

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)17,45 &57/Ahd-III/2016-17/Appeal-I
ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-230 to 232-16-17

दिनांक Date : 30.01.2017 जारी करने की तारीख Date of Issue 5/2/17

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 सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: As Per Order Date: As Per Order Issued by: Joint
Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Bloom Dekor Ltd.

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।

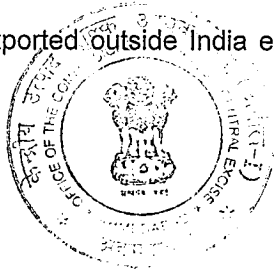
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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- षोबी/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

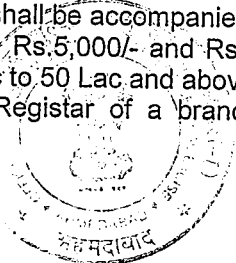
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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, 1984 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 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 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,

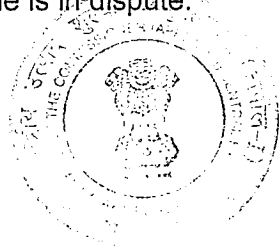
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 s.dWR मे. 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

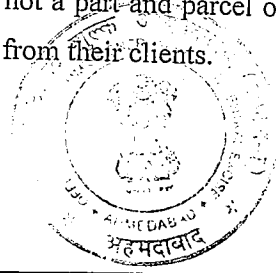
Three appeals have been filed by M/s Bloom Dekor Limited, Sabarkantha, and Gujarat (hereinafter referred to as "the appellant" against the Orders-in-Original (hereinafter referred to as 'the impugned order') passed by the Joint/Additional Commissioner, Central Excise, and Ahmedabad -III (herein after referred to as 'the adjudicating authority'. The details are as under:

S No	Impugned order & Dt	Period involved	Amount involved (Rs)	Appeal No.
1	AHM-CEX-003-JC-14 to 15/14-15 dated 18.03.2015	01.01.2013 to 31.12.2013	24,08,199/- duty 24,08,199/- penalty	17/Ahd-III/16-17
2	AHM-CEX-ADC-MLM-028-15-16 dated 31.12.2015	01.01.2014 to 31.12.2014	28,51,122/- duty 28,51,122/- penalty	45/Ahd-III/16-17
3	AHM-CEX-003-ADC-MLM-070-15-16 dated 23.03.2016	01.01.2015 to 30.09.2015	14,58,805/- duty 14,58,805/- penalty	57/Ahd-III/16-17

2. Briefly stated, the appellant is engaged in the manufacture of Laminate Sheets and Flush Doors falling under Chapter heading 48239019 and 44182000 and holding Central Excise Registration. It was observed during audit of records of the appellant that they had sold their goods through their consignment agents at various places like Delhi, Nagpur, Bangalore, Calcutta, Chennai, Jaipur, Mumbai etc; that the goods were removed from the factory on the basis of stock transfer and sold at an enhanced value from the depot. As per Section 4(3)(c) (iii) of the Central Excise Act, 1944 read with Rule 7 & 2(b), 2 (c) of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the nearest to the time of removal of goods under assessment. As it was noticed that appellant had not declared/ shown the clearance value affected from their depot in the statutory returns or any other statements, Show Cause Notices were issued for demanding short paid duty with interest and imposition of penalty under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002. The said show cause notices were decided by the adjudicating authority, vide the impugned order, by confirming the demands with interest and imposed penalty equal to the duty demanded under Section 11 AC of CEA.

5. Being aggrieved, the appellant has filed the present appeal on the following grounds that;

- They neither included the ex-factory cost in the assessable value when the goods sold from their factory and also not shown separately in the invoice; that after the goods were dispatched to various consignment agents, the freight charges was incurred on that and hence the freight is not a part and parcel of the assessable value and not collected the said amount from their clients.



