FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/12/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71939-71959/2017-EX[DB] dated 01/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1	E/Stay/1321/2011	E/1070/2011	**NARBADA INDUSRIES,** LANE N0. 2, PHASE-II, SIDCO, INDUTRIAL COMPLEX, BARI BRAHMANA, JAMMU, J&K.
2	E/Stay/1442/2010	E/1407/2010	**V S INDUSTRIES** Lane No.4-B, Phase-III, SIDCO Industrial Complex, Bari Brahmana, Jammu
3	E/MISC/54298/2014, E/Stay/1652/2010	E/1654/2010	**ARORA AROMATICS** 2 Km Stone, Moradabad Road, Sambhal, Moradabad (UP)
4	E/MISC/54299/2014, E/Stay/1653/2010	E/1655/2010	**PANKAJ SOMANI** 501, Coral Somdatt Landmark Hawa Sarak Civil Lines, Jaipur, Rajasthan.
5	E/MISC/54300/2014, E/Stay/1654/2010	E/1656/2010	**RUCHI INFOTECH SYSTEMS** Lane No. 35B, Phase_II, SIDCO Industrial Complex, Bari Brahmana, Jammu.
6	E/Stay/1655/2010	E/1657/2010	**ABHAY CHEMICALS** Gangyal, Jammu.
7	E/Stay/1656/2010	E/1658/2010	**RAJDHANI AROMATICS** Phase-I, Industrial Growth Centre, Samba (J&K)
8	E/Stay/1657/2010	E/1659/2010	**RAPTI COMMISSION AGENCY** Through Its Proprietor Ms. Rani Goel, C-2025, Indira Nagar, Lucknow.
9	E/Stay/1658/2010	E/1660/2010	**VISHAL TRADING CO.** Through Its Proprietor Shri Vishal Chand, 21/1119, Indira Nagar, Lucknow.

Contd.

10	E/Stay/1659/2010	E/1661/2010	**ANIL KUMAR GOEL** M/s. Rapti Commission Agency Through Its Proprietor Ms. Rani Goel, C-2025, Indira Nagar, Lucknow.
11	E/Stay/1660/2010	E/1662/2010	**BANSAL TRADING COMPANY** Through Its Proprietor Shri Vishal Agarwal, Hathikhana, Jawahar Road, Chandausi, Moradabad.
12	E/Stay/1661/2010	E/1663/2010	**MEENU ENTERPRISES** Through Its Proprietor Smt. Meenu Rastogi, Kot East, Sambhal, Moradabad.
13	E/Stay/1714/2010	E/1710/2010	**AMARNATH INDUSTRIES,** SHED NO.II, TYPE-C, INDUSTRIAL ESTATE, KATHUA, JAMMU, (J&K)
14	E/Stay/1715/2010	E/1711/2010	**NATIONAL CHEMICALS,** SHED NO.B-1,B-2,AHDC INDUSTRIAL ESTATE, BORGURIA, TINSUKIA, ASSAM.
15	E/Stay/1716/2010	E/1712/2010	**SHRI SANTOSH SAHARIA, ATTORNEY HOLDER OF** M/S NATIONAL CHEMICALS C/O M/S SAGAR FURNISHINGS, COLE ROAD, DIBRUGARH, ASSAM.
16	E/Stay/1717/2010,	E/1713/2010	**GAURAV AGROCHEM,** SICOP INDUSTRIAL AREA, KATHUA, JAMMU, (J&K)
17	E/Stay/2482/2011	E/1869/2011	**ARORA AROMATICS** 2KM STONE, MORADABAD ROAD, SAMBHAL, MORADABAD (U.P.)
18	E/Stay/2483/2011	E/1870/2011	**SH. PANKAJ SOMANI, GENERAL MANAGER,** M/S ARORA AROMATICS, 2KM STONE, MORADABAD ROAD, SAMBHAL, MORADABAD (U.P.)
19	E/Stay/2484/2011	E/1871/2011	**RUCHI INFOTEK SYSTEMS** LANE NO. 3B, PHASE-II, SIDCO INDUSTRIAL COMPLEX, BARI BRAHMANA, JAMMU.

Cont

20 E/Stay/2220/2010 E/2389/2010 **JAY AMBEY CORPORATION,**
11/11A, MAHENDRA INDUSTRIAL ESTATE, 2ND FLOOR, FORT GARDEN ROAD, SION (EAST), MUMBAI-400022.

21 E/Stay/2876/2010 E/3094/2010 **BHAGWATI ENTERPRISES,**
HATLI ROAD, KATHUA (J&K)

Name and Address of Respondent

22 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

23 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

24 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

25 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

26 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

27 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

28 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

29 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

30 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Contd.

