SYS.

आयुक्त का कार्यालय, केन्द्रीय उत्पाद शुल्क, अहमदाबाद – १
७वी मंजिल , केन्द्रीय उत्पाद शुल्क भवन, पोलिटेकनिक के पास, आंबावाडी, अहमदाबाद -१५
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-I
7th FLOOR, CENTRAL EXCISE BHAVAN, NR. POLYTECHNIC, AMBAVADI,
AHMEDABAD-15

निबन्धित पावती डाक द्वारा / **By REGISTERED POST A.D.**

फा. सं./ F. No. V.32&38/15-06/Meghmani/Commnr/OA-1/2012

आदेश की तारीख/Date of Order :29.10.2012
जारी करने की तारीख/Date of Issue : 29.10.2012

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

मूल आदेश संख्या /
Order-In-Original No. : 20/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।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, O-20, मेघाणीनगर, न्यु मेन्टल हॉस्पीटल 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 प्रारुप सं. इ.ए.3 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पद 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।

Contd.....

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

4.अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन 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 ` 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 ` 4.00.

विषय: –

Sub : *Proceedings initiated with reference to Show Cause Notice F.No. V.32&38/15-06 / Meghmani/Commnr/OA-1/2012 dated, 18.06.2012 issued to M/s Meghmani Industries Ltd., Plot No.27,Phase-I,GIDC,Vatva,Ahmedabad.*

BRIEF FACTS OF THE CASE:

M/s Meghmani Industries Limited, Plot No.27, Phase-I, G.I.D.C., Vatva, Ahmedabad was a 100% EOU [debonded from 12.10.2011] (herein after referred to as "the noticee"), having Letter of permission No. KASEZ/100%EOU/16/2002-03/1620 dated 16.05.2002, issued by the Deputy Development Commissioner, Kandla Special Economic Zone and having License under Section 58 of the Customs Act, 1962, for private bonded warehouse, and permission for the manufacture and other operation in the bonded warehouse under Section 65 of the Customs Act, 1962. The noticee is registered with the Central Excise under registration No. AABCM0535GXM002 for the manufacture of Agro Chemicals falling under Ch. 38 and Reactive Dyes, Solvent Dyes and Optical Brightening Agents (OBAs), falling under Chapter 32 of the First Schedule to the Central Excise Tariff Act, 1985. The said Unit debonded from 12.10.2011.

2. The said assessee is availing Cenvat facility under the provisions of Cenvat Credit Rules, 2004. During the course of audit conducted at their factory premises, the following discrepancies were noticed:

2.1 During the verification of Cenvatable documents, it was observed that that as per the request of assessee, the Dy. Development Commissioner (I/C), Kandla Special Economic Zone, vide Final Exit Order No.KASEZ/100%EOU/II/16/2002-03/Vol.II dated 12.10.2011 has allowed final exit from 100% EOU Scheme after taking into consideration the no dues certificate furnished by the Assistant Commissioner of Central Excise, Division-III, Ahmedabad-I Commissionerate, Ahmedabad vide letter F. No. VIII / 04-01/ MIL/ EOU/ GEN, PERM./ 2011-12, dated 05.10.2011. At the time of exit from 100% EOU Scheme, the said assessee had worked out the total duty liability of Rs.1,54,39,772/- to be discharged as shown in attached worksheets i.e. Annexure-A, Annexure-B, Annexure-B-1 & Annexure-C, in respect of duty to be paid on capital goods (imported), duty on capital goods procured duty free under CT-3, duty on imported raw material in stock & Work in progress, and duty on raw material procured under CT-3 in stock & Work in progress (WIP), submitted to the Assistant Commissioner of Central Excise, Division-III, (Vatva-II), Ahmedabad-I and copy to the Superintendent of Central Excise, AR-III, Division-III, (Vatva-II), Ahmedabad-I. Thereafter, the Assistant Commissioner of Central Excise, Division-III, Ahmedabad-I Commissionerate, Ahmedabad vide letter F.No.VIII/04-01/MIL/EOU/GEN,PERM./2011-12, dated 30.09.2011 informed the assessee for payment of duty amount of Rs.1,54,39,772/- with reference to duty on capital goods imported, CT-3 goods & goods in stock & WIP and raw material procured under CT-3 in stock & Work in Progress (WIP). Subsequently, the Assistant Commissioner of Central Excise, Division-III, Ahmedabad-I Commissionerate, Ahmedabad vide letter F.No.VIII/04-01/MIL/EOU/GEN,PERM./2011-12, dated 05.10.2011 issued NO DUES CERTIFCATE on the basis of payment particulars for Rs.1,43,11,313/- and Rs.11,28,459/- totally amounting to Rs.1,54,39,772/- (consolidated details as per Annexure-A submitted by them) made by them as per TR-6 challan No.01/11-12 dated 03.10.2011 and e-payment receipt (Challan No.00273) dated 01.10.2011. Thereafter, the said assessee had taken/availed total Cenvat Credit amounting to Rs.1,07,02,607/- (CVD Rs.75,94,406/- + 4% ACD Rs.28,80,369/- + Edu.Cess Rs.1,51,888/- & S&H Edu. Cess Rs.75,944/-) in RG-23A Pt.II E.No.226/15.10.2011 on the basis of worksheet i.e. Annexure-

