



केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर  
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,

PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,

नारायण उपाध्याय मार्ग, भावनगर-364001

NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

दूरभाष : (0278) 2523627 फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाईल सं. V/15-09/Adj/DGCEI/HQ/2011

F. No.

आदेश की तारीख : 08/01/2013

Date of Order :

जारी करने की तारीख : 08/01/2013

Date of Issue :

पारितकर्ता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त , केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner , Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 01/BVR/Commissioner/2013

1. आदेश की यह प्रति जिसको जारी किया गया है उनके व्यक्तिगत उपयोग के लिए नि:शुल्क भेजी जा रही है ।

1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.

2. यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है , तो इस आदेश के विरुद्ध सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय प्राधिकरण , ओ-20 , मेघाणी नगर , नया मानसिक अस्पताल संकुल , अहमदाबाद को केन्द्रीय उत्पाद शुल्क अधिनियम की धारा 35-बी की उपधारा 1(a) की शर्तों के आधार पर अपील कर सकता है । धारा 35-बी (1) (परंतुक) (a) से (d) के अंतर्गत मामले जैसे कि हानि , छूट , बॉण्ड के अंतर्गत निर्यात , शुल्क क्रेडिट के मामले , आवेदन के पुनरीक्षण के मामलों में आवेदन भारत सरकार के संयुक्त सचिव , राजस्व विभाग , वित्त मंत्रालय , नई दिल्ली को बंधनकर्ता रहेगा ।

2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lie to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.

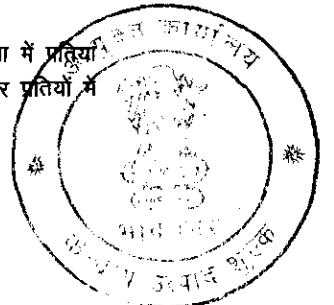
3. अपील फॉर्म E.A.-3 में केन्द्रीय उत्पाद शुल्क (अपील) नियम , 2001 के नियम 3 के उपनियम 2 में विनिर्दिष्ट व्यक्ति द्वारा की जानी चाहिए ।

3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.

4. केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35-B के अंतर्गत अपील इस आदेश की प्राप्ति के तीन माह के अंदर दर्ज करवानी होगी ।

4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).

5. यह अपील चार प्रतियों में दाखिल की जाए और जिसके विरुद्ध अपील की गई है , उस आदेश की समान संख्या में प्रतियां संलग्न की जाए (इन में से कम से कम एक प्रति अधिप्रमाणित होनी चाहिए) । उक्त अपील के समर्थक सभी दस्तावेज चार प्रतियों में



भेजे जाए । उक्त अपील व्यक्तिगत रूप से रजिस्ट्रार के समक्ष प्रस्तुत की जाए या पंजीयक के नाम से रजिस्ट्री डाक द्वारा भेजी जाए । परन्तु उक्त रजिस्ट्रार के कार्यालय में प्राप्ति की तारीख नियत अवधि में होगी ।

5. 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. The appeal shall be presented in person to the Register or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. फीस का भुगतान न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट द्वारा अधिनियम के प्रावधानों के अंतर्गत करना अपेक्षित है । यह ड्राफ्ट जहाँ पीठ स्थित है , किसी राष्ट्रीयकृत बैंक की किसी शाखा के नाम पर जारी किया जाए और उस उक्त अपील प्रपत्र के साथ डिमाण्ड ड्राफ्ट संलग्न किया जाना चाहिए ।

6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

(क) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 50,00,000/- (रूपए पचास लाख) से ज्यादा हो , रू. 10,000/- (रूपए दस हजार )

(a) Where the amount of duty and interest demanded and penalty is levied is more than Rs. 50,00,000/- (Rupees Fifty Lakhs), Rs. 10,000/- (Rupees Ten Thousand);

(ख) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) से अधिक हो लेकिन , रूपए 50,00,000/- (रूपए पचास लाख) से कम हो 5,000/- (रूपए पांच हजार )

(b) Where the amount of duty and interest demanded and penalty levied is more than Rs. 5,00,000/- (Rupees Five Lakhs) but not exceeding Rs. 50,00,000/- (Rupees Fifty Lakhs), Rs. 5,000/- (Rupees Five Thousand);

(ग) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) अथवा कम हो , रूपए 1,000/- (रूपए एक हजार )

(c) Where the amount of duty and interest demanded and penalty levied is Rs. 5,00,000/- (Rupees Five Lakhs) or less, Rs. 1,000/- (Rupees One Thousand);

7. इस आदेश की प्रतिलिपि पर न्यायालय शुल्क मुद्रांक अधिनियम , 1970 की अनुसूची 1 मद 6 के अंतर्गत निर्धारित 50 पैसे का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प ) लगाया जाना चाहिए ।

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. उक्त अपील फॉर्म के साथ शुल्क / दण्ड की अदायगी का प्रमाण संलग्न किया जाना चाहिए ।

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. अपील पर रू. 5 (रूपए पांच ) का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प ) लगाया जाना चाहिए ।

9. Appeal should bear a Court Fee Stamp Rs. 5/-.

10. पूर्ण जानकारी हेतु केन्द्रीय उत्पाद शुल्क (अपील) नियम , 2001 एवम CESTAT (कार्यविधि) नियम 1982 देखें ।

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CESTAT, Procedure Rules, 1982 for complete details.

To,

- (1) M/s. Madhu Silica Pvt. Ltd. (100% EOU),  
Plot Nos. 53, 55, 56/B & 193, GIDC Chitra,  
Bhavnagar (Gujarat)
- (2) Shri Darshak R. Shah,  
Director of M/s. Madhu Silica Pvt. Ltd. (100% EOU),  
Plot Nos. 53, 55, 56/B & 193, GIDC Chitra,  
Bhavnagar (Gujarat)

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice F. No. DGCEI/AZU/36-142/2011-12 dated 14.12.2011 issued by the ADG, DGCEI, AZU, Ahmedabad issued to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Plot Nos. 53, 55, 56/B & 193, GIDC Chitra, Bhavnagar (Gujarat) and others..

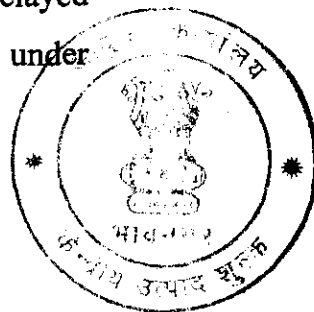


**BRIEF FACTS OF THE CASE :**

M/s. Madhu Silica Pvt. Ltd. (100% EOU), Plot Nos. 53, 55, 56/B & 193, GIDC Chitra, Bhavnagar (Gujarat) (herein after referred to as the "MSPL" for the sake of brevity) is having a status of 100% EOU as per Letters of Permission (LOP) No. KASEZ/100%/EOU/II/59/03-04/11149 dated 23.01.2004 & 11.07.2009 issued by the Development Commissioner, KASEZ, Gandhidham under the provisions of 100% EOU scheme under Chapter 6 of Foreign Trade Policy, 2009-2014. M/s. MSPL is having the Central Excise Registration No. AABCM4381JXM002 issued by the Assistant Commissioner, City Division, Bhavnagar on 28.06.2006 and engaged in the manufacture & sale of Precipitated Silica falling under Chapter Sub-heading No. 38249025 of CETA, 1985 & Sodium Alumina Silicate falling under Chapter Sub-heading No. 28421000 of CETA, 1985. M/s. MSPL has also been granted License for Private Bonded Warehouse under 100% Export Oriented Scheme under Section 58 of the Customs Act, 1962. The Unit had furnished a B-17 Bond with the department and agreed to fulfill various conditions laid down therein including observance of all the provisions of the Customs Act, 1962 / Central Excise Act, 1944 and rules / regulations framed there under including accounting and disposal of excisable goods obtained without payment of duty.

