

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(85)44/Ahd-III/2016-17/Appeal-I / 594-598
ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-256-16-17
दिनांक Date : 28.02.2017 जारी करने की तारीख Date of Issue _____

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: OIO/545/Ref/Cex/APB/2016 Date: 22.04.2016 Issued by:
Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Clyde Bergemann Control P. 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- ए0बी/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

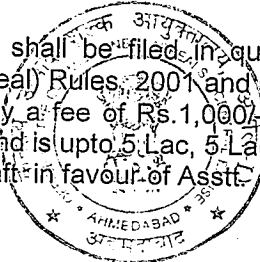
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(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 मेटल 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 इ.ए-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 वहां 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 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 अनुसूचि-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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 13 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।

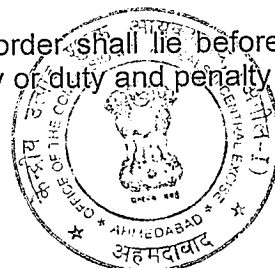
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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 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 of duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s Clyde Bergemann Controls Pvt. Ltd., Suite # 403, 4th Floor, Imperial Heights Building, Akshar Chowk, Akota, Off O.P. Road, Vadodara, Gujarat (hereinafter referred to as 'the appellant') had filed the following rebate claim under the provisions of Rule 18 of Central Excise Rules, 2002 (CER, 2002) read with Notification No. 19/2004-CE(NT) dated 06/09/2004:

Name of Manufacturer / Adress	Name of Exporter / Adress
M/s Masibus Automation & Instrumentation Pvt. Ltd., B-30 GIDC, Electronics Estate, Sector-25, Gandhinagar-382 044.	M/s Clyde Bergemann Controls Pvt. Ltd., Suite #403, 4 th Floor, Imperial Heights Building, Akshar Chowk, Akota, Off O.P. Road, Vadodara.

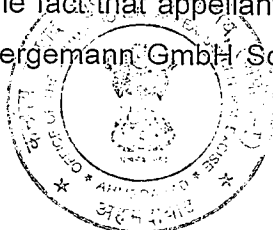
Sr. No.	RC No.	RC date	ARE-1 No. & Date	Invoice No. & Date	MR Date/ BRC	Amount of claim
1.	38/2016	09/02/2016	89/14-15 dated 17/02/2015	142211/ 17/02/2015	19/03/2015	Rs.4,31,845/-

Sr. No.	Name of Product/ CH.SH. No.	S/B No. & Date	B/L No. & Date	Assessable Value	FOBvalue	Scheme Of Export	Country Of Export
1.	SOOT BLOWER CONTROL PANELS 85371000	7879469/ 18/02/2015	ERMO505HAM01 Dt. 02/03/2015	Rs.3493893/-	Rs.5257744/-	D.B.K.	GERMANY

A query memo F.no.V.85/16-38/M.Reb/CEX/2016 dated 18/03/2016 was issued to the appellant as there was no endorsement of Customs authority in Part-B on ARE-1 No. 89/14-15 dated 17/02/2015 and the CETH on the invoice and Shipping Bill mentioned in Invoice and Shipping Bill as 84041000 is not tallying with CETH mentioned in ARE-1 as 85371000. The Assistant Commissioner, Central Excise, Division-Gandhinagar, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority') has issued Order No.OIO/545/Ref/Cex/APB/2016 dated 22/04/2016 (hereinafter referred to as 'the impugned order') rejecting the Rebate claim of Rs.4,31,845/- on the grounds that there was no endorsement of Customs authority in Part-B on ARE-1 No.89 dated 17/02/2015; that in spite of being given proper time and opportunity, the appellant had failed to make it clear that the said goods was exported as no amendment copy of ARE-1 duly endorsed by Customs in terms of Section 149 of the Customs Act, 1962 had been produced and that the appellant had not submitted copy of ARE-1 to the Customs authority as the ARE-1 no. was not reflected / mentioned in the Shipping Bill.

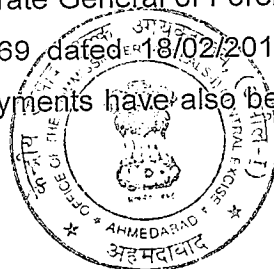
2. The appellant has filed the present appeal invoking the following grounds of appeal:

- 1) There is no dispute or doubt about the fact that appellant had a purchase order from their foreign buyer M/s Clyde Bergemann GmbH Schillwiese 20, D 46485,



Wesel, Germany ordering manufacture and supply of Soot Blower Control Panels to foreign buyer.