A. The details of duty paid at the time of debonding for Rs.1,54,39,772/-, vide TR-6 challan No.01/11-12, dated 03.10.2011 & E-payment Receipt Challan No.00273, dated 01.10.2011 and the details of Cenvat Credit taken, out of the said payment, in RG-23A Pt.II vide E. No.226/15.10.2011 are detailed in **Annexure-I** to this Show Cause Notice.

2.2 The procedure for de-bonding has been prescribed under Paragraph 37 of Chapter 25 of the CBEC Customs Manual 2011-12. Para 37.7 provides that as per para 6.18(e) of FTP and Appendix 14-I-L of HBP, an EOU can opt out of the scheme after taking approval of the Development Commissioner. Such exit is permitted subject to payment of the duties and industrial policy in force at the time of exit. Further Para 37.9 of Customs Manual stipulates that after obtaining in principle de-bonding order, the unit is required to assess the duty liability by itself and submit such details to jurisdictional Customs/Central Excise authority. The Assistant/Deputy Commissioner of Central Excise and Customs is required to confirm the duty liability within 15 days of the receipt of the details of assessment from the unit and issue 'No dues Certificate' to the unit. It is a fact that every importer is required to file a Bill of Entry for home consumption or warehousing, in terms of Section 46 of the Customs Act, 1962, in the form prescribed by regulations.

2.3 As per Rule 9 of the Cenvat Credit Rules, 2004, the CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by –
  (i) a manufacturer for clearance of -
    (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;
    (II) inputs or capital goods as such;
  (ii) an importer;
  (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;
  (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or
(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods……
(bb) a supplementary invoice, bill or challan issued by a provider of output service.
(c) a bill of entry; or
(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or
(e) a challan evidencing payment of service tax by the person liable to pay service tax…
(f) an invoice, a bill or challan issued by a provider of input service……..
(g) an invoice, bill or challan issued by an input service distributor……

3. From the above, it is evident that manufacturer cannot take Cenvat credit on the basis of merely worksheet or duty paid challan. In the instant case, the credit taken on the basis of worksheet/duty paid challan of duty paid at the time of de-bonding (exit from 100% EOU to DTA [normal unit] is inadmissible in as much as the same does not fall within the ambit of the documents prescribed under Rule 9 of Cenvat Credit Rules, 2004, as discussed hereinabove. Thus, the Cenvat Credit of duty paid at the time of debonding, amounting to Rs.1,07,02,607/-, as detailed in **Annexure-I** to this show cause notice, taken by the asseessee is considered as wrong availment of Cenvat Credit in violation of Rule 9 of the Cenvat Credit Rules, 2004 and same is liable to be disallowed and recovered from them along with interest under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A and Section 11AA of the Central Excise Act, 1944.

4. Further, Rule 9(6) of the Cenvat Credit Rules, 2004 stipulates that the burden of proof regarding admissibility of cenvat credit shall lie upon the manufacturer or provider of output service taking such credit. Therefore, it is the responsibility of the assessee to take cenvat credit only if the same is admissible as per Rule 9 of Cenvat Credit Rules, 2004. In the instant case, the credit taken on the basis of worksheet/duty paid challan of duty paid at the time of de-bonding is inadmissible in as much as the same does not fall within the ambit of the documents prescribed under Rule 9 of Cenvat Credit Rules, 2004, as discussed hereinabove. Therefore, it appeared that the assessee have taken cenvat credit on the documents which is not prescribed under Rule 9 of Cenvat Credit Rules, 2004. Thus, it appears that the assessee have failed to discharge the obligation cast on them under Rule 9(6) of the Cenvat Credit Rules, 2004.. Thus, it appeared that the assessee had contravened the provisions of the Cenvat Credit Rules, 2004, as discussed hereinabove.