2.1 A Show Cause Notice No. DGCEI/AZU/36-142/2011-12 dated 14.12.2011 has been issued to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Bhavnagar by the Additional Director General of Central Excise Intelligence, Ahmedabad Zonal Unit (AZU), Ahmedabad proposing :-

- (a) the recovery of Central Excise duty evaded to the tune of Rs.1,33,22,958/- (Rupees One Crore Thirty Three Lacs Twenty Two Thousand Nine Hundred and Fifty Eight Only) leviable on clearance of DTA sale of finished goods made during the period from September-2007 to April-2011, under proviso to Sub-section (1) of Section 11-A of Central Excise Act, 1944 as well as in terms of conditions of B-17 Bond furnished by them and to appropriate the said amount against the amount of Rs.1,33,22,958/- already paid,
- (b) the recovery of interest to the tune of Rs.29,94,847/- (Rupees Twenty Nine Lakh Ninety Four Thousand Eight Hundred Forty Seven only) on delayed payment of the evaded Central Excise duty as mentioned aforesaid under



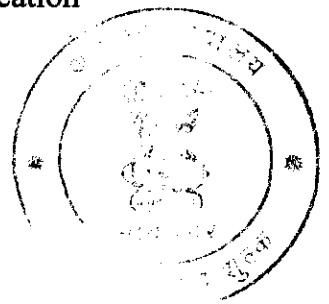
Section 11-AB of the Central Excise Act, 1944 as well as in terms of conditions of B-17 Bond furnished by them and to appropriate the the amount of Rs.2,81,354/- already been paid by them against the aforesaid demand of interest ;

(iii) the penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 well as in terms of conditions of B-17 Bond furnished by them.

2.2 In the said Show Cause Notice dated 14.12.2011, it has also been proposed to impose personal penalty on Shri Darshak Ramesh Shah, Director of M/s. Madhu Silica Pvt. Ltd. (100% EOU), Plot Nos. 53, 55, 56/B & 193, GIDC Chitra, Bhavanagar (Gujarat) under Rule 26 of the Central Excise Rules, 2002.

3.1 The facts leading to issuance to the Show Cause Notice DGCEI/AZU/36-142/2011-12 dated 14.12.2011 is that an intelligence was gathered by the officer of Director General of Central Excise Intelligence (DGCEI for short), Ahmedabad Zonal Unit (AZU), Ahmedabad that M/s. MSPL is not discharging the Central Excise duty properly on DTA sale of their finished goods w. e. f. 06.07.2007 in as much as they are paying central excise duty i.e. an amount equal to Central Excise duty as per Serial No. 3 of the Notification No.23/2003-CE dated 31.03.2003 on DTA sale of their finished excisable goods, instead of paying Central Excise duty i.e. an amount equal to fifty per cent of the aggregate of all Customs duties leviable thereon under Section 3 of the Central Excise Act, 1944 as per Serial No. 2 of the said Notification.

3.2 M/s. MSPL has procured the raw materials mainly Soda Ash, Sulphuric Acid, Sodium Silicate Glass etc duty free from the DTA units / suppliers, who have in turn availed the benefit of deemed Exports provided under paragraph 8.3 (a) and (b) of the Foreign Trade Policy and the said raw materials have been used in the manufacture of their finished goods, which were cleared under DTA. Thus, the raw materials received under benefits of deemed Exports under paragraph 8.3 (a) and (b) of the Foreign Trade Policy from Domestic Tariff Area by the said 100% EOU shall be treated as imported goods as explained under explanation-II inserted vide Notification No. 29/2007- CE, dated 06.07.2007 in the Notification No.23/2003-CE dated 31.03.2003, which reads as under:-



Explanation II: "following supplies shall be treated as imported goods: ---  
(ii) goods received from Domestic Tariff Area under benefits of deemed Exports under paragraph 8.3 (a) and (b) of the Foreign Trade Policy."

3.3 Subsequent to insertion of the aforesaid explanation-II in Notification No.23/2003-CE dated 31.03.2003 w. e. f. 06.07.2007, M/s. MSPL was required to pay the excise duty on DTA clearances as per serial no. 2 of the Notification No. 23/2003 – CE dt.01.03.2003 as amended in as much as to pay an amount equal to fifty per cent of the aggregate of all customs duties leviable under Section 3 of the Central Excise Act, 1944, as the suppliers of the raw materials had supplied the raw materials availing benefit of deemed Exports under paragraph 8.3 (a) and (b) of the Foreign Trade Policy, therefore, the supply of goods was to be treated as Imported Goods. However, M/s. MSPL, had continued to pay duty i.e. equal to excise duty as per serial no. 3 of the said Notification even after 06.07.2007 instead of paying an amount equal to fifty per cent of the duty leviable under Section 3 of the Central Excise Act, as per serial no. 2 of the said Notification, which resulted into short payment of duty on DTA sale.

4.1 Accordingly, a search operation was conducted at the factory cum office premises of M/s. MSPL, situated at Plot Nos. 53, 55, 56/B & 193, GIDC Chitra, Bhavanagar on 27.09.2011 and the records of M/s. MSPL were withdrawn under the reasonable belief that the same were useful for further investigations, as detailed in Annexure-A to the Panchnama dated 27.09.2011

4.2 A statement of Ms. Neepa Mehta, Director of M/s. MSPL, was recorded under Section 14 of Central Excise Act, 1944 on 27.09.2011 wherein she, *inter alia*, stated that she is one of the Directors in M/s. MSPL and other Directors are Shri Ramesh Shah and Shri Darshak Shah; that Shri Ramesh Shah is the Chairman cum Managing Director of the company and all the decisions relating to financial and administrative matter including payment of Duty on DTA sales and other Taxes were being taken by him and she directly works under him as per his direction; that he is wholly and fully responsible for all the activities of M/s. MSPL; that she is a paid employee of the said unit and she looks after marketing related works of their company since 2007-08; that their company was engaged in manufacturing and sale of Precipitated Silica & Sodium Alumina Silicate and functioning as a 100% Export Oriented Unit; that for the manufacture of the aforesaid goods, they were also having other four DTA units situated at Plot No.



