantity to be used was not certain, the Cenvat credit was taken on entire quantity and subsequently reversed the credit after the inputs went into use.
- (iii) When everything was disclosed in their monthly returns (ER-1 returns), the ER-1 return for the month of August, 2004 was filed in September, 2004, the demand for the month of July, 2004, is barred.
- (iv) They had already given reply to the letters issued by the department that they were maintaining separate records for the goods except, color and chemicals, and at the end of every month they were debiting the cenvat credit on the inputs used for manufacture of goods cleared under



Notfn.No.30/2004-CE; that the provisions of suppression of facts cannot be invoked. The department cannot say that the scrutiny of ER-1 returns filed for the month of August, 2004 was pending till January, 2006, this would go against the instructions of the CBEC.

- (v) The similar issue was raised by the Ahmedabad-II Commissionerate in respect of one unit M/s Omkar Textile Mills Limited, Naroda, and the matter had reached the CESTAT; that since the issue was subjudiced before the higher authority, they were awaiting for its decision before going and bluntly replying to the officers of the department about their misinterpretation of the law.
- (vi) The issue is no more Res Integra as the same very issue has been decided by the Honorable CESTAT, at Ahmedabad vide Order No.A/836 to 838/WZB/A'bad/07, dated 18.4.2007, has set aside the OIO No.241/Commissioner/2005, dated 28.9.2005, that in this Order, the Honorable CESTAT has clearly held that the credit availed and reversed would amount to the situation as if the same was not availed, thus, satisfying the condition of Notification No.30/2004-CE; that since the appellate jurisdiction of the present Commissioner, Central Excise, Ahmedabad-I, the present adjudicating authority, lies with the same bench of the Honorable CESTAT which has passed the above said Order dated 18.4.2007, the judicial discipline requires that the Commissioner should follow the ratio laid down by the CESTAT and drop the proceedings initiated.
- (vii) Since on the merit of the case, the proposed demand of duty is required to be quashed and set aside, the consequential actions of demanding interest and imposing penalty are also required to be set aside; this is not a case of deliberate evasion of central excise duty, at the most this is case of technical interpretation where the bonafide of the manufacturer cannot be doubted; that when the bonafide are clear and the demand of duty has arisen out of technical interpretation of the provisions of notification, it does not invite for imposition of penalty.



11.2 The noticee vide their letter dated 05.10.2009 has filed additional written submissions, wherein it has been, inter-alia, submitted that :

- (i) The issue is no more Res Integra as the same very issue has been decided by the Honorable CESTAT, at Ahmedbad in its decision in the case of three appellants viz. M/s Omkar Textiles, M/s Diamond Textiles and M/s Ashima Dyecot Ltd., vide order dated 16.04.07, relied upon the decision of the Hon'ble Supreme Court in case of Chandrapur Magnet (Wires) Pvt. Ltd., V/s CCE, Nagpur {1995 (81) ELT 3 (SC)} and held that the reversal of credit of duty originally availed would amount to the effect as if no credit has been availed.
- (ii) The findings rendered by the Honourable Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. Vs Collector of Central Excise Nagpur, reported in 1996 (81) E.L.T. 3 (S.C.) are clearly applicable to the present matter;
- (iii) It is true that, they have reversed the credit taken on the inputs used in manufacture of these goods; that the ratio laid down in this decision rendered by the Honourable Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. (supra) is squarely applicable to the facts of the present case and maintenance of separate books of accounts at the initial stage cannot be considered to be a condition precedent for the purpose of claiming the benefit of exemption.
- (iv) Even otherwise, Rule 3 says that the manufacturer or producer of the final product or provider of output services shall be allowed to take credit on various items enumerated therein; that this issue had come up for consideration before the Allahabad High Court in the case of Hello Minerals Water (P) Ltd. v. Union of India, reported in 2004 (174) ELT 422 (All.), wherein it is held that "reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence, the benefit has to be given of the notification granting exemption/rate of duty on the final products since the reversal of credit on the input was done at the Tribunal's stage"; that while arriving at this conclusion, the Allahabad High Court has referred to



various judgments under which such reversal was made subsequently and still the benefit was given to the assessee.

