

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(24)02,03,04/Ahd-III/2015-16/Appeal-1 4112 to 4118
ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-187 to 189-15-16**

दिनांक Date : **23.12.2016** जारी करने की तारीख Date of Issue 20/1/16

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: **02/AC/CE/MEH/2016** Date: **19.01.2016**

Issued by: Assistant Commissioner, Central Excise, Din: Mehsana, A'bad-III.

घ **अपीलकर्ता** एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. AS PER ORDER

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, 4th 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

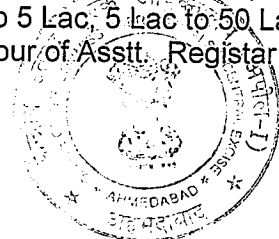
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(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 पढ़ी 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 Appellate 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, 1994 की धारा 83 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 होगा।

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,

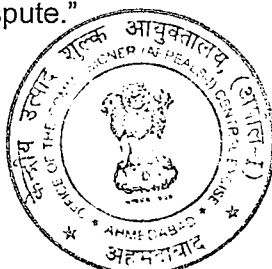
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 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."



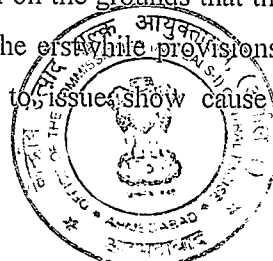
ORDER-IN-APPEAL

M/s Ambalal Dhanjidas Patel, Unjha, Mehsana (for short-M/s ADP); Shri Patel Amrutlal mbalal, Unjha, Mehsana (for short- Shri Patel) ; and M/s Varsha Stores, Patan, Mehsana (for short-M/s Varsha) have filed appeals against Order-in-Original No.02/AC/CE/Meh/2016 dated 19.01.2016 (hereinafter referred to as "the impugned order") passed by the Assistant commissioner, Central Excise, (Mehsana Division (hereinafter referred to as :the adjudicating authority). The details of above referred three appeals are as under:

S No	Appellant's name	Appeal No.	Duty involved	Penalty involved
1	M/s Ambalal Dhanjidas Patel	02/Ahd-III/16-17	Rs.1,21,798/-	Rs.18,273/- Rs.54,997/-
2	Shri Patel Amrutlal Ambalal	03/Ahd-III/16-17	-	Rs.15,000/-
3	M/s Varsha Stores	04/Ahd-III/16-17	-	Rs.2,000/-

2. Briefly stated, the facts of the case is that on the basis of information that M/s ADP is engaged in production of "unmanufactured branded tobacco" falling under chapter 2401 of Central Excise Tariff Act, 1944 and not registered with the department and not paying appropriate central excise duty on clearance of excisable goods, the premises of M/s ADP was searched by the jurisdictional Central Excise Preventive officers on 13.03.2015. It was noticed that the taxable goods viz. "unmanufactured branded tobacco" of 634 puches of 12 gm/100gn valuing Rs.4,280/- were lying in the premises. On simultaneous search at the premises of M/s Varsha, one of the buyer of M/s ADP, it was noticed that 38.688 kgs of "unmanufactured tobacco", valued at Rs.15,660/- cleared by M/s ADP were lying in their premises. All the above said goods were detained on 13.03.2015 and further seized on 09.04.2015. On further investigation, it was noticed that M/s ADP had produced and sold "unmanufactured branded tobacco" in pouch, valued at Rs.2,02,500/- during 2014-15. Therefore, a show cause notice dated 30.07.2015 was issued to M/s ADP for [i] confiscation of "unmanufactured branded tobacco" valued at Rs.4280/- and Rs.15,660/- which were seized at the premises of M/s ADP and M/s Varsha respectively, under Rule 25 of Central Excise Rule, 2002(CER); [ii] demand of duty amounting to Rs.1,21,798/- under Section 11A of Central Excise Act, 1944 (CEA) with interest under Section 11AA of CEA; and [iii] imposition of penalty under Section 11 AC of Central Excise Act. The show cause notice also proposes for imposition penalty to Shri Patel and M/s Varsha under Rule 26 of CER. The said notice was adjudicated by the adjudicating authority by confirming the duty with interest and imposition of penalty as mentioned in the above table.