40, GIDC, Chitra, Bhavnagar, Plot No. 53, 55 & 56/A, 193, 196 +197, GIDC, Chitra, Bhavnagar, Plot No. 73/74, GIDC, Chitra, Bhavnagar, Plot No. 147, GIDC, Vartej, Bhavnagar respectively; that they have taken registration of their 100% EOU from the Assistant Commissioner, City Division, Bhavnagar on 28.06.2006 and registration No. is AABCM4381JXM002; that they had applied for de-bonding of the said unit to KASEZ on 11.04.2011; that the process flow chart of their finished product viz. Precipitated Silica and Sodium Alumina Silica are as under:

**Precipitated silica**

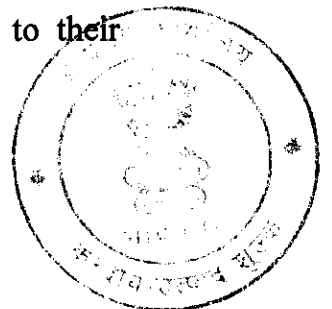
Soda ash + Silica sand (reacted)- sodium silicate glass + steam – sodium silicate slurry + Sulphuric acid – silica precipitates out – reacted silica slurry filtration and washing (water + salt gets removed during filtration)- the cake is dried in flash dryer / cake is converted into slurry and spray dried – product pulverization if required & packing – post dried/ de-aerated or granulated & packed.

**Sodium Alumina Silica**

Sodium Silicate Glass- Melter- settling tank- reaction- filter press- filter cake- flash dryer- screening machine- packing.

She further stated that they had procured their raw materials viz. Soda Ash, Sulphuric Acid, Sodium Silicate Glass, Packing materials etc. wholly from DTA suppliers against CT3 from 2007-08 to April, 2011 and used the same in the manufacture of finished goods cleared for DTA as well as for Exports; that after applying for de-bonding of their unit on 11.04.2011, they had started to procure the raw materials on payment of applicable duties from DTA suppliers against which those DTA suppliers are neither entitled nor availed any benefit of Deemed Exports; that their unit did not maintain the separate accounts for finished goods manufactured out of duty free inputs procured against CT-3 and duty paid inputs purchased from DTA suppliers during the month of April 2011.

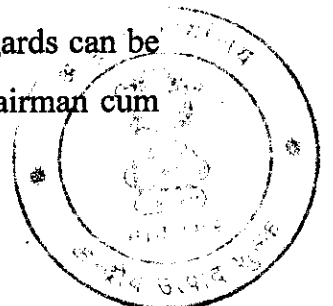
4.2 She denied to have knowledge of the fact that their suppliers of the inputs had availed the benefit of deemed exports viz. Advance Authorization/DFIA Licenses/ Deemed Export Drawback etc., as stipulated under paragraph 8.3(a) and (b) of the Foreign Trade Policy, against the supplies of inputs made to their company during the period from 06.07.2007 to 11.04.2011.



4.3 She confirmed on going through the invoices issued by one of major DTA supplier viz. M/s. GHCL Limited, Veraval that it was clear from the endorsement made on invoices that M/s. GHCL had supplied goods viz. Soda Ash under CT-3 without payment of central excise duty against DIFA License to M/s MSPL during the period from July-2007 to 11.04.2011, thereby M/s. GHCL were availing the benefit of deemed exports as stipulated under paragraph 8.3(a) and (b) of the Foreign Trade Policy against such supplies made to M/s. MSPL.

4.4 She further stated that M/s. MSPL had cleared their finished goods viz. Precipitated Silica and Sodium Alumina Silica in DTA after getting permission from DGFT and was paying duty on DTA sale of said goods equal to excise duty only as per Sr. No. 02 of Notification No. 23/2003-CE dated 31.03,2003 since September-2007.

4.5 She further confirmed on going through the Notification No.23/2003-CE dated 31.03.2003 and Notification No.29/2007-CE dated 06.07.2007 that as per Explanation-II inserted vide Notification No. 29/2007-CE dated 06.07.2007, goods received from Domestic Tariff Area under deemed exports under paragraph 8.3(a) and (b) of the Foreign Trade Policy was be treated as imported goods. However, they were under the impression that since M/s. MSPL had procured the raw materials wholly from the DTA units and neither imported any goods till date and their said receipts were indigenous. They had paid duty on DTA sale equal to excise duty as per Sl. No. 2 of Notification No.23/2003-CE dated 31.03.2003 till date considering the said receipts indigenously. Having understood the aforesaid Notification, she further confirmed that the goods received from DTA suppliers under benefits of deemed exports under Paragraph 8.3(a) and (b) of the Foreign Trade Policy by M/s. MSPL during the period from July 2007 to 11.04.2011 was be treated as "Deemed Import" / Imported goods. According to Sr. No. 03 of Notification No. 23/2003 dated 31.03.2003 and they had to pay duty equal to 50% of aggregate of all Customs Duties on DTA sale of their finished goods made during the period from September-2007 to 30.04.2011. However, their company had paid duty on DTA sales equal to excise duty only as per Sr. No. 02 of Notification No. 23/2003-CE dated 31.03.2003. Thus, their company had short paid duty on goods cleared under DTA. Further explanation in this regards can be given by main directors of their company viz. Shri Ramesh Shah, Chairman cum



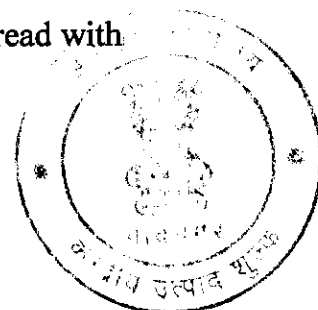
Managing Director and Shri Darshak Shah, Director, as all the decisions relating to financial and administrative matter including payment of Duty on DTA sales and other Taxes were being taken by them only and they are wholly and fully responsible for all the activities of their unit. She is directly working under them as per their directions.

4.6 She stated that their company had not cleared any goods in DTA during the month of July & August-2007 and she submitted the details of DTA sale of goods made during the period from 01.09.2007 to 30.04.2011 as under:

Period	Description of goods	Quantity (MT)	Assessable Value (Rs.)	Total duty paid on DTA sale (PLA + Cenvat) (Rs.)
2007-08 (w.e.f. 01.09.07)	Precipitated Silica	570.826	22479341	3682800
2008-09	Precipitated Silica	1555.665	60328100	7766806
2009-10	Precipitated Silica	2966.086	114565185	9615265
2010-11	Precipitated Silica & Sodium Alumina Silica	4844.357	216473592	22296096
2011-12 (April-11)	Precipitated Silica	372.613	23191260	2388716
	TOTAL	10309.547	437037478	45749683

The aforesaid finished goods cleared in DTA during the period from 01.09.2007 to 30.04.2011 were manufactured out of the inputs procured duty free against CT-3 from DTA suppliers, against which those suppliers might have availed the benefit of deemed exports.