- (v) If debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee; that in such a situation, it cannot be said that they have taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A; that in other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that they have taken credit of the duty paid on the inputs used in manufacture of these goods; that there are plethora of judgments at various levels in favour of the noticee.
- (vi) In the similar matter of M/s. Ashima Dyecot and others, the CESTAT, Ahmedabad has given the decision in favour of the assessee. The department has gone in the High Court but the Honourable High Court in its decision reported at 2008 (12) S.T.R. 701 (Guj.) has held that "since the Tribunal has correctly applied the law laid down by the Honourable Supreme Court and the issue is well settled, we are of the view that no question of law, much less any substantial question of law, arises out of the order of the Tribunal and hence, all the three appeals are, accordingly, dismissed"; that the department filed a SLP in the Supreme Court against this order and the Honourable Supreme Court has recently dismissed the appeal filed by the department. Therefore the issue is now settled and the entire notice is required to be quashed and set aside.
- (vii) This is not a case of deliberate evasion of central excise duty, and at the most this is case of technical interpretation where the bonafide of the manufacturer cannot be doubted; that all the textile units were following the same procedure and the said procedure was in the knowledge of the department that if one unit is following a procedure differently it may be assumed that there is any intention to evade the revenue but when many textile units were following the same procedure it can not be said



that they were following such procedure with intention to evade the revenue; that it is an established law position when there is a difference of interpretation, the benefit should go to the manufacturer.

- (viii) The CBEC has cleared the matter vide circular no. 858/16/2007-CX, dated 8.11.2007; that the Board in para 2 of the circular has clarified that "The matter has been examined. In para-8 of the above referred Supreme Court decision, it has been held that even when credit is taken, if the entry is reversed before utilization, it would amount to not taking credit; that this is given in the context of erstwhile notification No. 14/2002-C.E., which is similar to Notification No. 30/2004-C.E., dated 9-7-2004; that both the notifications deal with textile articles falling under Chapters 50 to 63 of the Central Excise Tariff; that all goods falling under Chapters 50 to 63 of the Tariff are covered under Rule 6(3)(a) of the Cenvat Credit Rules, 2004, which stipulates that if Cenvat Credit is taken on inputs used in the manufacture of exempted goods falling under these Chapters, then the manufacturer shall reverse the credit so taken".
- (ix) When the bonafide are clear and the demand of duty has arisen out of technical interpretation of the provisions of notification, it does not invite for imposition of penalty; that in Hindustan Steel Ltd. v. State of Orissa - 1978 (2) ELT (J 159) (S.C.), the Supreme Court pointed out that the liability to pay penalty does not arise merely upon proof of default; that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.
- (x) The Principal Bench of CESTAT New Delhi in case of M/s Spice Systems Ltd. Vs Commissioner of Customs, Central Excise Noida reported at 2008 (231) E.L.T. 650 (Tri. - Del.), has held that the "applicability of Notification No. 5/98-C.E. (Si. No. 69, Condition No. 10) - Issue settled by Apex Court in the case of N.M. Nagpal (P) Ltd. [2008 (222)



E.L.T. 486 (S.C.)] - Submission that issue involved purely a question of legal interpretation as to fulfillment of condition of notification which finally settled by Supreme Court, hence no justification for penalty." Therefore the penalty under section 11 AC is far fetched for the same reason in this case.