31 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

32 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

33 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

34 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

35 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

36 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

37 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

38 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

39 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

40 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

41 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

42 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki
Lat) Delhi Road, Meerut (UP)

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Other Appellants and Respondents as per Annexure

Cont-

Copy To
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44

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MORADABAD,
UTTAR PRADESH**

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55 C.D.R. 56 Office Copy 57 Second Folder Copy 58 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/1654-1663/2010, 1710-1713/2010, 1407/2010, 2389/2010, 3094/2010, 1070/2011 & 1869-1871/2011-EX[DB] With E/Stay/1652-1661/2010, 1714-1717/2010, 1442/2010, 2220/2010, 2876/2010, 1321/2011 & 2482-2484/2011 And E/MISC/54298-54300/2014

(Arising out of Orders-in-Original No. 83-105/Commr./Meerut-II/2010 dated 29/01/2010 & 37/Commr./Meerut-II/2011 dated 29/03/2011 passed by Commissioner of Customs & Central Excise, Meerut-II)

M/s Arora Aromatics (In Appeal No. E/1654/2010),

Shri Pankaj Somani (In Appeal No. E/1655/2010),

Ruchi Infotech System (In Appeal No. E/1656/2010),

Abhay Chemicals (In Appeal No. E/1657/2010),

Rajdhani Aromatics (In Appeal No. E/1658/2010),

Rapti Commission Agency (In Appeal No. E/1659/2010),

Vishal Trading Co. (In Appeal No. E/1660/2010),

Anil Kumar Goel (In Appeal No. E/1661/2010),

Bansal Trading Company (In Appeal No. E/1662/2010),

Meenu Enterprises (In Appeal No. E/1663/2010),

Amarnath Industries (In Appeal No. 1710/2010),

National Chemicals (In Appeal No. 1711/2010),

Shri Santosh Saharia (In Appeal No. 1712/2010),

Gaurav Agrochem (In Appeal No. 1713/2010),

V. S. Industries (In Appeal No. 1407/2010),

Jay Ambey Corporation (In Appeal No. 2389/2010),

Bhagwati Enterprises (In Appeal No. 3094/2010),

Narbada Industries (In Appeal No. 1070/2011),

Arora Aromatics (In Appeal No. 1869/2011),

Shri Pankaj Somani (In Appeal No. 1870/2011),

Ruchi Infotek Systems (In Appeal No. 1871/2011), **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri B. L. Narasimhan, Advocate &
Ms. Natasha Sarkar, Advocate (In Appeal Nos. E/1654-1660, 1662 & 1663/2010 & 1869-1871/2011)
Shri M. B. Mathur, Advocate, (In Appeal Nos. 1710-1713/2010)
for Appellant

Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 01/11/2017

FINAL ORDER NO. 71939 - 71959/2017

Per: Anil G. Shakkarwar

The above stated 21 appeals are arising out of two Orders-in-Original and the issues involved are same and the appellants involved are also common. Therefore, these are taken together for decision. All the above sated appeals filed in the Year 2010 are arising out of Order-in-Original No. 83-105/Commr./Meerut-II/2010 dated 29/01/2010. Secondly, the remaining appeals are arising out of Order-in-Original No. 37/Commr./Meerut-II/2011 dated 29/03/2011. Through OIO dated 29/01/2010 Show Cause Notice dated 28/11/2008 which was issued for covering a period from November, 2003 to 15/07/2008 was adjudicated. The OIO dated 29/03/2011 has adjudicated Show Cause Notice dated 07/08//2009 which was issued covering a period from 16/07/2008 to 30/06/2009.

2. Through the said Show Cause Notice dated 28/11/2008 M/s Arora Aromatics were called upon to show cause as to why Cenvat credit amounting to Rs.15,87,77,553/- availed by them during the period from November, 2003 to 15/07/2008 on the strength of invoices issued by M/s Ruchi Infotech System, Jammu should not be demanded and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944. Further, M/s Arora Aromatics were called upon to show cause as to why Cenvat credit amounting to Rs.24,07,392/- availed by them during the period from November, 2003 to January, 2005 on the strength of invoices issued by M/s National Chemicals, Tinsukia, Assam should not be demanded and recovered from them under Rule 12/Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944. Further, M/s Arora Aromatics were called upon to show cause as to why Cenvat credit amounting to Rs.9,10,10,103/- availed by them during the period from 16/02/2006 to 15/07/2008 on the strength of invoices issued by the units namely M/s Abhay Chemicals, Jammu, M/s Amarnath Industries, Kathua, M/s Rajdhani Aromatics, Samba, M/s Gaurav-Agrochem, Kathua, M/s G. L. Traders, Jammu, M/s V. S. Industries, Jammu, M/s Narbada

Industries, Jammu, M/s Bhagwati Enterprises, Kathua, M/s Essar Overseas, Kathua, M/s Khazana Corporation, Jammu, M/s V. K. Sales, Kathua & M/s Jay Ambey Corporation, Jammu should not be demanded and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944. Further, M/s Arora Aromatics were called upon to show cause as to why rebate amounting to Rs.6,71,18,555/- pertaining to the duty paid on the goods exported and refunded as rebate on export of the goods should not be recovered under the of Section 11A of the Central Excise Act, 1944. Through the said Show Cause Notice dated 28/11/2008, there was a proposal to impose penalty under Rule 26 of the Central Excise Rules, 2002 on Shri Pankaj Somani, General Manager of M/s Arora Aromatics, Shri Santosh Saharia, Attorney Holder of M/s National Chemicals, Tinsukia, Shri Anil Kumar Goel, Attorney Holder of M/s Rapti Commission Agency, Lucknow, M/s Ruchi Infotech System, Jammu, M/s National Chemicals, Tinsukia, M/s Abhay Chemicals, Jammu, M/s Amarnath Industries, Kathua, M/s Rajdhani Aromatics, Samba, M/s Gaurav-Agrochem, Kahua, M/s G. L. Traders, Jammu, M/s V. S. Industries, Jammu, M/s Narbada Industries, Jammu, M/s Bhagwati Enterprises, Kathua, M/s Essar Overseas, Kathua, M/s Khazana