- As per rule 5 of Valuation Rules, if the excisable goods are sold for delivery at a place other than the place of removal, the actual cost of transportation from the place of removal to the place of delivery should be excluded from the assessable value;
- The goods were dispatched to various C & F agents without including any other cost; that the C & F agents were sold the said goods on the basis of marketability of the products at their place and the prices incurred were relating to selling commission which the appellant generally pays after the sales of the products.
- The appellant has relied on the following decision in their favour:-
 - (i) *Saturn Non-woven Ltd. V/s C.C.E, Surat [2009(234) E.L.T- 326 (Tri.-Mum.)]*;
 - (ii) *VIP Industries Ltd. V/s C.C.E, Ahmedabad [2003 (155) E.L.T-8 (S.C.)]*;
 - (iii) *Shakti Tubes Ltd. V/s C.C.E, Patna [2007(217) E.L.T-96 (Tri.-Mum.)]*

6. A Personal Hearing in the matter was held on 17.01.2017. Ms. Dipa Devani, Chartered Accountant appeared for the same and reiterated the submissions made in the appeals. The Learned C.A further submitted citation viz. 2015-TIOL-684-CESTAT Mum in the case of M/s Mahindra & Mahindra; 2003-TIOL-11-CESTAT-Bang in the case of M/s Appollo Tyres.

7. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal. The issue to be decided in the matter is relating valuation of goods cleared to the depots and consignment agents.

8. In the present case, I observe that during the relevant period in question, the appellant had cleared their finished goods i.e. laminated sheets and flush doors through their depot and consignment agents situated at various places viz. Delhi, Nagpur, Bangalore, Calcutta, Chennai, Jaipur, Mumbai etc. and charged enhanced prices, as compared to the prices declared at the time of transfer of goods to depot and consignment agents. The adjudicating authority has contended that the valuation of goods in the instant case is according to the provisions of Section 4(3)(c) (iii) of the Central Excise Act, 1944 read with Rule 7 and 2(b), 2 (c) of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The extract of relevant Section and Rules is as under:

9. Section 4- valuation of excisable goods for the purpose of charging of duty of excise under Central Excise Act, 1944, stipulates as under:-

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;



(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

The phrase 'place of removal' is defined under section 4(3) (c) of the Central Excise Act, 1944. It states that,-

(c) "place of removal" – means

(i) factory or any other place or premises of production or manufacture of the excisable goods;

(ii) warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without [payment of duty;]

(iii) depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed;

Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, stipulates that:-

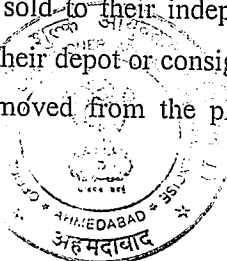
"Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

Rule 2(b) & (c) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, stipulates as under:-

"Rule 2 (b) "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold;

"Rule 2(c) "value" means the value referred to in section 4 of the Act;"

10. From the above statute, I observe that if there is no sale at the factory gate, the value as per Section 4(1) (a) is not applicable; that where the excisable goods are transferred on stock basis from the factory to the depot, the duty is to be paid in terms of Section 4(b) read with Valuation Rules. Rule 7 of Valuation Rules, 2000 provides that where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment. In other words, the price of goods cleared from the depot/consignment agents would be treated as relevant for payment of duty of the goods at factory gate at or about the same time. In the present case, I observe that appellant has not sold their goods at factory gate but transferred to the depot/consignment agents and from where goods have been sold to their independent buyers; thus the place of removal in the instant case would be their depot or consignment agents place. The time of removal in respect of goods removed from the place of

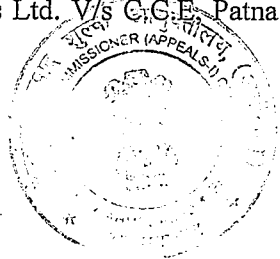


removal shall be deemed to be the time at which such goods are cleared from the factory. It is clear from the provisions of the Section and Rule *ibid* that the valuation of goods under clearance is to be made on the basis of sale of price prevailing on the date of removal at the place of removal i.e. depot. In the present case, it is an undisputed fact that the appellant has transferred their finished goods to various depots and consignment agents located at various places and from that places, clearance to the independent buyers was made. Thus, provisions of Section 4 of CEA read with Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 are applicable and duty to be calculated on the basis of valuation of such goods cleared from the depot/place of consignment agents.