### **Personal Hearing:**

12. The Personal Hearing in the matter was fixed on 15.11.2011, which was postponed to 07.12.2011. The noticee attended the personal hearing on 07.12.2011 and sought for two weeks time to produce records before the Jurisdictional Range Officer. The noticee was requested to submit the statements/documents and records of relevant period to show the quantum of credit reversed by them before the JRO vide letter dated 29.11.2011, but the noticee has not responded to the requests. Another date of personal hearing was granted on 03.01.2012 wherein the notice vide letter dated 03.01.2012 have requested for adjournment. The noticee was again requested vide letter dated 06.01.2012 to produce all the relevant records/documents before the Jurisdictional Deputy Commissioner for verification by 13.1.2012, but they failed to do so. The personal hearing in the matter is again fixed on 17.01.2012. The advocate of the noticee had attended the P.H. and submitted their written submission and conveyed that they were not in a position to produce documents for verification for the reasons cited in their written submission.

### **Discussions and Findings:**

13. I find that the Noticee alleged to have availed the provisions contained in the Notifications no. 29/2004-CE. and 30/2004-CE. both dated 09-07-2004, simultaneously without maintaining separate accounts for the inputs used in the finished products cleared by them under the said Notifications and without reversing the equivalent Cenvat Credit attributable to the inputs used in the finished products cleared by them under Not. No. 30/2004-C.E. dated 09-07-2004 before effecting such clearances and hence the said Show Cause Notice was issued.





13.1 I have carefully gone through the evidence available on record, including Show Cause Notice (SCN) dated 07.03.2007, the submissions made by the noticee vide their written submissions dated 30.05.2007, 05.10.2009 and 17.01.2012 and the Hon'ble CESTAT's order No. A/1818-1822/WZB/AHD/2010 & S/1274-1278/WZB/AHD/2010 dated 12.10.2010 and CESTAT Order No. M/1043/WZB/AHD/2011, dated 07.06.2011 in the case.

13.2 While passing the above order, the Hon'ble CESTAT have relied upon the judgement of the Hon'ble Gujarat High Court in the case of CCE V/s. Ashima Dyecot Ltd. reported at 2008 (232) ELT 580 (Guj) and in the case of CCE, Ahmedabad V/s. Maize products reported at 2008 (89) RLT 211 (Guj.) **Also Considering the appeal and submission of the noticee that they are in a position to demonstrate before Commissioner that the quantum of credit reversed by them was equivalent to the credit taken by them on the said input,** the Hon'ble CESTAT vide their above order allowed the stay petitions unconditionally and set aside the impugned order and remanded the matter to the Commissioner for fresh decision in the light of the law declared by the Hon'ble High Court of Gujarat on the disputed issue. They also directed that the appellants are at liberty to place before Commissioner their submissions as regards quantum of input credit so reversed by them."

13.3. The issue before me is to decide the case afresh in the light of Hon'ble CESTAT's Ahmedabad order No. A/1818-1822/WZB/AHD/2010 & S/1274-1278/WZB/AHD/2010 dated 12.10.2010 and CESTAT Order No. M/1043/WZB/AHD/2011, dated 07.06.2011. Accordingly I proceed to decide the case afresh.

13.4 As per the order of the Hon'ble Gujarat High Court, the reversal of the Cenvat credit is allowed even at the appeal stage and had been held in accordance with law in the case of CCE, Ahmedabad V/s. Maize Products reported at 2008 (89) RLT 211 (Guj.). A perusal of the order of the Hon'ble High Court wherein the appeal of the department against the order of the CESTAT was dismissed go on to show that the said appeal was dismissed only on the ground that the "..... **entire controversy has been decided by the Tribunal by merely remitting the matter to the Adjudicating Authority to re-**



**determine the credit in accordance with law. If any reversal has been made by the respondent assessee, the same is subject to verification and adjustment if ultimately any further amount is found reversible".**

13.5. Further, the department has filed Special Leave Petition in the Hon'ble Supreme Court against the Order passed by the Hon'ble Gujarat High Court in the case of M/s. Maize Products which has been dismissed by the Hon'ble Supreme Court vide SLP NO. 11119 of 2009 dated 20/11/2009.