Corporation, Jammu, M/s V. K. Sales, Kathua & M/s Jay Ambey Corporation, Jammu, M/s Rapti Commission Agency, Lucknow, M/s Vishal Trading Co., Lucknow, M/s Bansal Trading Company, Hathikhana, Jawahar Road, Sambhal & M/s Meenu Enterprises, Kot East, Sambhal. Through the said Show Cause Notice dated 07/08/2009 M/s Arora Aromatics were called upon to show cause as to why Cenvat credit amounting to Rs.1,03,06,922/- availed by them during the period from 16/07/2008 to 30/06/2009 on the strength of invoices issued by M/s Ruchi Infotech System, Jammu & M/s Amarnath Industries, Kathua should not be demanded & recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944. Further, there was a proposal to impose penalty under Rule 26 of the Central Excise Rules, 2002 on Shri Pankaj Somani, General Manager of M/s Arora Aromatics, M/s Ruchi Infotech System, Jammu, Shri Suresh Chandra Arora, Proprietor of M/s Ruchi Infotech System, Jammu, M/s Amarnath Industries, Kathua & Shri Vijay Kumar Agarwal, Partner of M/s Amarnath Industries, Kathua.

3. The brief facts of the case are that M/s Arora Aromatics were engaged in the manufacture of Menthol Crystal & Menthol Powder falling under Tariff Item No. 30039021,

Menthol Solution falling under Tariff Item No. 29061100 & De-mentholized Oil (DMO), Pepper Mint Oil, Menthones, Terpine, etc., falling under Sub-heading No. 3301.25.90 of the Schedule to Central Excise Tariff Act, 1985. They were availing facility of Cenvat credit. M/s Arora Aromatics were receiving inputs such as Menthol Flakes & De-mentholized Oil (DMO) manufactured by M/s Ruchi Infotech System, Jammu and were availing Cenvat credit of duty paid on such inputs by M/s Ruchi Infotech System, Jammu. The said credit was utilized for payment of duty on goods manufactured by M/s Arora Aromatics. The goods manufactured by M/s Arora Aromatics were also exported on payment of duty and on export rebate of duty paid was claimed and they received the said rebate. On 01/02/2006 a team of Central Excise Officers visited the factory premises of M/s Arora Aromatics and conducted various investigations. The investigations were mainly concentrated on the inputs received from M/s Ruchi Infotech System, Jammu who were availing benefit of Notification No. 56/2002-CE & 57/2002-CE both dated 14/11/2002. The said Notification No. 56/2002-CE dated 14/11/2002 provides for refund of duty paid through PLA to the units manufacturing goods in Jammu & Kashmir and simultaneously the manufacturers receiving the goods manufactured by units in Jammu &

Kashmir as their inputs were allowed Cenvat credit of entire duty paid even when the duty paid through PLA was refunded to the manufacturer's of the goods in Jammu & Kashmir Rule 12 of the Cenvat Credit Rules, 2004 allowed availment of such Cenvat credits. M/s Arora Aromatics were also receiving inputs from other units situated in Jammu, in respect of whom there was a proposal for recovery of Cenvat credit amounting to Rs.9,10,10,103/- as stated above. M/s Arora Aromatics were also receiving inputs from M/s National Chemicals, Tinsukia. On the basis of investigations said Show Cause Notice dated 28/11/2008 was issued wherein there were allegations that the raw-materials shown to have been procured by M/s Ruchi Infotech System, Jammu, from M/s Rapti Commission Agency, M/s Vishal Trading Company, M/s Gupta Suppliers Company, M/s Bansal Trading Company & M/s Meenu Enterprises appeared to be manipulated and fabricated. Further, M/s Ruchi Infotech System, Jammu & M/s National Chemicals, Tinsukia did not appear to have manufactured the goods, in respect of which invoices were available of having said goods procured by M/s Arora Aromatics and therefore the goods claimed to have been manufactured by M/s Ruchi Infotech System, Jammu & M/s National Chemicals, Tinsukia did not appear to have been manufactured in their factories and therefore, availment of

Cenvat credit on the basis of invoices issued by them was fraudulent and therefore, M/s Arora Aromatics were not eligible to avail the said Cenvat credit. The main allegation was that the suppliers of inputs to M/s Arora Aromatics neither procured raw-materials nor had capacity to manufacture and nor manufactured the goods which were said to have been procured by M/s Arora Aromatics and that the said goods were not transported from M/s Ruchi Infotech System, Jammu and were not received by M/s Arora Aromatics and therefore, Cenvat credit availed on the strength of such invoices was not admissible. With similar allegations the said Show Cause Notice dated 07/08/2009 was also issued for the subsequent period.