3. Being aggrieved, M/s ADP has filed the appeal on the grounds that they had paid the duty with interest and penalty as required under the erstwhile provisions of Section 11A(6) of CEA and requested the department not to issue show cause notice and



concludes the proceedings under the provisions of Section 11A(7) of CEA i.e prior to the enactment of the Section 11A w.e.f 14.05.2015; that after issuance of show cause notice, they have paid the duty on seized goods at their premises and the premises of M/s Varsha; that to avoid any controversy and litigation in the case, they have paid total duty of Rs.1,21,798/- with interest amounting to Rs.4554/- and penalty of Rs.18,273/- (15% of the duty) as required under the amended provisions of Section 11 AC(d) of CEA. The adjudicating authority has not concluded the proceedings as requested by them and confirming the double duty on seized goods at the premises of M/s Varsha .

3.1 Shri Patel and M/s Varsha filed the present appeals on the grounds that M/s ADP has paid the full amount with interest and penalty to conclude the proceedings, however, the adjudicating authority has ignored their request and imposed the penalty which is against the law and principle of natural justice; that the impugned order has not appreciated Board's circular dated 18.08.2015; that Shri Patel being partner of M/s ADP, separate penalty cannot be imposed. He relied on various citations in support; that so far as the quantity of tobacco seized at the premises of M/s Varsha, they stated that the goods was purchased under the cover of invoice and M/s ADP has paid the duty in respect of the said goods, hence the seized goods is part and partial of the duty confirmed in the impugned order and also part and partial of the proposal for conclusion of the proceedings as requested by M/s ADP. M/s Varsha also stated that the penalty under Rule 26 of CER cannot be imposable on the firm.

4. Personal hearing in the matter was held on 20.12.2016. Shri N.R.Parmar and Shri G.B.Patel, Authorized representatives appeared for the same. They reiterated the grounds of appeals.

5. I have carefully gone through the facts of the cases and submissions made in the appeals as well as at the time of personal hearing. The case is relating to the duty liability of goods viz. "unmanufactured branded tobacco" produced and cleared by M/s ADP and penalty imposed on M/s ADP, Shri Patel, Partner of the firm and M/s Varsha, who received goods from M/s ADP without payment of duty.

6. In the instant cases, I observe that the department has booked a case against M/s ADP for illicit production of "unmanufactured branded tobacco" and clearance of said goods to M/s Varsha without payment of Central Excise duty amounting to Rs.1,09,994/-. The department has also seized the said goods valued at Rs.4,280/- and Rs.15,660/- from the premises of M/s ADP and M/s Varsha respectively which was confiscated vide the impugned order and demanded duty amounting to Rs.11,805/-. While considering the case on merit, I observe that there is, however, no dispute regarding liability of Central Excise duty on goods seized and goods found to be cleared by M/s ADP. The only dispute is relating to quantum of penalties imposed by the adjudicating authority to M/s ADP, Shri Patel and M/s Varsha.



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7. M/s ADP contended that they have requested vide their letter dated 18.09.2015 to the adjudicating authority to conclude the proceedings under the provisions of erstwhile Section 11A (7)(1) of CEA and under the provisions of amended Section 11 AC (d) of CEA, as they have fulfilled the conditions prescribed in the section *ibid.* Shri Patel and M/s Varsha has also contended that since the main appellant M/s ADP has requested to conclude the proceedings, no further penalty needs to be imposed on them.

8. I observe that the adjudicating has not considered the request and stated that since the goods in the instant case is confiscated as well as in the case of M/s Varsha, the proceedings initiated in the show cause notice cannot be concluded and imposed penalty under the provisions of Section 11 AC (e) of CEA on M/s ADP and penalty under Rule 26 of CER. Since the issue revolves around erstwhile Section 11A(7) (i) and amended Section 11 AC(d) of CEA, the relevant extracts of the rule and the section is reproduced below, for ease of reference:

"11A- Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. —

(1)

(5) Where, during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or short levied or short paid erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified records, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under Section 11AA and penalty equivalent to fifty percent, of such duty.

(6) Any person chargeable with duty under Section (5) may, before service of show cause on him, pay the duty in full or in part, as may be accepted by him along with interest payable thereon under section 11AA and penalty equal to one percent of such duty per month to be calculated from the month following the month in which such duty was payable, but not exceeding a maximum of twenty five percent, of the duty, and inform the Central Excise Officer of such payment in writing.

(7) The Central Excise Officer, on receipt of information under sub-section (6) shall-

(i) not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise officer that the amount of duty, interest and penalty as provided under sub-section (6) has been fully paid."

