

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :  
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :  
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(48)48 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-003-16-17

दिनांक Date : 26.04.2016 जारी करने की तारीख Date of Issue 4/5/16

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग \_\_\_\_\_ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल  
आदेश सं \_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-JC-04-15-16 Date: 29.06.2015  
Issued by: Joint Commissioner, Central Excise, Din: Kalol, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Salasar Laminates Limited**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे  
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as  
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में  
पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,  
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को  
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision  
Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building,  
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the  
following case; governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने  
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में  
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

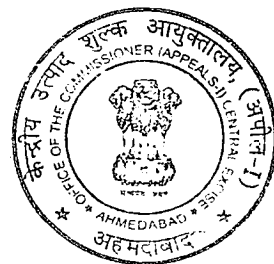
(ii) In case of any loss of goods where the loss occur in transit from a factory to a  
warehouse or to another factory or from one warehouse to another during the course of  
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क  
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित  
है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside  
India of on excisable material used in the manufacture of the goods which are exported to any  
country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया  
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of  
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

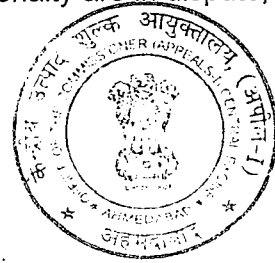
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER-IN-ORIGINAL**

This appeal has been filed by **M/s Salasar Laminates Ltd., Kadi-Chhatral Road, Tal-Kalol, Dist. Gandhinagar** (hereinafter referred to as "the appellant") against Order-in-Original No.AHM-CEX-003-JC-04-15-16 dated 29.06.2015 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner of Central Excise, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case is that the appellant is engaged in manufacturing of Laminated Sheets and Electrical Insulator Paper bas industrial sheet falling under chapter heading 48 and 85 of Central Excise Tariff Act, 1985 and registered with Central Excise Department. During the course search conducted by the officers of Central Excise Officer at the factory premises of the appellant on 20/21.01.2015, it was detected that the production details of 50502 nos. of laminated sheets of various grades valued at Rs.1,47,49,719/- manufactured by the appellant during the period from 06.01.2015 to 19.01.2015 were not entered and accounted for in daily stock register (RG-1). The said goods were placed under seizure on 21.01.2015 under the Panchnama dated 21.01.2015 under the reasonable belief that the same were not entered in RG-1 with an intent to evade duty and handed over to the appellant for safe custody under Supratnama dated 21.01.2015. After investigation and it further appeared that the appellant have contravened the provisions of Central Excise Act and Rules, a show cause notice dated 03.06.2015 was issued to the appellant for proposal of confiscation of said seized goods under Rule 25(1) (b) and (d) of Central Excise Rules, 2002 (CER) and imposition of penalty under Rule 25 (1) of CER read with Section 11 AC of Central Excise Act, 1944 (CEA). During the course of adjudication of the said show cause notice dated 03.05.2015, the adjudicating authority found that out of 50502 nos. of seized goods, 45239 nos. were accounted for in the Tally system of the appellant and same was also matching with the quantity as shown in the handwritten sheets withdrawn during the course of Panchnama dated 21.01.2015. Therefore, in the impugned order, the adjudicating authority has vacated the seizure of said 45239 nos. goods and ordered for confiscation of remaining non entered 5263 Nos. of laminated sheets



various grade in the records, valued at Rs.11,43,582/- in terms of Rule 25 (1) of CER. He also given option to redeem the confiscated goods on payment of fine of Rs.2,86,000/-. A penalty of Rs.1,41,347/- was also imposed by the adjudicating authority under Rule 25 of CER.

3. Being aggrieved, the appellant had filed the present appeal on the grounds that the case made out against them was for non accounting of goods in statutory records, which was the production for the period from 06.01.2015 to 19.01.2015 and the adjudicating authority has condoned such lapse for the period from 06.01.2015 to 18.01.2015 as the same was entered in tally system; that the entry of production for the day 19.01.2015 was not done due to shortage of staff and the same may also be condoned. The appellant has not attempted or preparation was made for removal of such goods without payment of duty and therefore, confiscation of such goods was unwarranted and unjustified notwithstanding the facts that the goods were not entered in daily stock account. Penal provisions under Rule 25 of CER is not applicable in the matter in as much as the said rule is attracted only when situations contemplated under Section 11 AC of CEA were present; that there was no demand of duty that could have been made for the goods in question when they were admittedly cleared on payment of appropriate duty and therefore, section 11 AC of the Act was not attracted. The appellant has relied on several decisions of Court/Tribunal in support of their argument.

4. A personal hearing in the matter was granted on 13.04.2016 and Shri Smt.Shilpa P Dave, Advocate appeared for the same. She reiterated the grounds of appeal and states that only one day stock was not entered in to the records. The Ld. Advocate also relied on Hon'ble High Court's decision in the case of M/s Resham Petrotech Ltd reported at 2010 (258) ELT 60 (Guj) and Tribunal's decision in the case of M/s Bhillai Conductors (P) Ltd reported at 2000 (125) ELT 781 (Tri) and decision of Commissioner (Appeals) in OIA No.AHM-EXCUS-002-APP-203 & 204 14-15 dated 25/03/2015.