4. The said two Show Cause Notices dated 28/11/2008 & 07/08/2009 were adjudicated through above stated impugned Orders-in-Original dated 29/01/2010 & 29/03/2011 respectively. The appellant - M/s Arora Aromatics submitted before the Original Authority inclosing a copy of Order-in-Original No. 25-26/2008 dated 31/03/2008 passed by Commissioner of Central Excise, Jammu in respect of M/s Ruchi Infotech System, Jammu wherein, at para 3 the ld. Commissioner, Jammu noted that the manufacturing process carried out by said M/s Ruchi Infotech System, Jammu wherein it was categorically mentioned that the

Menthol Flakes were melted and stored in drums. They further stated that ld. Commissioner, Jammu himself recorded that there were melting tanks in which melting of Menthol Flakes was carried out by M/s Ruchi Infotech Systems, Jammu. The allegation that M/s Ruchi Infotech System, Jammu did not have capacity to manufacture the goods, claimed to have been cleared by them which were used as inputs by M/s Arora Aromatics did not survive. Therefore, there was no strength in the allegation that without movement of inputs into the factory M/s Arora Aromatics have taken Cenvat credits. M/s Arora Aromatics submitted to the Original Authority the record in the Order-in-Original, copies of the Assessment Order issued by Uttar Pradesh Sales Tax Department, whereby the assessments including those of purchased by M/s Arora Aromatics were finalized for the Years 2003-04 up to the Year 2006-07 and in all those assessments, the purchase of raw-materials such as Menthol, Menthol Flakes & De-mentholized (DMO), etc. from the suppliers at Jammu & Kashmir including M/s Ruchi Infotech System, Jammu were assessed and no discrepancy whatsoever was noticed. M/s Arora Aromatics also submitted to the Original Authority making a reference towards enquiries conducted by Central Excise, Commissionerate, Dibrugarh in respect of M/s National Chemicals, Tinsukia, Assam and contended that during the visit to the said unit on 09/11/2005 Officers found that they had purchased Menthol Flakes & De-mentholized (DMO), etc. as per their investigation dated 27/01/2005 which was their last investigation and the factory was closed on the date of visit by Officers on 09/11/2005 and did not make any purchase from M/s National Chemicals, Tinsukia, Assam after 27/01/2005. M/s Arora Aromatics also submitted to the Original Authority that the investigations were conducted only in respect of M/s Ruchi Infotech System, Jammu and no investigations were conducted in respect of other suppliers of raw-materials still a demand of more than Rs.9 Crore was raised through the said Show Cause Notice without carrying on any investigation and the same was not sustainable. They also submitted before the Original Authority that the goods were exported on payment of duty and proof of export was submitted to the Competent Authority and then the rebate more than of Rs.6.71 Crore was sanctioned to them and therefore, the demand in respect of recovery of the same was not sustainable. The findings by the Original Authority in the said Order-in-Original dated 29/01/2010 are as follows:-

(A) The Original Authority has stated that he has gone through the said Order-in-Original dated 31/03/2008 passed by Commissioner of Central Excise, Jammu in respect of M/s

Ruchi Infotech System, Jammu and nowhere found any remark of said Commissioner having seen the manufacture of Menthol Flakes & DMO by M/s Ruchi Infotech System, Jammu and also did not see melting tanks himself in the premises of the factory. Therefore, finding by Commissioner, Jammu recording the manufacturing process carried out by M/s Ruchi Infotech System, Jammu is not accepted by the Original Authority.

(B) In respect of the claim of the appellant that the Toll Tax exemption by the Authorities was granted after verification by various authorities such as Project Manager, District Industries Centre, Jammu and other Officers of State Government of Jammu & Kashmir. The Original Authority has held that he did not find such evidence acceptable in respect of receipt of inputs by the appellant as the documents approved by different Authorities were record based before the respective authorities and after physical verification no such remark was given on the approval. On the statement of the appellant 4 orders of refund were accepted and passed by Officers under Notification No. 56/2002-CE dated 14/11/2002 being accepted by Commissioner of Jammu. The ld. Original Authority has held that no assessment was being done by the Department and their units were working under self-assessment procedure.

(C) In respect of the statement by the appellant that the Central Excise Officers working in Jammu conducted P.B.C. checks on the units supplying inputs to the appellant, the Original Authority as held that he did not find any such remark on the P.B.C. check report that production of Menthol Flakes was seen by the Officers by their own eyes.

(D) In respect of the physical verification of the material i.e. inputs received by the appellant and verified by the local Assistant Commissioner on the receipt of the same in the factory of appellant – M/s Arora Aromatics, the Original Authority has held that the verification report about receipt of inputs into the factory of – M/s Arora Aromatics was arranged by the appellant and therefore, he did not accept the same.

5. On the basis of such findings, the Original Authority confirmed the demand. The operative part of the said order is reproduced below:-

"(1) (a) I disallow the Cenvat Credit amounting to Rs.15,87,77,553/- (Rs.15,49,71,307/- BED + Rs.31,11,413/- Ed. Cess + Rs.6,94,833/-H. Ed. Cess) [Rupees Fifteen Crore Eighty Seven Lacs Seventy Seven Thousand Five Hundred & Fifty Three only] fraudulently availed by the M/s Arora Aromatics during the period from June, 2005 to 15/07/2008, on the strength of bogus invoices issued by M/s Ruchi Infotech System, Jammu

and I demand the same from M/s Arora Aromatics alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A & Section 11AB of the Central Excise Act, 1944.

(b) I disallow the Cenvat Credit amounting to Rs.24,07,392/- (Rs.23,82,336/- BED + Rs.25,056/- Ed. Cess) [Rupees Twenty Four Seven Thousand Three Hundred & Ninety Two only) fraudulently availed by the M/s Arora Aromatics during the period from November, 2003 to January, 2005, on the strength of bogus invoices issued by M/s National Chemicals, Tinsukia, Assam and I demand the same from M/s Arora Aromatics alongwith interest under Rule 12 of the erstwhile Cenvat Credit Rules 2002/Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A & 11AB of the Central Excise Act, 1944.