4.7 She agreed with the work-sheet showing details assessable value of goods sold in DTA, duty payable on DTA sale of goods in terms of Sr. No. 03 of Notification No. 23/2003 read with Notification No. 29/2007-CE, duty paid and differential duty of excise short paid on DTA sale of finished goods during the period from September-2007 to April 2011 by M/s. MSPL, prepared on the basis of aforesaid details of DTA sales and ER-2 Returns filed by M/s. MSPL and the manner of the duty calculation in respect of DTA Sales. According to which, M/s. MSPL was liable to pay C. Ex. duty totally amounting to Rs.5,90,72,641/- on DTA sale of finished goods in terms of Sr. No. 03 of Notification No. 23/2003 read with





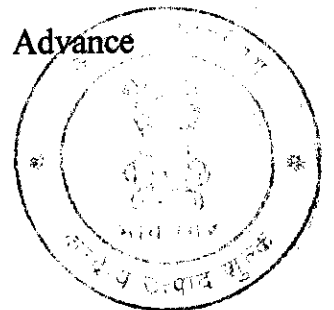
Notification No. 29/2007-CE as against their company had paid Central Excise duty totally amounting to Rs. 4,57,49,683/- leviable thereon, thereby their company had short paid Central Excise duty totally amounting to Rs.1,33,22,958/- on DTA sale of finished goods during the period from September-2007 to April-2011, as detailed in aforesaid worksheet, which is marked as Annexure "A" to her this statement.

4.8 She stated that Shri Ramesh Shah, Chairman cum Managing Director is the authorized person to take decision with regard to the payment of the aforesaid short paid duty on DTA sale along with interest and applicable penalty and she cannot take any decision in this regard as she is not empowered to take such vital decision regarding payment of short paid duty on DTA Sale along with Interest and applicable penalty, if payable.

4.8 She stated that since she was not looking after the excise related works of their company, it was not possible to reply that the vital fact that their company had manufactured the finished goods cleared / sold in DTA, out of the inputs procured duty free from the DTA suppliers, who have in turn against such supplies availed the benefit of deemed exports as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy was informed to the department or not and Shri Ramesh Shah or Shri Darshak Shah can reply in this matter.

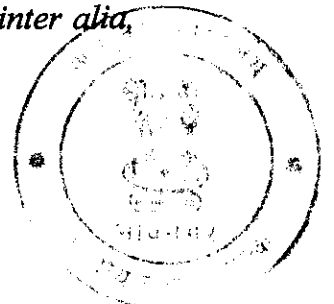
5. In order to ascertain the fact of availment of the benefit of deemed exports as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy, against supplies made to M/s. MSPL by the DTA suppliers, inquiry was also extended at the end of their DTA suppliers under summons proceedings. Accordingly, some of DTA suppliers appeared along with relevant information to give oral statements in the matter, details thereof are as under:-

5.1 A statement of Shri Dipak Amritlal Shah, Director of M/s. Neptune Polymers Pvt. Ltd., 529/10/1, Old Dalia Building, Opp. Town Hall, Ellisbridge, Ahmedabad, was recorded under Section 14 of the Central Excise Act, 1944 on 01.11.2011, wherein he, *inter alia* submitted an Annexure showing the details of supply of goods viz. HDPE Woven Sacs Bag made by their company to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Bhavnagar by availing the benefit of deemed export. He further stated that till date they had obtained one Advance



Authorization License No. 08100062804/3/03/00 dated 07.02.2007 from DGFT, Ahmedabad, for direct import of Granules and export of HDPE Woven Sacks. Subsequently, on their request, DGFT has invalidated the above said Advance Authorization for Direct import and had issued two Invalidation Letters No. 0859000781 & No. 0859000782, both dated 11.04.2007 to the effect that the exporter will procure inputs viz. 60.500 MT HDPE Granules indigenously from M/s. RIL and 15.750 MT Granules of materials used for lamination/ coating & 31.500 MT Granules of materials used for liner from M/s. IPCL, Vadodara, respectively; that however, they had procured only 20 MT from M/s. RIL, Hazira during 2007-08 against aforesaid Invalidation letter and after that they had not procured inputs against the aforesaid Invalidation; that for fulfillment of their export obligation against aforesaid license/ Invalidation, they had made supply of goods viz. 20000.80 Kgs. of HDPE Woven Sacs Bag from their company to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Bhavnagar, against which they had availed the benefit of deemed export during the year 2007-08 only, as detailed in aforesaid Annexure; that after 2007-08, they had supplied the goods to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Bhavnagar, against CT-3 and had neither availed nor intend to avail any benefit of deemed exports for such supply; that after completion of their export obligation, they had surrendered their aforesaid license to DGFT on 06.09.2011. He again confirmed that after 01.04.2008 they had not availed any benefit of deemed export against supply made to aforesaid 100% EOU, however, while supplying the goods to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Bhavnagar during the period from 2008-09 to 04.04.2011, they, by mistake through oversight, had shown / mentioned Advance Authorization License No. 08100060804 / 08100062804 dated 07.02.2007 on invoices/ ARE-3s issued in favour of M/s. MSPL; that in place of Advance Authorization License No. 08100062804 dated 07.02.2007, their staff had mentioned the Advance Authorization License No. 08100060804 dated 07.02.2007 on invoices/ARE- 3 issued during the aforesaid period, which is a clerical mistake. He submitted the copy of the said Advance Authorization License No. 08100062804 dated 07.02.2007 along with Invalidation Letter No. 0859000781 dated 11.04.2007 issued in favour of their company.

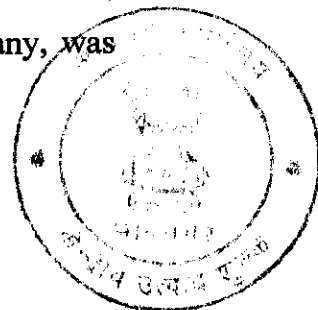
5.2 A statement of Shri Vipul Arvindbhai Shah, Director of M/s. Veeshna Polypack Pvt. Ltd., 244/B, Sarasa Patia Road, Village Kanera, Taluka & Dist.- Kheda- 387540, in pursuance of summons dated 18.10.2011, was recorded under Section 14 of the Central Excise Act, 1944 on 04.11.2011, wherein he, *inter alia*,



stated that they have made supplies to M/s. Madhu Silica Pvt. Ltd.(100% EOU), Bhavnagar, against CT-3 licenses, under Chapter 8 of Foreign Trade Policy as deemed exports and claimed & received the Duty Draw Back from DGFT, Gandhidham for the period from 01.07.2007 to 31.03.2009. In respect of supplies made to M/s. Madhu Silica Pvt. Ltd.(100% EOU), Bhavnagar, against CT-3 licenses, under Chapter 8 of Foreign Trade Policy as deemed exports during the period from 01.04.2009 onwards, he stated that they are in process to claim the Duty Draw Back from DGFT; that their company had also availed the benefit of deemed exports in the form of the benefit of Advance Authorization License No. 0810089920/3/03/00 dated 22.06.2010 against the supplies of goods viz. LDPE Bags & LDPE Liners totally weighing 15675.000 Kgs. made by our company to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Bhavnagar against CT-3; during the period from 19.07.2010 to 11.02.2011; that against the aforesaid license they had imported 16500 Kgs. of LDPE duty free from M/s. Qatar Petrochemical Company, Doha Qatar and for fulfillment of export obligation against aforesaid license, they had supplied the resultant finished goods viz. LDPE Bags & LDPE Liners totally weighing 15675.000 Kgs. to the aforesaid 100% EOU as deemed exports as mentioned above. He further stated that after 06.04.2011, they had supplied the goods to M/s. Madhu Silica Pvt. Ltd. (100% EOU), Bhavnagar, on payment of appropriate duty against which they had neither availed nor intended to avail any benefit of deemed exports for such supplies. He submitted a file containing worksheets showing the details of Duty Draw Back claimed by them against the supplies to the said 100% EOU, worksheet showing the details of supply of goods against the aforesaid license along with copies of Advance License, relevant invoices, A.R.E.3 and a statement showing the details of supplies made to the said unit during the period from 2007-08 to till date.