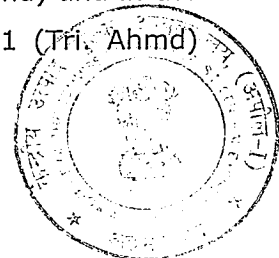
5. I have gone through the facts of the case, submissions made by the appellant in the appeal memorandum and at the time of personal hearing. The issue to be decided is whether the goods found in excess in the factory premises which were not recorded in daily stock account register are liable for confiscation and penalty or otherwise.

5.1 In the instant case, I find that a case of was made out from 50502 nos. of finished goods found in excess in the factory premises which was pertaining to the production for the period from 06.01.2015 to 19.01.2015 and a show cause notice was issued to the appellant for confiscation of such finished goods lying in the factory under the provisions of Rule 25 (1)(b) of CER and (d) of CER. The



adjudicating authority, in the impugned order, has invoked provisions of Rule 25(1) and ordered for confiscation of 5263 nos. of seized goods, pertaining to the production of 19.01.2015 only, and imposed penalty equal to the duty amount. In the show cause notice, it was alleged that the appellant has failed to make entry the details of production in the daily stock account register with intent to evade payment of duty and hence it is liable for confiscation and penalty under the provisions of Rule 25 of CER was imposable. In the impugned order, the adjudicating has vacate proposal of confiscation in respect of 45239 nos. of seized finished goods, pertaining of production for the period from 06.01.2015 to 18.01.2015, on the grounds that since the appellant has entered the details of said goods in their tally system such goods cannot said to be unaccounted, mere non entry in RG-1 register owing to shortage of staff and human error as explained by the appellant. The remaining 5263 nos. of finished goods were ordered for confiscation by the adjudicating authority as it was not accounted for in any of the records and accordingly also imposed penalty of Rs.1,41,387/-.

5.2 On going through records, I find that the case was booked on 21.01.2015 and the adjudicating authority has ordered for confiscation of finished goods of 19.01.2015 lying in the factory premises and imposed penalty mere on the grounds the appellant had not accounted for the said goods in their records and the said goods were intend to remove without payment duty. There is nothing on record to show during investigation or at the time of adjudication that there was some preparation for removal of the excess finished goods in a clandestine manner on the part of the appellant. The adjudicating authority himself accepted the facts, by vacating seizure of finished goods pertaining to the production from 06.01.2015 to 18.01.2015, that the tally records of the appellant had updated upto 18.01.2015 and mere entry in the register, owing to shortage of staff and human error is condonable in as much as the substantial requirement of law has been fulfilled. However, the investigating authority as well as the adjudicating authority has failed to discharge the burden to adduce any evidence regarding clandestine removal of finished produced on 19.01.2015 which was not entered in the records. The confiscation of unaccounted of goods pertaining to only one day production, lying within the factory premises when no attempt was noticed to have been made for its clandestine removal, confiscation of such goods is not justifiable. Looking into such circumstances in this case, it appears that the case law in the case of M/s Ganapati Rolling Mills P Ltd reported in 2014 (303) ELT 240 (Tri Del) cited by the adjudicating authority in para 12.4 of the impugned order defers from the facts of the instant case, especially when decision in the case of M/s Morakhia Metals & Alloys Pvt Ltd Vs CCE & ST Ahmedabad-III reported at 2015 (330 ELT 325 (Tri. Ahmd) and in the case of Marigold Paints Pvt Ltd reported at 2014 (308) ELT 421 (Tri. Ahmd)



states that the goods were not liable for confiscation where no evidence on record to show that there was any attempt to remove the goods lying within the factory premises clandestinely without payment of duty. Therefore, I do not find any merit in the impugned order for ordering confiscation of seized goods of one day production i.e 19.01.2015 which not entered in the records till 21.01.2015.

5.3 Further, I find that the Hon'ble High Court of Gujarat in the case of M/s Saurashtra Cement Ltd reported at 2010 (260) ELT 271 (Guj) has held that Rule 25 of the CER was subject to Section 11 AC of the CEA and therefore, imposition of penalty under Rule 25 is applicable only when the appellant was guilty of evasion of duty by way of suppression of facts, wilfull mis-statement, fraud or contravention with an intent to evade payment of duty. Therefore, ingredients of section 11 AC of CEA are not present in the instant case, as stated above, penalty cannot be imposed under rule 25.

5.4 However, from the facts and circumstances of the case, it is apparent that the appellant has undoubtedly violated the provisions of Rule 10 of CER, imposition of penalty under Rule 27 of the CER is warranted in light of the decision of M/s Saurashtra Cement Ltd cited supra.

5.5 In view of the facts, circumstances and above discussions, the impugned order is set aside to the extent of confiscation and imposition of redemption and imposition of penalty under rule 25 of CER. However, I impose penalty of Rs.10,000/- under Rule 27 of the CER on the appellant in above terms.

*Uma Shanker*

**(UMA SHANKER)**  
COMMISSIONER (APPEALS-I)  
CENTRAL EXCISE, AHMEDABAD

Attested

*Mohan V.V.*  
**(Mohan V.V.)**  
Superintendent.(Appeal-I)  
Central Excise, Ahmedabad  
**BY R.P.A.D**

Date: 26/04/2016

To,  
**M/s Salasar Laminates Ltd.,**  
**Kadi-Chhatral Road, Tal-Kalol,**  
**Dist. Gandhinagar**

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Kalol, Ahmedabad-III
5. Guard file.
6. P.A file.

