

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(17)74/Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-208-16-17

दिनांक Date 23.01.17 जारी करने की तारीख Date of Issue 2/2/17

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 स 50/CE/REF/DC/2015 दिनांक : 28.12.2015, सृजित

Arising out of Order-in-Original: 50/CE/REF/DC/2015 Date: 28.12.2015
Issued by: Deputy Commissioner, Central Excise, Div: Kalol, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Zest Packers Pvt. Ltd.(Unit-5)

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।

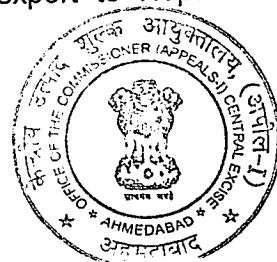
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 मैन्टल 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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 रुपए 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."



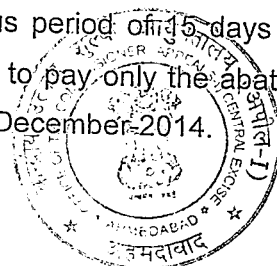
ORDER-IN-APPEAL

M/s Zest Packers Pvt. Ltd. (Unit-5), 95/3, Shed No. B/3, Trimul Estate, P.O.: Khatraj, Taluka: Kalol, District: Gandhinagar (hereinafter referred to as 'the appellant') has preferred the present appeal, being aggrieved by the Order-in-Original No. 50/CE/Ref/DC/2015 dated 28/12/2015 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority').

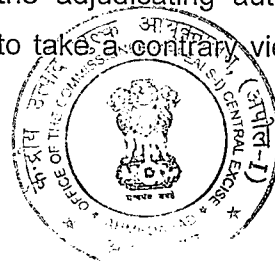
2. Briefly stated, the facts of the case are that the appellant is holding Central Excise registration No.AAACZ4200CEM005 and is working under the Chewing Tobacco and unmanufactured Tobacco Packing Machine (Capacity Determination and collection of Duty) Rules, 2010 (hereinafter referred to as 'the said rules'). The appellant had filed an abatement claim of Rs.14,78,710/- for the month of December-2014. In this regard, the appellant had filed declaration in Form-I informing that one pouch packing machine of M.R.P. Rs.1.51 to Rs.2.00 will be operated for fifteen days from 04/12/2014 to 18/12/2014 for which they had paid duty amount of Rs.28,65,000/- [Rs.24,51,442/- by cash and Rs.4,13,558/- through CENVAT account]. The abatement claim was submitted for pre-audit, where it was observed that the appellant had not stopped production for a continuous period of 15 days in December-2014 [from 19/12/2014 to 31/12/2014]. As regards the claim for continuous closure period from 19/12/2014 to 16/01/2015, it was observed that the appellant had already availed benefit of abatement for the period of 01/01/2015 to 16/01/2015 in the month of January-2015. Therefore, a show cause notice F.No.V.24/18-42/CE/REF/2014-15 dated 27/10/2015 was issued to the appellant proposing to reject the claim of abatement. This SCN was decided by the adjudicating authority who issued the impugned order rejecting the claim of abatement of Rs.14,78,710/-.

3. The appellant has preferred the present appeal against the impugned order on the following grounds:

- The adjudicating authority had erred in rejecting the abatement claim on the finding that the conditions of Rule 10 of the said rules were not fulfilled as the appellant had complied with all the conditions specified in Rule 10 of the said rules.
- The adjudicating authority had not appreciated the fact that the factory of the appellant did not produce the notified goods during the continuous period of 15 days and the month of December-2014 was part of those continuous days of closure two times – once from 21/10/2014 to 03/12/2014 (44 continuous days) and from 19/12/2014 to 16/01/2015 (29 continuous days). Thus in effect the factory had not produced notified goods for a continuous period of 15 days or more during such period and the appellant was required to pay only the abated duty, whereas it had paid the duty for the entire month of December-2014.