- 2) There is also no dispute or doubt about the fact that the appellant had got the 'Soot Blower Control Panels' manufactured under job-work against the said export order by M/s Masibus Automation & Instrumentation P. Ltd. having their factory at B-30, GIDC, Electronics Estate, Sector 25, Gandhinagar – 382 044.
- 3) There is no dispute that goods were manufactured and cleared by M/s Masibus Automation & Instrumentation P. Ltd. under ARE-1 No.89 dated 17/02/2015. which was duly signed by the Inspector and Superintendent of the jurisdictional Range office and cleared under Notification No. 18/2012 CE under claim of Rebate from their factory.
- 4) There is no dispute that M/s Masibus had paid Central Excise duty to the tune of Rs.4,31,835/- on clearance of 'Soot Blower Control Panels' under Central Excise Invoice No. 142211 dated 17/02/2015 for export through Merchant Exporter M/s Clyde Bergemann Controls P. Ltd., Vadodara.
- 5) Thus it is proven beyond doubt that the said goods 'Soot Blower Control Panels' were cleared by the appellants under ARE-1 No. 89 dated 17/02/2016 on payment of Central Excise duty under claim of Rebate.
- 6) There is also no dispute or doubt that M/s Masibus Automation & Instrumentation P. Ltd. had given disclaimer certificate to the effect that they had no objection if the appellant claimed Rebate of Excise duty. Accordingly, the appellant, being a Merchant manufacturer had cleared 'Soot Blowers Control Panel' from their end under Export Invoice CBCON-1416/Ex/001, dated 12/02/2016 mentioning Buyers Order Purchase Order No.4500053399 dated 27/06/2014. The goods were shipped under Bill of lading No. ERM050HAM01 through Embassy Transportation India Pvt. Ltd., Mumbai, which gives details pertaining to export done through M/s Embassy which were packed in Container No.SUDU6011001/40'HC with Marks & Numbers : Packing NO. CBC-1415-001 CBC-1415-002 etc. These details of Export Invoice matches with the details mentioned in Shipping Bill as well as with Bill of Lading showing that the 'Soot Blower Control Panels' were genuinely exported under the said Invoice, Packing List, Shipping Bill, Bill of Lading and LEO under the Container number and Marks & Numbers mentioned therein, through Nhava Sheva Port. The goods were cleared under Shipping Bill No.7879469 dated 18/02/2015 and Let Export Order no.1/171 dated 19/02/2015, which were duly signed & stamped by the Superintendent of Customs Khodiyar proving beyond doubt that the 'Soot Blower Control Panel' were exported by the appellant.
- 7) The appellant had received payments through HSBC Bank as per Four Bank Realisation Statements issued by Directorate General of Foreign Trade matching with details of Shipping Bill No. 7879469 dated 18/02/2015 proving that the goods were not only exported but the payments have also been received by the



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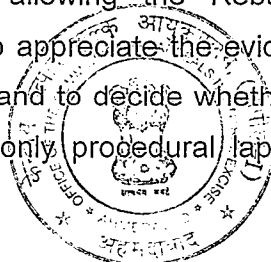
appellants. The appellants had already submitted Form C to the adjudicating authority. The appellant is trying to rectify their mistake, which was an oversight by their CHA, by contacting the Customs officer through their CHA to provide amended copy in terms of Section 149 of the Customs Act, 1962. There is no evidence produced by Revenue with regard to clandestine removal in the domestic market and therefore, rightful rebate claim of the appellant should not have been rejected.

8) The appellant has relied on the following citations in support of their argument that the primary requirement for rebate is that the goods are exported and such goods were of duty paid character:

- GARG TEX-O FAB PVT. LTD. – 2011 (271) E.L.T. 449
- SHREEJI COLOUR CHEM INDUSTRIES vs CCE – 2009 (233) E.L.T. 369
- COMMISSIONER OF CENTRAL EXCISE – 2009 (233) E.L.T. 367
- MODEL BUCKETS & ATTACHMENTS (P) LTD. vs CCE – 2007 (217) E.L.T. 264
- CCE vs TISCO – 2003 (156) E.L.T. 777

3. Personal hearing in the matter was held on 17/01/2017. Shri Mithil Dave, Consultant appeared on behalf of the appellant and reiterated the submissions made in the grounds of appeal. However, the Container No. in Bill of Lading and Shipping Bill is not matching. He cited citations in his favour and submitted that the clarification will be provided within 7 days.

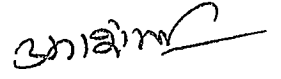
4. I have gone through the facts of the case and submissions made in the appeal memorandum. The limited point to be decided is whether the appellant is eligible for the Rebate claim that has been rejected by the adjudicating authority in the impugned order on the ground that there was no endorsement by the Customs authority in ARE-1 No.89 dated 17/02/2015 to evidence that the export consignment was actually received at the port for export. This lapse can be rectified by way of amendment copy of ARE-1 duly endorsed by Customs in terms of Section 149 of the Customs Act, 1962. The appellant has submitted in their grounds of appeal that efforts are being made through the CHA to get the amended copy of ARE-1 endorsed by Customs. However, during personal hearing the appellant has not submitted the amended ARE-1. The mismatch of Container Nos. in Bill of Lading and Shipping Bill remains to be rectified. The appellant has also not been able to challenge the finding of the adjudicating authority that the ARE-1 No. is not reflected / mentioned in the Shipping Bill indicating that the ARE-1 was not submitted to the Customs authority. However, the appellant is required to be given more time to produce the required evidence showing that the duty paid goods have actually been exported. They have produced a letter dated 24/01/2017 from the CHA giving the reasons for the mismatch. The validity of this letter has to be verified and endorsed by the sanctioning authority before allowing the Rebate claim. The sanctioning authority is the appropriate authority to appreciate the evidence submitted by the appellant with regards to the Rebate claim and to decide whether the lapses in the present case are substantial deficiencies or only procedural lapses in order to



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decide the admissibility of Rebate. Meanwhile the appellant can get the amendments / endorsements from Customs done in the relevant documents and produce the same before the adjudicating authority. I remand the case back to the adjudicating authority with directions to grant the appellant appropriate opportunity to present the evidence and thereafter verify such evidences and give a reasoned order while disposing of the Rebate claim.

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



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/02/2017

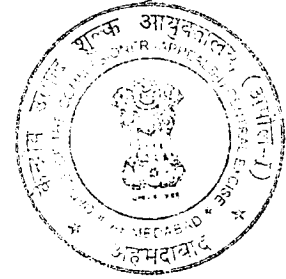
Attested



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

BY R.P.A.D.

To,
M/s Clyde Bergemann Controls P. Ltd.,
Suite #403, 4th Floor,
Imperial Heights Building,
Akshar Chowk, Akota,
Off O.P. Road,
Vadodara.



Copy to:

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