(omitted w.e.f 14.05.2015)

"Section 11AC. Penalty for short-levy or non-levy of duty in certain cases -

(1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:-

(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;"



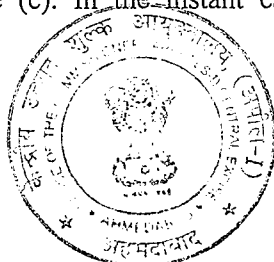
9. As per the impugned order and other records, the details of payment made by M/s ADP towards duty, interest and penalty is as under:

Details of goods	Duty involved	Duty paid	Interest paid	Penalty paid	Paid on
Sales Bill raised by M/s ADP	1,09,994/-	1,09,993/-	3,134/-	2,123/-	28.04.2015
Goods seized at M/s ADP	2,534/-	2,534/-			
Goods seized at M/s Varsha	9,271/-	9,271/-	1,420/-	16,150/-	16.09.2015
Total	1,21,799/-	1,21,799/-	4,554/-	18,273/-	

In the instant case, I observe that the adjudicating authority has admitted the fact in the impugned order that M/s ADP has paid duty amounting to Rs.1,21,798/- which also includes the duty on goods seized at the factory premises of M/s ADP and at the premise of M/s Varsha. The adjudicating authority has also admitted in the impugned order that they have paid interest amounting to Rs.4,554/- and penalty amounting to Rs.18,273/-.

10. As per provisions of the erstwhile Section 11 A referred to above, no show cause notice needs to be served to a person who have paid the duty in full or in part along with interest payable thereon under section 11AA and penalty equal to one percent of such duty per month, but not exceeding a maximum of twenty five percent, of the duty; that all proceedings in respect of the said duty shall be deemed to be concluded in respect of the amount so paid, on inform the Central Excise Officer of such payment in writing. The amended Section 11 AC (d) stipulates that the duty demanded in a show cause notice and the interest payable thereon is paid within thirty days of the communication of show cause notice, the amount of penalty shall be fifteen percent of the duty demanded, subject to condition that such reduced penalty should be paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded.

11. In the instant case, I observe that the appellant has paid the total duty involved with applicable interest and penalty by 16.09.2015 against show cause notice dated 30.07.2015, received by them on 18.08.2015. In the circumstances, the case is well within in the ambit of amended Section 11 AC(d) of the CEA as argued by M/s ADP and the adjudicating authority should have been concluded the case without further proceedings under the provisions of the section *ibid*, as requested by M/s ADP.. However, the adjudicating authority has ignored the request by stating that instant case is relating to confiscation of goods and also involved the case of M/s Varsha. This contention of the adjudicating authority is not justifiable as the section *ibid* only stipulates that where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c) of the Section. Further, no exclusion is given for goods seized /confiscated in respect of transaction referred in the said clause (c). In the instant case, the department has



demanded total duty amounting to Rs.1,21,799/- which includes duty of goods seized from the premises of M/s Varsha and M/s ADP has paid the said duty with applicable interest and penalty of Rs.18,273/-i.e 15% of the duty demanded within the time frame. Therefore, the penalty imposed on M/s ADP under Section 11 AC(e) of CEA, Shri Patel and M/s Varsha under Rule 26 of CER are unwarranted and required to be set aside.

12. In view of above discussions, I hold that since the duty amount with applicable interest and penalty was discharged by M/s ADP, the penalty further imposed under Section 11 AC (e) of CEA on them is set aside. The penalty imposed on Shri Patel and M/s Varsh is also set aside in view of foregoing discussion.

13. All the three appeals mentioned above stand disposed of in above terms.

U. Shankar

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 23/12/2016

Attested

Mohanan V.V.
(Mohanan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To,
M/s Ambalal Dhanjidas Patel,
Village Sunok, Tal-Unjha, Dist. Mehsana
Gujarat.

Shri Patel Amrutlal mbalal,
Partner of M/s Ambalal Dhanjidas Patel,
Village Sunok, Tal-Unjha, Dist. Mehsana
Gujarat.

M/s Varsha Stores,
G-1, Tirupati Plaza, Viral Mataji Chakla,
Patan, Gujarat

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III
3. The Additional Commissioner (System), Central Excise, Ahmedabad-III
4. The Deputy/Assistant Commissioner, Central Excise, Mehsana Division, Ahmedabad-III.
5. Guard file.
6. P.A