- It is emphatically mentioned that requirement of Rule 10 of the said rules stipulates that the factory should not manufacture notified goods for a continuous period of 15 days or more and it is not required that the said period of 15 days should fall in the same calendar month. The Punjab & Haryana High Court had held in CCE vs KAY FRAGRANCE' PVT. LTD. – 2014 (305) ELT A109 (P&H) that the notion that as duty liability is determined for each month, abatement cannot be granted for fraction of a month is misplaced as no such intent is discernible from a reading of the said rules. Rule 7 and 9 cannot be pressed into service by Revenue in support of its view that abatement cannot be claimed for a fraction of month. The Allahabad High Court has similarly held in CCE vs K.P. PAN PRODUCTS PVT. LTD. – 2014 (310) ELT A156 (ALL.) that there is nothing stated in rule 10 to the effect that a continuous period falling under different calendar months should be split up into periods falling under each month and abatement determined separately. So long as the days of closure are continuous, even if the days fall in different calendar months, it will constitute one continuous period and abatement under rule 10 is to be determined accordingly.
- Reliance is also placed on the decision in CCE vs PRAKASH PRODUCTS – 2015 (318) ELT 557 (T.Mumbai) wherein the Tribunal has held that there is no mention in rule 10 that period of closure of 15 days should fall under same month.
- Availing abatement for the month of January-2015 will not have any bearing on the abatement of duty for the period of closure of factory during the month of December-2014. The factory had produced the notified goods only during the period from 04/12/2014 to 18/12/2014 in December-2014 and in terms of provisions of rule 10, the appellant was liable to pay only the abated duty during the said period. It means that instead of paying duty for whole month of December-2014, duty was required to be paid only for the period 04/12/2014 to 18/12/2014 and claim abatement for the remaining days of December-2014 if the factory did not produce notified goods for a continuous period of 15 days or more. Since the factory had not produced the notified goods for a continuous period of 15 days, the abatement of duty was available to the appellant.
- The adjudicating authority had applied his own condition in granting abatement under rule 10 which was not legally permissible as held by Apex Court in the case of RANBAXY LABORATORIES LTD. – 2011 (273) ELT 3 (SC).
- In the present matter, the SCN as well as the impugned order have been issued on the wrong premises that the appellants had claimed abatement for the period 04/12/2014 to 18/12/2014. As the appellant had paid duty for the entire month of December-2014, they had sought abatement for duty for remaining days as factory had remained closed for a continuous period of 15 days prior to 04/12/2014 as well as after 18/12/2014.
- Similar abatement claim had been allowed by the adjudicating authority for earlier period. It was therefore, not open for him to take a contrary view in the



present matter, particularly when the said abatement claim had been allowed after pre-audit and the said order allowing abatement had not been reviewed under the provisions of section 35E of the Central Excise Act, 1944. The said order has attained finality as no appeal against the said order has been filed by the department.

4. Personal hearing in the appeal was held on 04/01/2017. Shri V.K. Agarwal, Advocate and Shri P.M. Pandya, Consultant appeared for personal hearing. The learned Advocate reiterated the grounds of appeal. He submitted that in identical situation, for the month of October, the abatement was sanctioned. He submitted a Supreme Court citation that the practice accepted cannot be different for subsequent period [JAYASWALS NECO LTD. vs CCE, NAGPUR – 2006 (195) ELT 142 (SC)] and another citation CCE vs SAYAN VIBHAG SAHAKARI MANDALI KHAND UDYOG MANDALAIAT – 2016 (333) ELT 324 (Tri.-Ahmd.). He also pointed out the citations in his favour were cited in the grounds of appeal viz. CCE vs KAY FRAGRANCE PVT. LTD. – 2014 (305) ELT A109 (P&H); CCE vs K.P. PAN PRODUCTS PVT. LTD. – 2014 (310) ELT A156 (ALL.) and CCE vs PRAKASH PRODUCTS – 2015 (318) ELT 557 (T.Mumbai).

5. I have carefully gone through the facts of the case on records and submissions made by the appellant.

6. The appellant had paid the specified monthly duty amount of Rs.28,65,000/- for the month of December-2014 but they had operated one pouch packing machine of MRP of Rs.1.51 to Rs.2.00 only from 04/12/2014 to 18/12/2014. During the period 01/12/2014 to 03/12/2014 and thereafter from 19/12/2014 to 31/12/2014 the machine remained sealed and there was no production of the notified goods. The appellant had filed a claim amounting Rs.14,78,710/- for abatement of duty for the month of December-2014 under Rule 10 of the Chewing Tobacco and Unmanufactured Tobacco Packing Machine (capacity determination and collection of duty) Rules, 2010, which has been rejected by the adjudicating authority in the impugned order on the following grounds:

- a) The appellant had not fulfilled the condition stipulated in the proviso to Rule 10 of the said rules in as much as there was no cessation of production of notified goods during any continuous period of fifteen days in the month of December because production was carried out from 04/12/2014 to 18/12/2014.
- b) As regards the claim of continuous period of cessation of production claimed by the appellant from 19/12/2014 to 16/01/2015, the abatement for the month of January-2015 had already been availed by the appellant.