5. Thus, it appeared that the said assessee had contravened the provisions of Rule 9 of the Cenvat Credit Rules, 2004, by wrongly availing Cenvat credit on the worksheet/duty paid challan of duty paid at the time of de-bonding, which were not covered under documents prescribed for taking credit under Rule 9 ibid, as discussed in foregoing paras; Rule 9(6) of the Cenvat Credit Rules, 2004 in as much as they have failed to discharge the burden of proof regarding admissibility of cenvat credit; all these acts of contravention on the part of the assessee have rendered themselves liable for penal action under Rule 15(1) of the Cenvat Credit Rules, 2004.

6. M/s. Meghmani Industries Limited, Unit-II, Plot No. 27, Phase-I, G.I.D.C., Vatva, Ahmedabad, were called upon to show cause to the Commissioner of Central Excise, Ahmedabad-I, as to why:

(i) the Cenvat credit of **Rs.1,07,02,607/-** (Rupees One Crore Seven Lakh Two Thousand Six Hundred Seven only), as per **Annexure-I,** wrongly taken/availed by them should not be disallowed, demanded and recovered from them under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with the Proviso to Section 11A(1) of the Central Excise Act, 1944;

(ii) Interest should not be charged and recovered from them on the above amount under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA of the Central Excise Act, 1944.;

(iii) Penalty should not be imposed upon them under the provisions of Rule 15(1) of Cenvat Credit Rules,2004 .

Defence of the noticee:

7. M/s. Meghmani Industries Limited vide their defence reply dated 11-07-2012 have submitted that the charges and allegations purported to have been made in the Show Cause Notices are without considering the fact of the case and without any substance. The charges appear to be self contradictory and not in accordance with the law. They deny the charges and allegations purported to have been made in the Show Cause Notice except the things herein after expressly admitted by them. They submitted that the Show Cause Notice is based on assumptions and presumptions not permitted under law and required to be withdrawn on the following main, among other grounds, which they submit hereinafter without prejudice to one another. They submitted that they were an assessee registered with the excise department and engaged in the manufacturing of S.O. Dyes, Agro chemicals and other chemicals falling under chapter heading of 29, 32 & 38 of CETA, 1985, availing the cenvat credit facility under the provisions of Cenvat Credit Rules, 2004. Till the time of final debonding i.e. 12.10.2011, they were operating their unit as 100% EOU under the LOP No. KASEZ/100%EOU/16/2002-03/1620 dated 16.05.2002 granted by the office of the Development Commissioner, Kandla Special Economic Zone, Gandhidham. Due to change in taxation policy of the Government, it became uneconomical for them to continue as 100% EOU and therefore, they got their unit debonded on 12.11.2011 vide final exit order issued by the Office of the Development Commissioner, Kandla Special Economic Zone, Gandhidham and since then operating as normal DTA unit.

7.1 During the process of de-bonding they have followed the procedure as prescribed under the Foreign Trade Policy and the Custom Manual and Central Excise Act, 1994 and rules framed there under in this regard. Para 37.7 of the Custom Manual, 2011 provides that as per para 6.18 (e) of FTP and Appendix-141-L of HBP, an ECU can opt out of the scheme after taking approval of the Development Commissioner. Such exit is permitted subject to the payment of duties and industrial policy in force at the time of exit. Further para 37.9 of Custom Manual states that after obtaining in-principal de-bonding order, the unit is required to assess the duty liability by itself and submit such details to jurisdictional Custom/Central Excise authority. The Assistant/Deputy Commissioner of Central Excise and Custom is required to confirm the duty liability within 15 days of the receipt of the details of assessment from the unit and issue " No due certificate" to the unit. In this connection they would like to submit that the procedure prescribed as above is followed in toto, which is explained here in below :-

7.2 They have applied for and received the In-principal approval from the office of Development Commissioner, KASEZ. They have submitted the details of stock and capital

goods, imported and indigenous, procured duty free and assessed the duty based on the relevant Bill of Entries and Invoice and submitted the same to jurisdictional divisional officers (JDO) and jurisdictional range officers (JRO) The details of raw material etc, lying in stock at the time of de-bonding were verified and duty payable thereon were assessed and confirmed by jurisdictional range officers. Based on their assessment only, jurisdictional range officer have endorsed the TR-6 challan for payment of duties, a prerequisite for payment of duties under custom and they have made the payment of various duties under prescribed challan as endorsed by JRO – (Annexure-A)

7.3 They have paid the duty of Rs.1,54,39,772/- as assessed and certified by the Superintendent, Range-III vide letter No. F.No. VIII/04-017MIL/EOU/GEN.PERM/2011-12 dated 30.09.2011 on de-bonding of their 100% EOU- (Annexure-B). The said duty was paid against the duty free procurement , imported and indigenous, raw material in stock and WIP and capital goods.