13.6 I also infer from various decisions of the Tribunal, High court and Apex court, "that Cenvat credit taken and reversed before utilization or reversed even at the appeal stage amounts to a situation that credit not taken" and held in accordance with law in as much as the quantum of reversal of credit has to be preceded by a proper verification and re-determination. I am also of the view that the Hon'ble CESTAT had remanded the instant case for fresh proceedings for the very same reason

13.7 I also find from the observations made and recorded at para No. 13.2.1 in the OIO NO. 34/Commissioner/RKS/Ahd-I/2009 dated 09.11.2009 passed in the case by the then Commissioner that the noticee has reversed the Cenvat credit involved in exempted goods to an amount of Rs. 36,22,347/- as against Rs. 36,43,655/- required to be reversed by them, thereby reversing less amount of Rs.21,308/- than what was actually required to be reversed.

13.8 Now, I find from the report submitted by the Jurisdictional Deputy Commissioner under whose jurisdiction the factory of the noticee falls/located vide his letter F.No. IV/11-4/Cestat/2011-12 dated 30.01.2012 that the noticee had paid Rs. 21,408/- towards the outstanding amount of proportionate Cenvat credit utilized on the inputs used in the manufacture of exempted final products under Notification No. 30/2004-CE dated 09.07.2004 along with applicable interest of Rs. 24,292/- was paid vide challan No. 50108 dated 20.01.2012. He also submitted that there is **no outstanding credit to be reversed** by the noticee and as such the **entire amount of proportionate Cenvat credit stands reversed by them.**



13.9 I find that the noticee have reversed the entire amount of proportionate credit, and no outstanding amount is required to be reversed by them and hence I hold that the reversal of Cenvat credit made by them is in accordance with law as held by various decisions of the Tribunal as well as the Hon'ble High Court and Apex Court.

13.10 I also hold that the **Cenvat credit taken and reversed by the noticee amounts to the situation that no credit has been taken by them and hence the same is satisfying the condition of Notification No. 30/2004-CE dated 09.07.2004. Hence, I hold that they are eligible to the benefit of Notification No. 30/2004-CE dated 09.07.2004 during the period in question.** Hence, the central excise duty of Rs. 2,72,12,546/- demanded under Section 11A(1) of CEA 1944 from the noticee is not sustainable and I also find that the contraventions of the various provisions of Central Excise Act & Rules 1944 framed thereunder as alleged in the show cause notice are not sustainable. Therefore, I refrain from imposing any penalty and redemption fine on the noticee under section 11AC of CEA 1944 and Rule 25(1) of Central Excise Rules, 2002 respectively.

14. In view of the foregoing discussion, I pass the following order:

### **ORDER**

I drop all the proceedings initiated vide Show Cause Notice F.No. V.52,55,60/03-19/06-07/Div-IV/DA dated 08.05.2007 issued to M/s. Gopi Synthetics Private Limited, Narol-Vatva Road, Narol, Ahmedabad.



**ATTESTED**  
*(Signature)*  
**(J. V. L. PRASAD)**  
SUPERINTENDENT (O&A)  
CENTRAL EXCISE, H.Q.  
AHMEDABAD-I

*(Signature)*  
**(RAJU)**  
COMMISSIONER,  
CENTRAL EXCISE,  
AHMEDABAD-I.

F.No.V.52,55,60/15-154/Dem/Gopi/07

Dated: 31.01.2012

#### **By Hand Delivery:**

To,  
M/s. Gopi Synthetics Private Limited,  
Narol-Vatva Road,  
Narol,  
Ahmedabad.

**Copy for information and necessary action to :**

- 1) The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Additional Commissioner (R.R.A.), Central Excise, Ahmedabad-I.
- 3) The Additional Commissioner (Preventive), Central Excise, Ahmedabad-I.
- 4) The Additional Commissioner (Legal & Prosecution), Central Excise, Ahmedabad-I.
- 5) The Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-I.
- 6) The Superintendent, Central Excise, AR-V, Division-IV, Ahmedabad - I.
- 7) The Superintendent (Systems), Central Excise, Ahmedabad - I.
- 8) Guard File.

Pk.