(c) I disallow the Cenvat Credit amounting to Rs.9,10,10,103/- (Rs.8,90,84,505/- BED + Rs.15,41,192/- Ed. Cess + Rs.3,84,406/- H. Ed. Cess) fraudulently availed by M/s Arora Aromatics during the period from 16/02/2006 to 15/07/2008 on the strength of bogus invoices issued by units namely M/s Abhay Chemicals, Jammu, M/s Amarnath Industries, Kathua,

M/s Rajdhani Aromatics, samba, M/s Gaurav-Agrochem, Kathua, M/s G. L. Traders, Jammu, M/s V. S. Industries, Jammu, M/s Narbada Industries, Jammu, M/s Bhagwati Enterprises, Kathua, M/s Essar Overseas, Kathua, M/s Khazana Corporation, Jammu, M/s V. K. Sales, Kathua, M/s Jay Ambey Corporation, Jammu and I demand the same from M/s Arora Aromatics alongwith interest Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A & Section 11AB of the Central Excise Act, 1944.

(d) I impose Penalty of Rs.25,21,95,048/- (Rupees Twenty Five Crore Twenty One Lakh Ninety Five Thousand & Forty Eight only) upon M/s Arora Aromatics under Rule 13 of the erstwhile Cenvat Credit Rules, 2002, as applicable during the relevant period and under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

(e) I demand the erroneously sanctioned/paid rebate amounting to Rs.6,71,18,555/-) [Rupees Six Crore Seventy One Lakh Eighteen Thousand Five Hundred & Fifty Five only], from M/s Arora Aromatics, under the provisions of Section 11A of the Central Excise Act, 1944 with extended period of limitation which was

sanctioned/paid to M/s Arora Aromatics on the goods exported on payment of duty out of the Cenvat credit accumulated in their account fraudulently, alongwith interest as applicable rate read with Section 11AB of the Central Excise Act, 1944.

(2) I impose penalty of Rs.50,00,000/- (Rupees Fifty Lakh only) upon Shri Pankaj Somani, General Manager of M/s Arora Aromatics, Sambhal, Moradabad under Rule 26 of the Central Excise Rules, 2002 for their involvement in fraudulent availment of Cenvat credit and utilization thereof for payment of duty on the goods exported by M/s Arora Aromatics, under rebate claim.

(3) I impose penalty of Rs.10,00,000/ (Rupees Ten Lakh only) upon Shri Santosh saharia, Attorney Holder of M/s National Chemicals, Tinsukia, Assam under Rule 26 of the Central Excise Rules, 2002 for their involvement in fraudulent act as discussed above.

(4) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakh only) upon Shri anil Kumar Goel, Attorney Holder of M/s Rapti Commission Agency, C-2025, Indra Nagar, Lucknow under Rule 26 of the Central Excise Rules, 2002.

(5) I impose penalty of Rs.5,00,00,000/- (Rupees Five Crore only) upon M/s Ruchi Infotech System, Jammu, Rs.10,00,000/- (Rupees Ten Lakhs only) upon M/s National Chemicals, Tinsukia, Rs.20,00,000/- (Rupees Twenty Lakhs only) upon M/s Abhay Chemicals, Jammu, Rs.1,00,00,000/- (Rupees One Crore only) upon M/s Amarnath Industries, Kathua, Rs.(50,00,000/- (Rupees Fifty Lakhs only) upon M/s Rajdhani Aromatics, Samba, Rs.25,00,000/- (Rupees Twenty Five Lakhs only) upon M/s Gaurav-Agrochem, Kathua, Rs.10,00,000/- (Rupees Ten Lakhs only) upon M/s G. L. Traders, Jammu, Rs.6,00,000/- (Rupees Six Lakhs only) upon M/s V. S. Industries, Jammu, Rs.10,00,000/- (Rupees Ten Lakhs only) upon M/s Narbada Industries, Jammu, Rs.15,00,000/- (Rupees Fifteen Lakhs only) upon M/s Bhagwati Enterprises, Kathua, Rs.5,00,000/- (Rupees Five Lakhs only) upon M/s Essar Overseas, Kathua, Rs.10,00,000/- (Rupees Ten Lakhs only) upon M/s Khazana Corporation, Jammu, Rs.5,00,000/- (Rupees Five Lakhs only) upon M/s V. K. Sales, Kathua & Rs.10,00,000/- (Rupees Ten Lakhs only) upon M/s Jay Ambey Corporation, Jammu under Rule 26 of the Central Excise Rules, 2002.

(6) I impose penalty of Rs.25,00,000/- (Rupees twenty Five Lakhs only) upon M/s Rapti Commission Agency under Rule 26 of the Central Excise Rules, 2002.

(7) I impose penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) upon M/s Vishal Trading Co., Lucknow under Rule 26 of the Central Excise Rules, 2002.

(8) I impose penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) upon M/s Bansal Trading Company, Hathikhana, Jawahar Road, Sambhal under Rule 26 of the Central Excise Rules, 2002.

(9) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) upon M/s Meenu Enterprises, Kot East, Sabmhal under Rule 26 of the Central Excise Rules, 2002."

6. The Original Authority through Order-in-Original dated 29/03/2011 given similar findings and confirmed the demand. The operative part of the said order is reproduced below:-

"(1) I disallow the Cenvat Credit amounting to Rs.1,03,06,922/- [Rupees One Crore Three Lacs Six Thousand Nine Hundred & Twenty Two only] representing amount of Cenvat credit fraudulently

availed by M/s Arora Aromatics during the period from 16/07/2008 to 30/06/2009, I order to recover the same from M/s Arora Aromatics alongwith interest payable under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A & 11AB of the Central Excise Act, 1944.