7.4 On submission of documentary proof of payment of duties (as assessed & confirmed by JRO) and bank guarantee for matters pending for adjudication, the office of Assistant Commissioner, Division-III, Ahmedabad-I vide their letter F.No. VIII/04-01/MIL/EOU/Gen.Perm/2011-12 dated 05.10.2011 issued a " No due certificate" for de-bonding of their EOU unit, in favour of " The Development Commissioner, Kandla Special Economic Zone, Gandhidham" with copy endorsed to them . (Annexure-C).

7.5 Based on the " No due Certificate" issued by Jurisdictional Assistant Commissioner and submission of other necessary information, the office of the Development Commissioner, Kandla Special Economic Zone, Gandhidham vide their letter No. KASEZ/100%EOU/II/16/2002-03/Vol.II/7483 dated 12.10.2011 given the " Final Exit order"-(Annexure-D). From the above, it is aptly clear that they have followed the prescribed procedure for de-bonding of EOU

Issue of non admissibility of Cenvat Credit paid on debonding :

8. They submitted that in case of de-bonding of EOU, duty free material is merely converted to duty paid material without any change of ownership or movement of the material. The material which was duty free till the time of de-bonding was, upon payment of assessed duty by JRO, converted into the duty paid material. There is no change in location or ECC number of the unit. Hence, the same unit can not be a buyer or seller at the same time. Since, there is no movement of material/goods, like in import or DTA clearance, therefore, procedure does not envisage need for filing of any other/additional invoice/bill of entry for de-bonding purpose. Had this been the case, the prescribed procedure would have the mention of that requirement in de-bonding procedure. Merely filing or non filing of any other paper, which is not envisaged even in procedure, does not invalidate their claim for Cenvat Credit of CVD portion/ Excise paid on de-bonding.

8.1 They further stated that it is a well known fact that 100% EOUs are granted licence u/s 58 & 65 of the Custom Act, 1962 to warehouse the duty free goods and to carry out

manufacturing operation under bond for export. These units are allowed to procure duty free material based on certain forms and conditions. Every importer is required to file a Bill of Entry for home consumption or warehousing in terms of Section 46 of the Custom Act, 1962 in the prescribed form. The assessment is done on the basis of details furnished in the Bill of Entry. Therefore, in case of 100% EOU, Bill of Entry for warehousing is being filed at the time of import. The duty is assessed but not recovered for exemption . Therefore, if the EOU opt out the scheme, it need to pay duty on duty free raw material and capital goods etc lying in their bonded premises at the time of de-bonding of the unit received under their respective Bill of Entry (for Imported material) and Invoice and ARE-1 (for local duty free material). The duty is payable on the value of import at the rate in force at the time of debonding. Therefore, the Bill of Entry filed earlier or ARE-1 issued are taken as base to determine the value and duty liability payable by EOU unit on exit from the scheme. Since it's a special mechanism created by law, can not be treated at par with normal import . Therefore, procedure prescribed in this regard, merely emphasis on assessment of duty and payment there of , which is without any further documentation as the duty payable on de-bonding is just accumulation of duty foregone on various BOEs and Invoices only adjusted to prevailing rates and recovered.

8.2 They further submitted that if the submission of working sheet or duty challan etc is not proper or as prescribed then the jurisdictional range and divisional officer would have objected to it. They can not assess the duty payment on working sheet and order for payment of assessed duty, though the same were based on Bill of Entries & ARE-1 filed at the time of importation or procurement of material/goods. If we look at the Rule 9 of CCR, 2004, the documents allowed to be filed for the purpose of assessment of duty and payment thereof, are also the valid documents for allowing the credit of cenvat paid through these documents. Therefore, the JDO/JRO, in their wisdom followed the prescribed procedure which It makes crystal clear that no other documents were required for, as the same is not prescribed.