5.3 In view of the above, it appeared that the DTA suppliers of M/s. MSPL had availed the benefits of deemed exports as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy, against supplies made to M/s. MSPL during the relevant period.

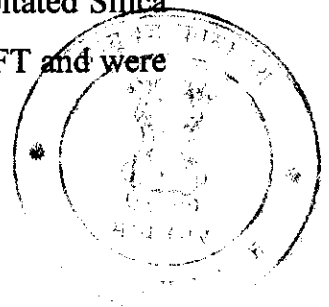
6. It further appeared that a statement of Shri Darshak Ramesh Shah, Director of M/s. MSPL, residing at Vasudha Bunglow, 1890, Near Rupnai circle, Bhavnagar- 364001, duly authorized and directed by his father, Shri Ramesh Shah, who is the Chairman cum Managing Director of M/s. MSPL our company, was



recorded under Section 14 of the Central Excise Act, 1944 on 12.11.2011, wherein, he, *inter alia*, stated that he is one of the Directors of M/s. MSPL and other directors are Shri Ramesh Shah, his father and Ms. Neepa Mehta; that his father Shri Ramesh Shah is the Chairman cum Managing Director of their company; that all the decisions relating to financial and administrative matter including payment of Duty on DTA sales and other Taxes were being taken by him only; that he is wholly and fully responsible for all the activities of their unit; that however, since his father's health was not well, he has been authorized to give oral statement; that he had gone through the Panchnama dated 27.09.2011 drawn at their company's registered office premises and the statement dated 27.09.2011 of Ms. Neepa Mehta, one of the Directors of their company and put his dated signature thereon in token of having seen, perused and agreed with the facts narrated therein.

6.1 He stated that their 100% EOU had procured raw materials viz. Soda Ash, Sulphuric Acid, Sodium Silicate Glass, Packing materials etc. wholly from DTA suppliers against CT-3 without payment of duty leviable thereon during the period from 2007-08 to till 11.04.2011 and used the same in the manufacture of finished goods viz. cleared for DTA sale as well as for Exports; that after applying for de-bonding of our unit on 11.04.2011, they were procuring all the raw materials on payment of applicable duties from DTA suppliers; that their company had not maintained the separate accounts for finished goods manufactured out of duty free inputs procured against CT-3 and duty paid inputs purchased from DTA suppliers during the month of April 2011.

6.2 He further stated that he did not know whether the suppliers of inputs had availed the benefit of deemed exports viz. Advance Authorization / DFIA License / Deemed Export Drawback etc. against the supplies made to their company during the period from 06.07.2007 to 11.04.2011. He confirmed upon perusal of the invoices issued by a DTA supplier viz. M/s. GHCL Limited, Veraval that it was clear from the endorsement made on invoices that M/s. GHCL had supplied goods viz. Soda Ash under CT-3 without payment of central excise duty against DIFA License to their company during the period from July-2007 to 11.04.2011, thereby they were availing the benefit of deemed exports as stipulated under paragraph 8.3(a) and (b) of the Foreign Trade Policy against such supplies made to their company. Their Company had cleared their finished goods viz. Precipitated Silica and Sodium Alumina Silica in DTA after getting permission from DGFT and were

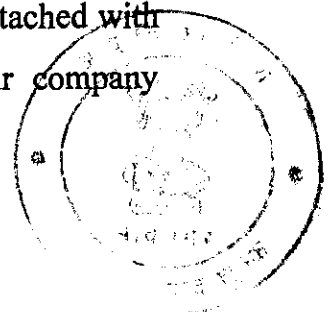


paying duty on DTA sale of said goods equal to excise duty only as per Sr. No. 02 of Notification No. 23/2003-CE dated 31.03.2003 since September-2007.

6.5 He had gone through the Notification No.23/2003-CE dated 31.03.2003 and Notification No.29/2007-CE dated 06.07.2007 and stated that as per Explanation-II inserted vide notification No. 29/2007-CE dated 06.07.2007, goods received from Domestic Tariff Area under deemed exports under paragraph 8.3(a) and (b) of the Foreign Trade Policy was to be treated as imported goods. However, they were under the impression that since they had procured the raw materials wholly from the DTA suppliers / units and neither imported any goods till date, their said receipts were indigenous. They had paid duty on DTA sale equal to excise duty as per Sl. No. 2 of Notification No.23/2003-CE dated 31.03.2003, till date considering their said receipts as indigenous. Having understood the aforesaid Notification, he confirmed that the goods received from DTA suppliers under benefits of deemed exports under Paragraph 8.3(a) and (b) of the Foreign Trade Policy by their unit during the period from July 2007 to 11.04.2011 was to be treated as "Deemed Import" / Imported goods for our company. Therefore, their company has to pay duty on equal to 50% of aggregate of all Customs Duties on DTA sale of their finished goods made during the period from September-2007 to 30.04.2011 according to Sr. No. 03 of Notification No. 23/2003 dated 31.03.2003. However, their company had paid duty on DTA sales equal to excise duty only as per Sr. No. 02 of Notification No. 23/2003-CE dated 31.03.2003. Thus, their company had short paid duty on goods cleared under DTA. He committed that it was mistake of their company.

6.6 He further stated that their company had not cleared any goods in DTA during the month of July & August-2007 and the details of DTA sale of goods made during the period from 01.09.2007 to 30.04.2011 given by Ms. Neepa Mehta, Director of their company in her statement dated 27.09.2011 are true and correct. The finished goods cleared in DTA during the period from 01.09.2007 to 30.04.2011 had been manufactured out of the inputs procured duty free against CT-3 from DTA suppliers, against which those suppliers had availed the benefit of deemed exports, as explained under his earlier replies.