(2) I impose a penalty of Rs.1,03,06,922/- [Rupees One Crore Three Lacs Six Thousand Nine Hundred & Twenty Two only] upon M/s Arora Aromatics under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

(3) I impose penalty of Rs.97,58,732/- [Rupees Ninety Seven Lacs Fifty Eight Thousand Seven Hundred & Thirty Two only] upon M/s Ruchi Infotech System, Jammu, under Rule 26(2)(ii) of the Cenvat Excise Rules, 2002.

(4) I impose penalty of Rs.5,48,190/- [Rupees Five Lacs Forty Eight Thousand One Hundred & Ninety only] upon M/s Amarnath Industries, Kathua, under Rule 26(2)(ii) of the Cenvat Excise Rules, 2002.

(5) I impose penalty of Rs.5,00,000/- [Rupees Five Lacs only] upon Shri Pankaj Somani, General Manager of

M/s Arora Aromatics, Sambhal, Moradabad under Rule 26 of the Cenvat Excise Rules, 2002.

(6) I impose penalty of Rs.1,00,000/- [Rupees One Lacs only] upon Shri Vinay Kumar Agrawal, Partner of M/s Amarnath Industries, Kathua, under Rule 26 of the Central Excise Rules, 2002."

Feeling aggrieved by the said order, above stated appellants have preferred above stated appeals before this Tribunal.

7. Neither any additional evidence nor any cross objections was filed by Revenue. Further appellant file a Miscellaneous Application No. 403/2011 praying for accepting additional evidence. The said Miscellaneous Application was heard on 01/10/2012 and was allowed. The additional evidences admitted and allowed to be considered through the said dated 01/10/2012 are as follows:-

> "Copy of the Letter bearing C. No. IV-CE(9)CP/45/06/Pt-III dated 06/05/2010 of the Commissioner of Central Excise, Noida addressed to the Chief Commissioner, Meerut with regard enquiry in to running of the six Jammu based units who supplied excisable goods to M/s Bhagat Aromatics, Noida."

8. Heard the ld. Counsel – Mr. B. L. Narasimhan, for the appellants on behalf of the M/s Arora Amormatics, who has made following submissions as follows:-

(a) The main demand pertains to denial of Cenvat credit on account of inputs allegedly not received from M/s. Ruchi Infotech System, Jammu (involving Cenvat Credit of Rs. 15,87,77,553/-) which according to the Original Authority, has not manufactured the inputs and thus not supplied to the main Appellant herein. The order of the Original Authority is based on the allegations and findings as under:-

(i) It has been contended that M/s. Ruchi Infotech System, Jammu do not have sufficient plant and machinery to manufacture the inputs which are claimed to have been supplied to M/s. Arora Aromatics, Sambhal who have availed this Cenvat Credit therein. Appellant has claimed that there have been melting tanks in the factory of M/s. Ruchi Infotech System as is evident from the copy of the invoices issued by M/s. J.K. Insulation which was part of the documents resumed from the factory of M/s. Ruchi Infotech System on 13.02.2006. The Original Authority at internal page 296 of the order did not accept the photo copy of the invoice without giving any cogent reasons. Since the invoice already existed and was resumed from the premises of M/s. Ruchi Infotech System, there was no reason to doubt the veracity of the invoice. A certificate dated 30.04.2009 was also provided from the engineers who have actually installed the said heating tanks. The Original Authority has held that the said certificate has been issued after the issue of show cause notice and hence it is afterthought and not acceptable. Appellants' claim is that the said certificate is only to further the contention that heating tanks were already there and supplied by M/s. J.K. Insulation. The invoice was already resumed by the Department and hence there is no question of the certificate of installation to be an afterthought. The fact that the melting tank was found by the Central Excise officers of Jammu during PBC checks, was placed before the Original Authority. However, the Original Authority has not agreed to the PBC checks on the ground that there is no remark of verification about the installation of melting tanks.

(ii) Appellants submit that the fact that stock of menthol was found in the melting tanks of PBC checks by the officers and the melting tanks were already available in the factory of supplier of inputs. The Central Excise Officers have clearly mentioned in PBC check dated 27.04.2006 that, "Visited the unit on 27.04.2006 and found the unit functional. The process of manufacturing of menthol solution from Mentha oil was undergoing at different stages of manufacturing but no final product was reached at the packing stage. Therefore, sample of Menthol solution was taken from Melting Tank No.2 in which Menthol Flakes were finally melted to form homogenous Menthol solution (its finished products)". Further, the list of the machinery approved by the District Industry Centre was also placed before the Original Authority which again he has chosen not to agree on the ground that there is no reference to the physical verification by the Officers of District Industry Centre. Appellants submits that the number of evidences, inter-alia, including the PBC checks were also there. Further, in the order of the Commissioner of Central Excise, Jammu dated 31st March, 2008, it has been held that the process adopted by M/s. Ruchi Infotech System amounts to manufacture which is also categorically mentions that menthol flakes were melted and stored in drums, and thus proves the existence of melting tanks. The Original Authority has chosen not to agree to this evidence and has doubted the order of the Commissioner of Central Excise, Jammu as well as PBC checks conducted by the officers of Central Excise, Jammu. The Original Authority in subsequent findings has also disallowed the cross-examination of those officers who actually conducted the PBC checks.