8.3 For example, if they were to make an export, they have to apply for export under ARE-1, a prescribed document in this regard. Will the department allow them the export without filling the ARE-1 or a simple request on their letter head? It will not, as the same is a prescribed document for effecting export. Therefore, the JRO/JDO, have followed the prescribed procedure at the time of debonding and they have taken the cenvat credit of duty paid at the time of debonding based on the assessment documents, which was certified by JRO, as is apparently clear from the Annexure-I to the show cause notice. Without reference of the said Bill of Entries and Invoices, the nature of " duty free' goods can't be decided nor the assessment of duty payable can be made. Therefore, the credit taken was based on the various Bill of Entries and Invoices alongwith TR-6 challan, though no separate bill of entries were filed or invoice was issued at the time of de-bonding.

8.4 They have, as an importer filed the applicable Bill of Entries at the time of importation of the material and received the applicable invoices from local supplier and based on the said Bill of Entries and Invoices , their liabilities upon de-bonding is being

assessed and paid for. The reference of payment challan in credit for easy understanding & recollection of the fact the same is related to de-bonding.

8.5 They further submitted that the de-bonding of EOU can't be equated with clearance of goods from private and public bonded warehouses, which purely operated to store the third party material. In PBW, the warehouse keeper simply provide the service of storage and ownership is transferred to the actual importer/ user and it needs filing of additional documents, to decide the ultimate user. In case of EOU, which is governed by totally a separate set of rules then PBW, the warehousing is necessitated because, EOU are set up and permitted for manufacturing under bond and export of goods and are not permitted in trading or storage of third party storage of the material.

8.6 Rule 9 of CCR, 2004 provides that (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of

the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002

(bb) a supplementary invoice , bill or challan issued by a provider of out services

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

The duty paid by 100% EOU at the time of de-bonding can't be covered in any of the document, as there is no clearance of goods or import at the time of de-bonding. One can't make invoice and Bill of Entry for himself, as buyer & seller. Therefore, if the department's contention is accepted, then no de-bonded EOU would be eligible for Cenvat Credit of duty paid at the time of de-bonding, which would be against the basic principal of law of Custom and Excise. Therefore, they are of the considered opinion that, they have rightly taken the Cenvat Credit.

8.7 Without prejudice, they further submitted that they have paid the entire assessed duty , equivalent to aggregate of import duty, payable on de-bonding of their 100% EOU, which has been accepted in the SCN also. There is no dispute with respect to payment of duty. Therefore, merely non-filing of an additional documents such as additional Bill of Entry or Invoice etc, which has equally been missed out by the departmental officer also, during assessment process, does not make them ineligible for credit of cenvat paid on de-bonding. When, they have paid all the applicable duty, if asked for, they would have filed this additional paper as well. They were under bonafile belief of having complied with the prescribed procedure.

8.8 They further submitted that in last two years, many a EOUs units were de-bonded by following the same procedure in the same Divisional and Commissionerate's jurisdiction without any issue of this kind been raised, which establish the acceptance of the procedure being followed. Therefore, they cant be treated differently and be put on disadvantageous position compared to other without any fault of them.

8.9 They also submitted that all these facts were explained & made a detailed representation to the audit team vide their letter 27.03.2012, which was completely ignored by them and even not made mention of the same in the final audit report. Therefore, it appeared that the facts were simply ignored to make out a case from none.

8.10 They further submitted that, even otherwise also TR-6 challan have been treated as valid document for availing cenvat credit of duty paid through it. It also found judicial support in various matters, at different judicial forum. In the matter of Philips India Ltd V/s CCE, Vadodara as reported 2005 (191) ELT 1028 (Tri- Mumbai) it is held that" It is found that the Hon'ble Appellate Tribunal in the case of Gabriel India Limited V/s CCE reported in 1993 (67) ELT 131 (T) had held that credit could be taken on TR6 Challan. Nothing Contrary have been shown. Therefore, they find no justification in denial of the credit on this account when they find the Larger Bench of this tribunal in the case of CCEv/s Satyen Dyes- 2001 (134) ELT 655 (LB) has held that credit has to be allowed when duty paid nature of the goods cannot be disputed" and the same has been affirmed by the Hon'ble High court of Gujarat as

reported in 2008 (224) ELT 44 (Guj), a copy of the same is enclosed herewith for kind reference as ANNEXURE-E

8.11 Without prejudice, they further submitted that , it is apparent from the records and monthly returns that they have the credit balance of cenvat to the extent of credit taken, all the time during relevant period. Without prejudice, the interest is compensatory in nature and where the government has not been denied its legitimate dues in time without any liability, liability to pay interest under section 11AA of Central Excise Act, 1944 or Rule 14 of CCR , 2004 does not arise. Merely book entry of cenvat credit cant be termed as credit taken as is held in Commissioner of Central Excise & Service Tax, Banglore V/s Bill Forge Pvt. Ltd. Reported in 2012 (26) STR 204 (Kar. HC), Annexure-F

8.12 Since, there is no justification in demand of duty levelled against them in this case, the question of recovery of interest under the provisions of Rule 14 of the CCR, 2004 read with section 11AA of the CEA, 1944 and imposition of penalty invoking the provisions of Rule 15 (1) of the Cenvat Credit Rule, 2004 does not arise.