7. I find that the interpretation of the phrase '*continuous period of fifteen days*' as envisaged in rule 10 of the said rules is no more *res integra* in view of the following two High Court decisions

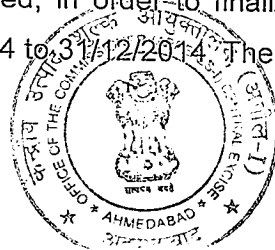


- (i) *CCE, ROHTAK vs KAY FRAGRANCE PVT. LTD. – 2014 (305) ELT 109 (P&H)*
and
(ii) *COMMISSIONER vs K.P. PAN PRODUCTS PVT. LTD. – 2014 (310) ELT A156*
(All.).

As per the ratio of both these decisions, period falling under different calendar months need not be split into periods falling under each month and abatement determined separately. So long as days of closure are continuous, even if days fall in different calendar months, it will constitute one continuous period. Reference to a continuous period of fifteen days or more under Rule 10 of the said rules cannot be read in isolation to raise an inference that if closure in a month is less than fifteen days, the claimant shall not be entitled to abatement of duty.

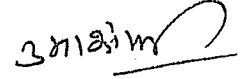
8. On studying the SCN it is seen that the abatement claim for the period of 04/12/2014 to 18/12/2014 is proposed to be denied. Similarly, in paragraph 2 of the impugned order, it is stated that one pouch packing machine of M.R.P. Rs.1.51 to Rs.2.00 having monthly duty rate of Rs.28,65,000/- has been operated for 15 days i.e. from 04/12/2014 to 18/12/2014. However in paragraph 12 of the impugned order, it has been clearly brought out that the appellant was not entitled for the abatement claim for the period of 04/12/2014 to 18/12/2014. On the other hand, in the grounds of appeal, the appellant has challenged this premise and claimed that the abatement claim is admissible from 01/12/2014 to 03/12/2014 and 19/12/2014 to 31/12/2014, i.e. for 16 days in December, 2014. Thus there arises a discrepancy relating to period of claim of abatement that is required to be verified and validated at the level of the adjudicating authority before the admissibility of the abatement claim can be decided. It has also been claimed in the grounds of appeal that the appellant had not produced notified goods for 44 continuous days during 21/10/2014 to 03/12/2014 (which includes the period of 01/12/2014 to 03/12/2014) and further for a period of 29 continuous days from 19/12/2014 to 16/01/2015 (which includes the period of 19/12/2014 to 31/12/2014). This claim of the appellant is also required to be factually verified in the light of the above mentioned High Court decisions at the level of the sanctioning authority / adjudicating authority before determining the admissibility of the claim of abatement.

9. The adjudicating authority in paragraph 13 of the impugned order has held that the appellant had already availed abatement for the month of January-2015 for the period 01/01/2015 to 16/01/2015 and hence the High Court decisions cited supra are squarely not applicable in the present case. However, no reasoning has been given in the impugned order to deny the abatement for the period of 19/12/2014 to 31/12/2014. As regards the claim for the period of 01/12/2013 to 03/12/2013, the impugned order is silent on the admissibility of the claim. This finding is cursory in nature and is required to be elucidated further clarifying as to whether any overlapping exists with regards to the period of claim vis-à-vis period of abatement already availed, in order to finalize the claim for the period 01/12/2014 to 03/12/2014 and 19/12/2014 to 31/12/2014. Therefore,



the adjudicating authority is directed to verify the facts and examine the abatement claim afresh in *de novo* proceedings after giving the appellant a fair opportunity to present its case. The appellant is directed to produce before the adjudicating authority, the evidence regarding the period of the impugned claim of abatement filed by them and regarding their entitlement to the same when the case is posted for hearing in the *de novo* proceedings.

10. अपीलकर्ता द्वारा दर्ज अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stands disposed of in the above terms.



(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 23/01/2017

Attested



(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Zest Packers Pvt. Ltd. (Unit-5),
95/3, Shed No.B/3,
Trimul Estate – Khatraj,
Taluka: Kalol,
District Gandhinagar – 382 721.

Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner, Central Excise (System), Ahmedabad-III.
4. The Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-I.
5. Guard File.
6. P.A. File.