6.7 He further agreed with the details mentioned in the worksheet attached with statement dated 27.09.2011 of Ms. Neepa Mehta, Director of their company

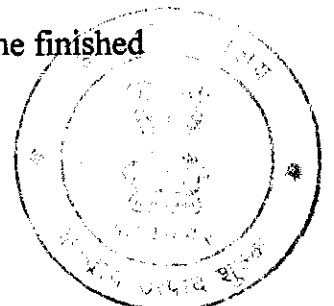


(Annexure-A to her statement) and manner of the duty calculation in respect of DTA Sales and according to which their company was liable to pay C. Ex. duty totally amounting to Rs.5,90,72,641/- on DTA sale of finished goods in terms of Sr. No. 03 of Notification No. 23/2003 read with Notification No. 29/2007-CE as against their company had paid Central Excise duty totally amounting to Rs. 4,57,49,683/- leviable thereon, thereby their company had short paid Central Excise duty totaling amounting to Rs.1,33,22,958/- on DTA sale of finished goods during the period from September-2007 to April-2011, as detailed in aforesaid worksheet, which was marked as Annexure "A" to her statement; that they had already paid the entire amount of differential short paid central excise duty amounting to Rs.1,33,22,958/- leviable on DTA sale of goods through E-Payments and they had already intimated vide their letter dated 08.11.2011, details thereof are as under:

Date of Deposition	Cheque No.	Amount deposited (Rs.)
03.10.11	11269745	25,00,000/-
10.10.11	11435990	5,00,000/-
19.10.11	11592216	20,00,000/-
07.11.11	11883189	25,00,000/-
07.11.11	11903480	25,00,000/-
07.11.11	11903677	25,00,000/-
07.11.11	CK11905505	11,04,312/-
	TOTAL	1,36,04,312/-

6.8 He further stated that he had thoroughly gone through the statements of DTA suppliers viz. statement dated 01.11.2011 of Shri Dipak Amratlal Shah, Director of M/s. Neptune Polymers Pvt. Ltd., Ahmedabad and statement dated 04.11.2011 of Shri Vipul Arvindbhai Shah, Director of M/s. Veeshna Polypack Pvt. Ltd., who in their respective statements had specifically confirmed that they had availed the benefits of deemed exports viz. DFIA licenses, Deemed Exports Drawback etc. against supplies made to their company during the period from July 2007 to 11.04.2011 and put his dated signature thereon in token of having seen, perused and agreed with the facts narrated / stated therein by them.

6.9 He further stated that they were not aware about the effect of availment of the benefit of deemed exports as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy against the supplies made to their company by their DTA suppliers, therefore, the vital fact that their company had manufactured the finished



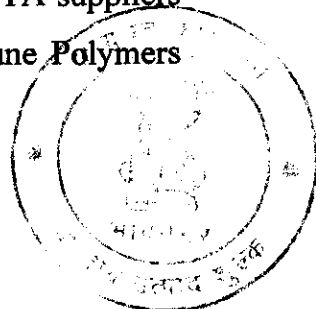
goods cleared/ sold in DTA, out of the inputs procured duty free from the DTA suppliers, who have in turn against such supplies availed the benefit of deemed exports as envisaged in paragraph 8.3 (a) & (b) of the Foreign Trade Policy, was not informed to the department and, therefore, failed to discharge the central excise duty properly at the applicable rate on DTA sale of goods cleared during the period from September-2007 to 30.04.2011; that it is true that they had specifically not inform the aforesaid facts in any form to the department, as the aforesaid facts were first time come into their notice during the course of search conducted by the DGCEI officers at their unit on 27.09.2011; that they had also not been informed about the availment of benefits of deemed exports against such supplies to their 100% EOU, by their DTA suppliers in past; that thus, earlier to that search, since they were not aware about the above facts, the question of informing the said facts to the department did not arise.

7. M/s. GHCL Limited, DTA supplier of M/s. MSPL, vide their letter dated 28.11.2011 submitted a detailed statement showing the supply of goods i.e. Soda Ash to M/s. MSPL, for which Deemed Exports benefit was availed under DFIA Licenses (i) 0810079587 dated 27.04.2009 & (ii) 0710081427 dated 14.07.2009, and enclosed copies thereof. From the details submitted by M/s. GHCL it clearly revealed that they had availed the benefits of Deemed Exports against supplies made to M/s. MSPL.

8. The other DTA suppliers namely M/s. Hindustan Zinc Ltd., Udaipur, M/s. Hindalco Insustires Ltd. Dahej were also issued summons dated 18.10.2011 and 17.11.2011 to confirm the facts as to whether they had availed the benefit of deemed export against supplies made to M/s. MSPL but they neither submitted any details nor appeared for giving oral statement in the matter.

9. In view of the facts discussed in foregoing paras and material evidences, it appeared that:

- (i) M/s. MSPL was registered as a 100% EOU, had procured their raw materials mainly Soda Ash, Sulphuric Acid, Sodium Silicate Glass etc. duty free against CT-3 during the period from September-2007 to 11.04.2011 from the DTA units / suppliers, who had in turn availed the benefit of deemed Exports provided under paragraph 8.3 (a) and (b) of the Foreign Trade Policy, as confirmed by their DTA suppliers viz. Shri Dipak Amratlal Shah, Director of M/s. Neptune Polymers

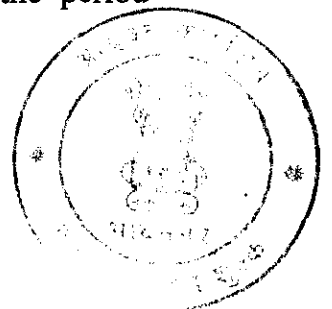


Pvt. Ltd., Ahmedabad and Shri Vipul Arvindbhai Shah, Director of M/s. Veeshna Polypack Pvt. Ltd., in their statements dated 01.11.2011 and 04.11.2011 respectively as well as major DTA supplier viz. M/s. GHCL, vide their letter dated 28.11.2011 in as much as they all had specifically confirmed that they had availed the benefits of deemed exports viz. DFIA licenses, Deemed Exports Drawback etc. against supplies made to M/s. MSPL during the period from July-2007 to 11.04.2011. M/s. GHCL had put remarks to the effect that they were availing the benefit of deemed export in the form of DFIA Licenses against supplies made to M/s. MSPL against CT-3 on each invoice issued to M/s. MSPL up to 11.04.2011. After applying for de-bonding of their 100% EOU to KASEZ on 11.04.2011, M/s. MSPL has started to procure their all inputs from DTA suppliers on payment of duty against which their suppliers have not claimed any benefit of deemed exports.

- (ii) The raw materials received under benefits of deemed Exports under paragraph 8.3 (a) and (b) of the Foreign Trade Policy from Domestic Tariff Area Suppliers by M/s. MSPL was to be treated as "Deemed Import" (imported goods) as explained under explanation-II inserted vide Notification No. 29/2007- CE, dated 06.07.2007 in the Notification No. 23/2003-CE dated 31.03.2003, which reads as under:

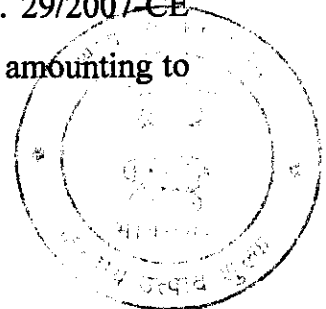
*Explanation II: "following supplies shall be treated as imported goods: -----; (ii) goods received from Domestic Tariff Area under benefits of deemed Exports under paragraph 8.3 (a) and (b) of the Foreign Trade Policy."*

- (iii) M/s. MSPL had manufactured their finished goods out of the said raw materials and cleared the same for exports as well as under DTA on payment of central excise duty equal to excise duty as per Sl. No. 2 of Notification No. 23/2003-CE dated 31.03.2003, during the period from September-2007 to till date.