8.13 In view of the above, they submitted that they were eligible for the Cenvat Credit so availed and there is no inadmissible cenvat credit been taken by them. therefore the order is required to be set aside in the interest of justice.

8.14 They reserve their right to add, to alter, to amend, modify, emphasis and/or withdraw all or any of the forgoing submissions before or during personal hearing if so necessitated. They requested to grant them an opportunity of Personal Hearing before deciding the case against them.

Personal hearing:

9. The personal hearing in the matter was granted to the noticee on 22.08.2012, 25.09.2012 wherein they have requested for adjournment. Thereafter, another date of PH was granted to the noticee on 10.10.2012 wherein Shri Manohar Maheshwari, General Manager (Commercial) and authorised signatory of the noticee attended the hearing and reiterated the submissions already made. In support of their defence, they have relied various judgements of the Tribunal.

Discussion and Findings:

10. I have carefully gone through the Show Cause Notice (SCN) dated 18.06.2012, the evidences available on record and the submissions made by the noticee vide their written submissions dated11-07-2012.

10.1 The issue to be decided in this case is whether the Cenvat credit taken by the noticee on the basis of assessment done on the worksheet i.e. Annexures-A,B,B-1 & Annexure C and the TR-6 challan dated 03-10-2011 and e-receipt for Central Excise Tax

payments dated 01-10-2011 vide which the duty so assessed was paid by them are considered as a valid document for taking Cenvat credit or otherwise.

10.2 I find that the procedure for de-bonding has been prescribed under Paragraph 37 of Chapter 25 of the CBEC Customs Manual 2011-12. Para 37.7 provides that as per para 6.18(e) of FTP and Appendix 14-I-L of HBP, an EOU can opt out of the scheme after taking approval of the Development Commissioner. Such exit is permitted subject to payment of the duties and industrial policy in force at the time of exit. Further Para 37.9 of Customs Manual stipulates that after obtaining in principle de-bonding order, the unit is required to assess the duty liability by itself and submit such details to jurisdictional Customs/Central Excise authority. The Assistant/Deputy Commissioner of Central Excise and Customs is required to confirm the duty liability within 15 days of the receipt of the details of assessment from the unit and issue 'No dues Certificate' to the unit.

10.3 I observe from the records that the Dy. Development Commissioner (I/C), KSEZ, vide Final Exit Order No.KASEZ/100%EOU/II/16/2002-03/Vol.II dated 12.10.2011 has allowed final exit from 100% EOU Scheme after taking into consideration the no dues certificate furnished by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I, Ahmedabad vide letter F. No. VIII / 04-01/ MIL/ EOU/ GEN, PERM./ 2011-12, dated 05.10.2011. At the time of exit from 100% EOU Scheme, the said noticee had worked out the total duty liability of Rs.1,54,39,772/- to be discharged as shown in attached worksheets i.e. Annexure-A, Annexure-B, Annexure-B-1 & Annexure-C, in respect of duty to be paid on capital goods (imported), duty on capital goods procured duty free under CT-3, duty on imported raw material in stock & Work in progress, and duty on raw material procured under CT-3 in stock & Work in progress (WIP) respectively and submitted to the Assistant Commissioner of Central Excise, Division-III, (Vatva-II), Ahmedabad-I. Thereafter, the JAC vide letter F.No.VIII/04-01/MIL/EOU/GEN,PERM./2011-12, dated 30.09.2011 informed the assessee for payment of duty amount of Rs.1,54,39,772/- with reference to duty on capital goods imported, CT-3 goods & goods in stock & WIP and raw material procured under CT-3 in stock & Work in Progress (WIP).The jurisdictional range officer have endorsed the TR-6 challan for payment of duties, a prerequisite for payment of duties under customs procedures. The Noticee had submitted the duty paid challan and e-receipt evidencing payment of duty so assessed and confirmed by the JAC. Subsequently, the JAC vide letter F.No.VIII/04-01/MIL/EOU/GEN,PERM./2011-12, dated 05.10.2011 issued NO DUES CERTIFCATE on the basis of payment particulars for Rs.1,43,11,313/- and Rs.11,28,459/- totally amounting to Rs.1,54,39,772/- (consolidated details as per Annexure-A submitted by them) made by them as per TR-6 challan No.01/11-12 dated 03.10.2011 and e-payment receipt (Challan No.00273) dated 01.10.2011. Thereafter, the said assessee had taken/availed total Cenvat Credit amounting to Rs.1,07,02,607/- (CVD Rs.75,94,406/- + 4% ACD Rs.28,80,369/- + Edu.Cess Rs.1,51,888/- & S&H Edu. Cess Rs.75,944/-) in RG-23A Pt.II E.No.226/15.10.2011 on the basis of worksheet i.e. Annexure-A and the TR-6 challan and e-receipt challan.