(b) In view of the above, the finding that there was no machinery available in the factory of M/s. Ruchi Infotech System, is not sustainable. Further, since the assessments have been completed by the jurisdictional Commissioner of Central Excise, Jammu showing that the factory of Ruchi Infotech System is existing and working, inter alia, having melting tanks in the factory cannot be challenged by the Original Authority not having jurisdiction over the factory of M/s. Ruchi Infotech System. Further, attention is invited to the refund orders of Jammu in which the Ld. Assistant Commissioner had held in the discussions and finding section that the manufacturing facility is available at the premises of M/s. Ruchi Infotech System. Therefore the finding of Original Authority is not sustainable.

(c) The next finding of the Ld. Commissioner at internal page 297 of the impugned order is that the Bahti forms at the Madhopur check post in the State of Punjab shows the different description of the goods passing through the borders. Appellants have adduced various evidence to show that the movement of the goods to the factory of M/s. Ruchi Infotech System as well as from the factory of M/s. Ruchi Infotech System to the premises of main Appellant(Arora Aromatics) have taken place and the documents obtained under the Right to Information Act from the Department of Trade Taxes, Punjab have been placed on record. Regarding the description, the Department of Trade Taxes, Punjab in its reply dated 20.04.2011 to RTI application dated 10.06.2009 has clearly mentioned that their computer system is unable to accept the description of the menthol for the reason that the commodities like MENTHOL FLAKES, MENTHOL SOLUTION and DEMENTHOLIZED OIL are not in their system and these commodities will be included/entered in the system at the earliest. Further, they have clearly mentioned in the report dated 26.02.2009 that the word 'menthol' is not appearing in the list of commodities master which the system has adopted. Thus the finding of the Original Authority that description is different is not sustainable.

(d) Apart from the above, the Original Authority has also given a finding in respect of transportation of raw material (Mentha Oil) from U.P to Jammu (Ruchi Infotech System). The Original Authority has contended that there was no transportation of raw material from U.P. to Jammu but only invoices were issued by various transporters and the same was received at Jammu. In this regard the Appellant had filed a RTI application dated 10.02.2011 before the State Public Information Officer cum Deputy Excise & Taxation office asking for all details of all the consignments dispatched from U.P in the name of M/s. Ruchi Infotech System and passed through Madhopur check post. The State Public Information officer replied to the application dated 10.02.2011 vide its letter dated 17.02.2011 along with the list providing for details of Consignor name, Consignee name, Entry date, Bill No., Bill date, Bill amount and Vehicle Number from 30.05.2005 to 30.01.2010. All the details supplied by the Excise

Taxation Commissioner tallies with the details available with the Appellant Said details were submitted to this Bench as additional evidence which was allowed to be admitted. This proves transportation and finding to the contrary is not sustainable.

(e) At internal page 298 of impugned order, a reference has been given to the enquires conducted from National Chemicals, Tinsukhia (Cenavt involved Rs.24,07,392/-). The Appellants have been claiming that the last material purchased from them was vide invoice dated 27.01.2005 and their factory has been found to be closed on 9.11.2005. The Original Authority has come to the conclusion that no material has been supplied to them. Since the material has passed through number of States to U.P. and all the documents at the check post enroute the factory of the Appellants have been placed before the Original Authority. The Original Authority ~~was~~ has ~~rejed~~ relied on the statement dated 09.11.2005 of Shri Chandra Prakash, a guard at the factory and the answer in no way leads to the conclusion of any possible contradiction of the fact of supply of materials from them in view of the numerous documents provided by the Appellants.

(f) Appellants have submitted to the Original Authority that as per the norms orally introduced by the then predecessor Commissioner, Meerut which required all the assesses receiving the material from Jammu units to intimate the local Central Excise range staff about the receipt of the materials. Accordingly the Appellants have submitted due intimations of the receipt of the materials. Thereafter, the then Commissioner was not satisfied by the mere intimation and therefore, gave further oral directions to the range staff to physically verify the material received. Accordingly, the Appellants have placed on record various intimations of the inward consignments which were verified by the local range staff regarding receipt of the materials. Thereafter, the Original Authority gave further oral directions to the staff that in addition to the intimation in writing, verification by the staff, samples should also be drawn from the consignments received from Jammu units. Accordingly, samples were also drawn from a number of inward consignments.

(g) In such a situation, the Appellants submitted to the Original Authority that the receipt of the materials from Jammu units cannot be doubted. At internal page 301 of the impugned order, the Original Authority has not agreed with the claim and the verbal directions to check consignments/draw samples and has held that no such requirement is available in the Rules. The Original Authority has cast aspersions that the same are arranged by the Appellants and cannot be accepted due to the reason that the same was not required under the Rules and collected just to put legal cover on the illegal act. The Appellants submit that the Original Authority is doubting his own officers. Nowhere in the impugned order it has come out if such requirements was not there under the rules, how the officers have acknowledged the intimations, verified the consignments and drawn the samples. At the same time, the Original Authority has declined to allow cross-examination of these officers who have received intimations from the Appellants, verified the consignments and drew samples of the inward consignment simply on the ground that there is no directions to do so. The Appellants submit if there was no direction, it was incumbent upon the Original Authority to ask the officers as to how they have received the intimations, verified the inward materials and drew samples. Having lost the opportunity to do so, the Original Authority simply cannot brush aside the verification of the inward material by none other than his own officers.