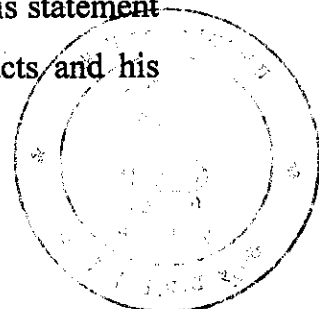
- (iv) The finished goods cleared as DTA sale by M/s. MSPL, had been manufactured out of the raw materials mainly Soda Ash, Sulphuric Acid, Sodium Silicate Glass etc. procured duty free from the DTA suppliers, who had in turn availed the benefit of deemed exports provided under paragraph 8.3 (a) and (b) of the Foreign Trade Policy, as discussed above. Since, the said DTA suppliers of the raw materials had availed the benefits of deemed Exports as envisaged under paragraph 8.3 (a) and (b) of the Foreign Trade Policy against the supplies made to M/s. MSPL, these receipts by 100% EOU was to be treated as "deemed Import" (imported goods) as explained under explanation-II inserted vide aforesaid Notification in Notification No.23/2003-CE dated 31.03.2003.
- (v) Subsequent to insertion of the aforesaid explanation-II in Notification No.23/2003-CE dated 31.03.2003, M/s. MSPL was required to pay the excise duty on DTA clearances made during the period from September- 2007 to 30.04.2011 as per Serial No. 2 of the Notification No. 23/2003 – CE dt.01.03.2003 as amended w.e.f. 06.07.2007 in as much as M/s. MSPL was required to pay an amount equal to fifty per cent of the duty leviable under Section 3 of the Central Excise Act, because the suppliers of the raw materials have supplied the raw materials under benefit of deemed Exports under paragraph 8.3 (a) and (b) of the Foreign Trade Policy and, therefore, the supply of goods was to be treated as Imported Goods. However, M/s. MSPL had continued to pay duty i.e. equal to excise duty as per serial no. 3 of the said Notification even after 06.07.2007 instead of paying an amount equal to fifty per cent of the duty leviable under Section 3 of the Central Excise Act, as per serial no. 2 of the said Notification, which resulted into short payment of duty on DTA sale during the period from September, 2007 to 30.04.2011.
- (vi) M/s. MSPL was liable to pay C. Ex. duty totally amounting to Rs.5,90,72,641/- on DTA sale of finished goods in terms of Sr. No. 03 of Notification No. 23/2003 read with Notification No. 29/2007-CE and as against they had paid Central Excise duty totally amounting to



Rs.4,57,49,683/- leviable thereon, thereby M/s. MSPL had short paid Central Excise duty totally amounting to Rs.1,33,22,958/- on DTA sale of finished goods during the period from September-2007 to April-2011, as detailed in Annexure "A" to the notice.

- (vii) Shri Darshak Ramesh Shah, Director of M/s. MSPL, in his statement dated 12.11.2011 confirmed that they were not aware about the effect of availment of the benefit of deemed export as envisaged paragraph 8.3 (a) & (b) of the Foreign Trade Policy against the supplies made to their company by their DTA suppliers. Therefore, they were, failed to discharge the central excise duty properly at the applicable rate on DTA sale of goods cleared during the period from September-2007 to 30.04.2011 and their company had informed the vital fact to the department that their company had manufactured the finished goods cleared / sold in DTA, out of the inputs procured duty free from the DTA suppliers, who have in turn against such supplies availed the benefit of deemed exports in the form of DFIA Licenses, Deemed Exports Drawback etc. as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy. He categorically admitted that since, they are not aware about the effect of availment of the benefit of deemed exports as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy against the supplies made to their company by their DTA suppliers and it is true that they had specifically not informed the aforesaid facts in any form to the department, as the aforesaid facts were first time come into their notice during the course of search conducted by the DGCEI officers at their unit on 27.09.2011; that thus, earlier to that search, since they were not aware about the above facts, the question of informing the said facts to the department did not arise. Thus, M/s. MSPL had by recourse to suppression of aforesaid vital facts, has evaded the central excise duty to the tune of Rs.1,33, 22,958/- on DTA sale of finished goods during the period from September-2007 to April-2011.

- (viii) Shri Darshak Ramesh Shah, Director of M/s. MSPL, in his statement dated 12.11.2011 categorically admitted the aforesaid facts and his

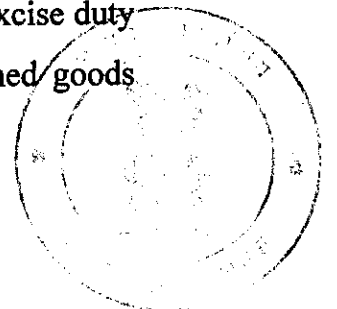


offence of short payment of central excise duty totally amounting to Rs.1,33,22,958/- on DTA sale of finished goods during the period from September-2007 to April-2011 by M/s. MSPL.

- (ix) During the course of investigation, M/s. MSPL had paid the entire amount of differential short paid Central Excise duty amounting to Rs.1,33,22,958/- leviable on DTA sale of finished goods through E-Payments, as detailed below:

Date of Deposition	Cheque No.	Amount deposited (Rs.)
03.10.11	11269745	25,00,000/-
10.10.11	11435990	5,00,000/-
19.10.11	11592216	20,00,000/-
07.11.11	11883189	25,00,000/-
07.11.11	11903480	25,00,000/-
07.11.11	11903677	25,00,000/-
07.11.11	CK11905505	11,04,312/-
	TOTAL	1,36,04,312/-

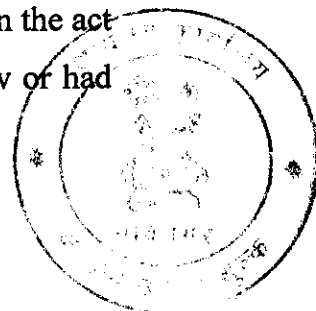
10. In light of the facts discussed in foregoing paras and material facts available on records, it appeared that M/s. MSPL has evaded/ short paid Central Excise Duty amounting to Rs.1,33,22,958/- on DTA sale of their finished goods during the period from September-2007 to 30.04.2011 by recourse to suppression of the vital fact that M/s. MSPL had manufactured the finished goods cleared / sold in DTA, out of the inputs procured duty free from the DTA suppliers, who have in turn, against such supplies availed the benefit of deemed exports in the form of DFIA Licenses, Deemed Exports Drawback etc. as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy as well as by contravention the provisions of Notification No. 23/2003-CE dated 31.03.2003 read with Notification No. 29/2007- CE, dated 06.07.2007, with intent to evade the duty on DTA sale of finished goods, as detailed in Annexure-A to the notice. Further, Shri Darshak Ramesh Shah in his statement dated 12.11.2011 specifically admitted that they had not informed the aforesaid vital facts in any form to the department, as the aforesaid facts were first time come into their notice during the course of search conducted by the DGCEI officers at their unit on 27.09.2011. Thus, M/s. MSPL had deliberately suppressed the facts with an intent to evade payment of Central Excise duty leviable on DTA sale of finished goods. Therefore, central excise duty evaded to the tune of Rs.1,33,22,958/- leviable on DTA sale of finished goods



made during the period from September-2007 to April-2011, was required to be recovered from M/s. MSPL by invoking extended period of time as provided under proviso to Sub-section (1) of Section 11 A of the Central Excise Act, 1944 along with interest for delayed payment of evaded Central Excise duty under Section 11AB of the Central Excise Act, 1944 as well as in terms of conditions of B-17 Bond furnished by them.