10.4 I find that the noticee had submitted the details of the duty calculations on his own assessment in the form of worksheets marked as Annexure-A, B, B1 and C and

consolidated details as per Annexure-I to the JAC. The JAC has confirmed the assessment made by the noticee and directed them to pay the Duty vide letter dated 30.09.2011. Subsequently the noticee had paid the duty vide TR-6 challans and e-payment. Further they had taken Cenvat credit on the duty paid on the said de- bonded goods on the strength of TR-6 challans and assessed worksheets.

10.5 I find that Section 46 of Customs Act explicitly mentions that every importer has to file a bill of entry for home consumption or warehousing in the form prescribed by regulations. I find that the said procedure was not followed by the noticee while de-bonding of their unit from Custom bonding . However, I also find that this procedure was not insisted upon the noticee by the Range Officers/ JAC and instead have assessed the worksheets so submitted by the noticee. Also the TR-6 challan was endorsed with signature by JRO to enable the noticee to pay the duty. I also find that the No due certificate was also issued by the JAC in order to enable the noticee to submit the same to KASEZ to obtain the final exit order. I find that the procedure of filing of Bill of Entry/Invoices was neither followed by the noticee nor insisted upon by the Department. I find force in the contention of the noticee that the procedure to file BOEs/invoices was not insisted upon them by the department at the time of their submission of details on self assessment basis in the form of worksheets. Therefore I can not find fault with the noticee for the procedural lapse. I also find that there is no dispute regarding assessment of duty and duty payments.

10.6 I find that there is no dispute regarding payment of duty on the debonded goods, the goods on which Cenvat Credit has been taken or any other violations of Rules or Act making them ineligible to take Cenvat credit, except for the procedural lapse that they have not filed the bill of entries/invoices . The only dispute is whether the noticee is eligible to take Cenvat credit on the strength of the assessed worksheets and TR-6 challans.

10.7 I find that the TR-6 challans, e-receipt challan and the worksheets so assessed by the JRO are not the valid documents for the purpose of taking Cenvat Credit under the provisions of Rule 9 of Cenvat Credit Rules 2004. However, I find that there are plethora of judicial pronouncements wherein it was held that TR-6 challans were considered as valid documents for taking credit and also as a primary evidence of duty payment and thus allowed Cenvat credit on the strength of TR-6 challans. Also it was held that credit not deniable for non-fulfilment of procedural requirement. In this regard, I rely upon the following decisions of the judicial forums.

i) *The Hon'ble Tribunal in the case of Commissioner of Central Excise, Mumbai –VI V/s. National Organics Chemicals Ltd. wherein it was held that* ***TR-6 challan a primary evidence of duty payment is a valid document for taking credit*** *– Rule 57AE of erstwhile Central Excise Rules, 1944 and Rule 9 of Central Excise Rules, 2004 – Debit entry in PLA or its indications on invoices issued by manufacturer or dealer are secondary evidence which generate from primary duty payment evidence, TR-6 challans. When rules accept the secondary evidence, it is impossible to hold that primary evidences (TR-6*

challans) on the basis of which secondary evidences (PLA and invoices) has to be discarded.