11. As per provisions of Rule 7 *ibid*, the transaction value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment. For example, suppose the appellant cleared the goods from their factory during 01.08.2013 to 01.09.2013 and the goods cleared on 01.08.2013 from the factory gate at the rate of Rs.800/- per sheet further sold from the depot on 03.08.2013 at the rate of Rs.1000/-per sheet, then the transaction value of the goods to be cleared on or after 03.08.2013 from the factory gate shall be Rs.1000/-. If the goods cleared from the factory gate on 04.08.2013 at the rate of Rs.1000/- are further sold from depot at the rate of Rs.800/-, as per provisions of Rule 7 *ibid*, the transaction value of the goods on 05.08.2013 from the factory gate shall be the value cleared on 04.08.2013 and duty shall be calculated accordingly. The other aspect is that no refund of duty is available for less sale price effect from the depot sale. I observe that the above mentioned method was categorically discussed in the impugned order by the adjudicating authority.

12. In the instant case, I observe that the duty demanded for the period from 01.01.2013 to 31.12.2013, 01.01.2014 to 31.12.2014 and 01.01.2015 to 30.09.2015 pertains for the difference amount between depot and factory sale value. The adjudicating authority has stated that the appellant has not submitted invoice wise details of goods cleared to depot/consignment agents and only submitted details differential transaction value between the depot and factory gate. I also observe this fact from the records. Since the appellant has failed to furnish details of invoice wise clearance made during the relevant periods and instead, submitted only the total differential amount of transaction value, it appears that the adjudicating authority has no other alternative option for computing the transaction value in this regard and accordingly he demanded the differential duty. Looking into the circumstances, I find no infirmity in the impugned order.

12. The appellant has relied on Saturn Non-woven Ltd. V/s C.C.E, Surat [2009(234) E.L.T- 326 (Tri.-Mum.)]; VIP Industries Ltd. V/s C.C.E, Ahmedabad [2003 (155) E.L.T- 8 (S.C)]; Shakti Tubes Ltd. V/s C.C.E, Patna [2007(217) E.L.T-96 (Tri.-Mum.)]; 2015-



TIOL-684-CESTAT Mum in the case of M/s Mahindra & Mahindra; 2003-TIOL-11-CESTAT-Bang in the case of M/s Appollo Tyres. The appellant has mainly contended that as per above cited decision, cost of freight and transportation from the factory to the depot is not includible in the assessable value of the goods, hence, such expenses are required to be deducted from the assessable value. The decisions cited by the appellant are not applicable to the instant case, looking in to the situation as narrated above. Further, I observe that the appellate authority has already decided this issue in appellant's case, pertaining to earlier period i.e from April 2009 to December 2012, vide OIA No.AHM-EXCUS-APP-003-07-15-16 dated 05.05.2015. Vide the said OIA, the appellate authority has upheld the decision of lower authority, by confirming the short paid duty and I follow the same.

8. In view of the above discussions, I uphold the decision of the adjudicating authority and accordingly, the appellant is required to pay the duty demanded with interest for the relevant periods.

9. As regards imposition of penalty, I observe that though the appellant was aware of the facts that they were liable to pay duty on depot/consignment agent sale clearance, the same was not done. Further, they even not turned up for paying duty under protest in this regard if they found any interpretation of law. Thus, in the facts of the present case suppression stands established by evidence on record and as a natural corollary, the proviso to sub-section (1) of section 11A would stand attracted and accordingly mandatory penalty under Section 11 AC is necessary. The adjudicating authority has imposed a penalty equal to the duty determined. I observe that the period involved in the instant cases is from 2013. Thus, as per amended provisions of Section 11 AC 1(b) w.e.f 08.04.2011, the appellant is liable to pay a penalty equal to fifty percent of the duty determined. Accordingly, I modify the penalty imposed.

10. All the three appeals filed by the appellant stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

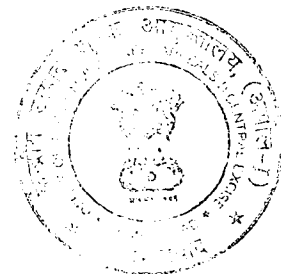
Date: 30/01/2017

Attested

20/1/17
(Mohan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY RPAD

To
M/s Bloom Dekor Limited,
267, N.H.-08, Oran-Prantij,
Sabarkantha- 383205, Gujarat



Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
 2. The Commissioner of Central Excise, Ahmedabad-III.
 3. The Addl. / Jt. Commr. (Systems), Central Excise, Ahmedabad - III
 4. The Dy. / Asstt. Commissioner, Central Excise, Division-Gandhinagar, Ahmedabad-III
 5. Guard file.
 6. P. A. file.
- 7-V2(48)17/Ahd-III/2016-17