(h) In addition to the denial of Cenvat Credit on the receipt of the materials from Jammu, the Original Authority has also demanded back sanctioned rebate to the of Rs.6,71,18,555/- which was granted by the Department after verification of invoices in terms of Rules 18 of the Central Excise Rules, 2002. The Appellants submitted to the Original Authority that the demand to the extent of the rebate is overlapping, inasmuch as the same already stands covered under the denial of Cenvat Credit, inasmuch as the rebate has been claimed from the very same Cenvat Credit amount. At internal page 303 of the impugned order, the Original Authority has denied to abate demand to that extent on the ground that since the issue of Cenvat Credit has not been settled, no abatement can be granted. The Appellants submit that since the demand to the extent of rebate is already included in the amount of rebate proposed to be denied, to that extent the demand should have been abated.

(i) The findings of the Original Authority are confined only to the supply of materials by M/s. Ruchi Infotech System (Rs.15,87,77,553/-) and M/s. National Chemicals (Rs.24,07,392/-) which the Appellants have already submitted in view of various documents, PBC checks, order of the Commissioner, Jammu, documents maintained by the DIC officers, border check records, sales tax records and the check post obtained under the RTI which Original Authority has not agreed to. There are several suppliers such as M/s. Abhay Chemicals, M/s. Rajdhani Aromatics, M/s. Gaurav Agro Chem and others in respect of which the Cenvat Credit to the extent of Rs.9,10,10,103/- has also been denied. There is no investigation, no findings in any manner by the Original Authority about the supply of input materials by these manufacturers at Jammu. There is no whisper about any documentary evidence to contend that the materials have not been supplied by these input suppliers. For this reason also, the impugned order is not sustainable. The list of documents in support of the Appellants' claim about the factual receipt of the raw materials are under:

(i) PBC Checks
(ii) Order of the Commissioner, Jammu
(iii) Sample copy of register maintained as per DIC

(iv) Intimations at Meerut
(v) Refund orders from Jammu
(vi) Verification by C.E. officers Range Billari
(vii) Drawl of samples by the range staff
(viii) Information received from RTI
(ix) Details of consignments from U.P. to Jammu

(j) Commissioner of Central Excise, Jammu has already written a letter dated 21.05.2010 to the Chief Commissioner, Chandigarh which was submitted at Additional Evidence along with internal communication of the Department that the factory of Ruchi Infotech System and others are existing and PBC checks have been conducted.

(k) Further Commissioner, Noida has also vide letter dated 06.05.2010 mentioned that no case is made out in respect of the units in the jurisdiction of Noida Commissionerate, since no clinching evidence has been produced by the Department to the Suppliers of Jammu.

9. Heard the ld. A. R. for Revenue, who has supported the impugned Orders-in-Original dated 29/01/2010 & 29/03/2011.

10. Having considered the rival contentions and on perusal of the facts on record, we find that the basic allegations in the

Show Cause Notice was that M/s Arora Aromatics did not receive inputs on which they availed Cenvat credit basically on the contention of Revenue that M/s Ruchi Infotech System, Jammu did not have facility to manufacture the inputs received by M/s Arora Aromatics and that the goods did not move from Jammu & Kashmir to the appellant's factory and therefore, Cenvat credit was not admissible. The evidence submitted by the appellant in the form of Order-in-Original passed by Commissioner of Central Excise, Jammu on 31/03/2008, wherein it was held that M/s Infotech System, Jammu was manufacturing the goods was not accepted by the Original Authority stating that the said Commissioner, Jammu did not see himself that the goods have been manufactured. If such a logic is accepted then the basic system of assessment by Authorities under tax statute needs to be concluded to have been not properly understood by the Adjudicating Authority. The present system of assessment in Central Excise is record based. The Officer assessing the duty is not required to be present when the goods are being manufactured to witness the process of manufacture. The adjudication is to be done on the basis of evidence produced before the Adjudicating Authority. As per Evidence Act evidence in totality is to be taken into consideration and therefore, finding recorded in the impugned

Order by the Original Authority who passed the said Order dated 29/01/2010 is bad in law. The Original Authority did not understand the process either of assessments or of adjudication. Further the investigations were not undertaken to find out wherefrom the inputs were received by the appellant for the goods they manufactured and on which they paid duty and which were exported, if they had been received the inputs from M/s Ruchi Infotech System, Jammu or the other suppliers of inputs. Further, the additional evidence submitted by the appellant indicated that in respect of units in Jammu, Central Excise Officers visited the factory premises and seen that the manufacturing process going on was evidence by them and such evidences being on record and submitted by the appellant it was the duty of the Original Authority to accept them and not to discard by saying that the Officers have not seen the goods being manufactured by their own eyes. Further, the receipt of inputs was verified by the Officers of Central Excise Department and sample of the same were also drawn and forwarded for Chemical Examination. Such evidence was also not accepted by the Original Authority, Therefore, it appears that the Original Authority was pre-determined to adjudicate the matter in the manner in which he has decided the issue and he was not just and fair and did not discharge his duty as an independent adjudicator. We, therefore, set aside both the impugned Orders-in-Original dated 29/01/2010 & 29/03/2011 and allow all the appeals filed by appellant. The appellant shall be entitled for consequential relief. All the demand and penalties imposed are also set aside. All the Miscellaneous/Stay Applications stand disposed, as infructuous.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy
23/01/18
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38, M. G. MARG, ALLAHABAD-211001