ii) *The Tribunal in the case of Avanti Kopp Electricals Pvt. Ltd. V/s. Commissioner of Central Excise, Hyderabad-I wherein it was held that* ***payments made under TR-6 challans sufficient for grant of Modvat credit*** *– Rule 57G of erstwhile Cenetral Excise Rules, 1944 – Rule 4 of Cenvat credit Rules 2004 Further, they held that the Tribunal in the case of Bela Nephol Pvt. Ltd. V/c. CCE – 1993 (67) ELT 131 (tribunal) has* ***considered that payment made under TR-6 challans to be sufficient for grant of Modvat credit****. In the case of Krebs Bio-Chemicals Ltd. V/s. CCE – 2001 (138) ELT 353 (Tribunal-Chennai) on identical facts, the Tribunal has taken the date of payment of duty on the capital Goods for the purpose of grant of Modvat credit.*

iii) *In the case of CCE, Aurangabad V/s. Western Maharashtra Development Corporation Ltd. reported at 2007 (219) ELT 355 (Tri-Mumbai) wherein it is held that Cenvat Modvat Credit – Duty paying documents – Validity of – TRr-6 challan is a valid duty paying documents and credit taken on the basis of the same is justified when there is no dispute as to duty paid – Rule 7 of Cenvat Credit Rules, 2002 – Rule 9 of Cenvat Credit Rules, 2004.*

iv) *In the case of Gabriel India Ltd. V/s. Collector of Central Excise reported at 1993 (67) ELT 131 (Tribunal), the Hon'ble CEGAT, West Regional Bench, Bombay has held that MODVAT Credit - Duty in respect of inputs paid by assessee under TR 6 Challan, GP 1 forms not having been granted to them and certificate of duty payment issued by Range Superintendent - Benefit of Modvat Credit available on production of original copy of certificate of duty payment on inputs issued by Superintendent and TR 6 Challan as received by assessee,* ***TR 6 Challan also being an instrument for payment of dues to Government under Treasury Rules - Rule 57G of Central Excise Rules, 1944****.*

v) *In the case of Philips India Ltd. V/s. Commissioner of Central Excise, Vadodara reported at 2005 (191) ELT 1028 (Tri-Mumbai) wherein it is held that Cenvat/Modvat – Duty paying documents – Challans and certificate issued by Customs authorities of duty discharge not being the assessment document, Commissioner's findings that credit cannot be availed on the basis of such documents not upheld – Explanation to Rule 7 of Cenvat credit Rules, 2002 clarifies that supplementary invoices shall also include challan or any other similar document evidencing payment of additional amount of additional duty of*

customs – Credit availed on TR 6 challans not deniable – rule 57G of erstwhile Central Excise Rules, 1944 – Rule 9 of Cenvat Credit Rules, 2004. They also held that credit not deniable for non-fulfilment of procedural requirement – Rule 9 of Cenvat Credit Rules, 2004. Further, the department's appeal was dismissed by the Hon'ble Gujarat High Court reported in 2008 (224) ELT 44 (Guj).

10.8 In view of the above findings and also as held by various judicial pronouncements referred above, I hold that the noticee is eligible to take Cenvat Credit on the basis of assessed worksheets and TR-6 challan no. No.01/11-12 dated 03.10.2011 and e-payment receipt (Challan No.00273) dated 01.10.2011. I also hold that the demand of interest under rule 14 of CER,2004 read with Section 11AA of CEA,1944 and penalty under rule 15(1) of CER,2004 do not sustain since the noticee are eligible for Cenvat Credit.

11. In view of the above discussions and findings, I pass the following Order:

ORDER

I drop the proceedings initiated vide Show Cause Notice No. V.32&38/15-06/Meghmani/Commnr/OA-1/2012 dated 18.06.2012 issued to M/s Meghmani Industries Ltd., Plot No.27, Phase-I, GIDC, Vatva, Ahmedabad.

सत्यापित
29/10/12
(जे. वि. एल. प्रसाद)
(अधिक्षक अपराध एवं न्याय निर्णयन)
केन्द्रीय उत्पाद शुल्क (मु.)
अहमदाबाद-I

(RAJU)
COMMISSIONER
CENTRAL EXCISE,
AHMEDABAD-I.

F.No. V.32&38/15-06/Meghmani/Commnr/OA-1/2012

Date: 29/10/2012

To
M/s Meghmani Industries Ltd.,
Plot No.27, Phase-I, GIDC, Vatva,
Ahmedabad.

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Addl. Commissioner, In charge of Division-III, Central Excise, Ahmedabad-I.
3. The Addl. Commissioner (RRA/Legal), Central Excise, Ahmedabad-I.
4. The Deputy Commissioner, Central Excise, Division-III, Ahmedabad-I.
5. The Superintendent, Central Excise, Division-III, Ahmedabad-I.
6. The Superintendent (Systems), Central Excise, Ahmedabad-I
7. Guard file.

Pk.