11. In light of above facts and the material evidence available on records, it revealed that M/s. MSPL had failed to pay Central Excise Duty to the tune of Rs.1,33,22,958/- on DTA sale of their finished goods, cleared during the period from September-2007 to April-2011 and thereby M/s. MSPL had contravened the provisions of the EXIM Policy and provisions of Notification No. 23/2003-CE dated 31.03.2003 read with Notification No. 29/2007- CE, dated 06.07.2007 and the conditions of B-17 Bond furnished by them and provisions of 100% EOU Scheme, rendering themselves liable for payment of Central Excise duty equal to the aggregate of all Customs duties on the DTA sale of finished goods. All these acts of contravention on their part committed by them by recourse to suppression of facts and willful mis-statement, constituted an offense of the nature as described under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002, rendering themselves liable for penal action under Section/ rule *ibid*.

12. In light of the above facts and the material evidence available on records, it further appeared that Shri Darshak Ramesh Shah, Director of M/s. MSPL, in his statement dated 12.11.2011 categorically admitted his offense of short payment of central excise duty totally amounting to Rs.1,33,22,958/- on DTA sale of finished goods during the period from September-2007 to April-2011 by M/s. MSPL. He has also admitted that they had not informed the vital fact to the department that M/s. MSPL has manufactured the finished goods cleared/ sold in DTA, out of the inputs procured duty free from the DTA suppliers, who had in turn against such supplies availed the benefit of deemed exports in the form of DFIA Licenses, Deemed Exports Drawback etc. as envisages in paragraph 8.3 (a) & (b) of the Foreign Trade Policy, which resulted in to failure to discharge the central excise duty properly at the applicable rate on DTA sale of goods and evasion of duty of Rs. 1,33,22,958/-. Thus, it appeared that he was actively indulged himself in the act of manufacturing, selling, clearing of their finished goods which, he knew or had

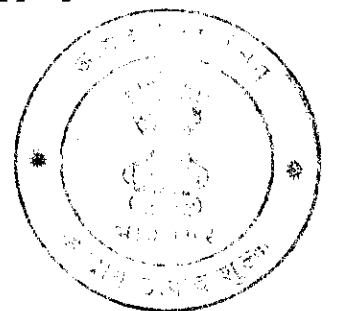


reasons to believe, were liable for confiscation, however the same were not available for seizure. All these acts of omission and commission on his part constituted an offence of the nature as described under Rule 26 of the Central Excise Rules, 2002, thereby rendering himself liable for penalty under the rule *ibid*.

DEFENCE REPLY :

13. M/s. MSPL and Shri Darshak Rameshchandra Shah, Director of M/s. MSPL submitted written reply to Show Cause Notice No. DGCEI/AZU/36-142/2011-12 dated 09.01.2012 issued by the Additional Director General, Central Excise Intelligence, Ahmedabad Zonal Unit, Ahmedabad vide their written submission dated 17<sup>th</sup> February, 2012.

14.1 M/s. MSPL submitted that the proposals made against their Company that as an EOU, they were required to discharge liability of Excise Duties on DTA clearances at the rate which was equal to 50% of the aggregate of duties of customs leviable on like goods under Sr. No. 2 of Table 2 notification No. 23/03-CE dated 31.03.2003 as amended from time to time (and also as amended by notification No. 29/07-CE dated 06.07.2007) because the suppliers of the raw materials which were used by them in relation to manufacture of such goods cleared in DTA had availed benefit of deemed exports under paragraph 8.3 (a) & (b) of the Foreign Trade Policy and accordingly such goods (i.e. the raw materials received from such suppliers) were to be treated as imported goods by virtue of explanation II to the said notification as inserted vide notification No. 29/07-CE above referred. Consequently the payment of rate specified against Sr. No. 3 of notification No. 23/03-CE was incorrect and wrong. Since they have paid excise duties of such DTA clearances during July 2007 to April 2011 in accordance with rate of duty specified against Sr. No. 3 of the above notification, i.e. duty equal to aggregate of duties of excise leviable under Section 3 of the Central Excise Act, 1944, the demand for differential duty of Rs.1,33,22,958/- is made against them by applying the higher rate of duty under Sr. No. 2 of the said notification. Since they had deposited the amount towards duty and interest to show their bonafide during October and November 2011, these deposits are proposed to be appropriated towards the duty and interest liabilities.



14.2 They submitted that larger period of limitation have been invoked against them by restoring to the proviso to Section 11A(1) of the said Act. It has been alleged that short payment of Central Excise Duty was on account of recourse to suppression of the vital fact that they had manufactured the finished goods cleared in DTA out of the inputs procured duty free from the suppliers thereof who had availed the benefit of deemed exports in form of DFIA licenses, deemed exports drawback etc. as envisaged in paragraph 8.3 (a) & (b) of the FTP as well as contravention of the provisions of notification No. 23/03-CE read with notification No. 29/07-CE with an intention to evade the duty on DTA clearances of finished goods. The statement of the Director Shri Darshak Shah recorded on 12.11.2011 have also been referred to for supporting the above allegation of "suppression of the vital fact" because he had stated before the Inquiry Officer when his statement was recorded that they had not informed the aforesaid vital facts in any form to the Department.

14.3 They submitted that the above allegations about suppression of vital facts and also about an intention to evade duty of DTA sales are incorrect and denied. The statement of Shri Darshak Shah referred to in the Show Cause Notice in support of the above allegations in a totally out of context manner, because Shri Darshak Shah had clearly stated before the Officers when his statement was recorded on 12.11.2011 that they were themselves not aware about the availment of deemed export benefits by any of the suppliers of raw materials and therefore they were not in a position to inform the Department about this fact. They also denied the allegation made in the Show Cause Notice that their Director had ever admitted or agreed to the suggestion that they had suppressed such facts from the Department. They also stated that on DTA sales during the period in question they had admittedly paid duties to the tune of Rs. 4,57,49,683/- and therefore there was no clandestine removal of the goods in DTA. The assessment of duties for all such DTA clearances were finalized by the Range and Divisional Officers after scrutinizing and verifying all the relevant documents including the invoices of the suppliers of raw materials, accompanying ARE 3s as well as the intimation forms submitted by them for all the procurements of raw materials for the entire period in question. There is no justification in the basis adopted by the Revenue in suggesting in the notice that the facts in this case including the procurement of raw materials from the suppliers were suppressed by us. When an overall view of the matter is taken, it is also clear that they had been removing goods in DTA, on

