

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(RIP)53/Ahd-III/2016-17/Appeal-I / 3074 to 3078

ख. अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-037 -17-18

दिनांक Date : 27.06.2017 जारी करने की तारीख Date of Issue: 12-07-17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

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

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

Arising out of Order-in-Original: GNR-STX-Dem-DC-18/2016 Date: 11.08.2016 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. Varshil Packaging Pvt 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  
पूवोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,  
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, रुसद मार्ग, नई दिल्ली : 110001 को  
की जानी चाहिए।

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

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने  
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में  
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया 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- एंडी/35-इ के अंतर्गत:-

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

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों 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.

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 रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहाँ रुपए 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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 अर्जों 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)(ii) 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."



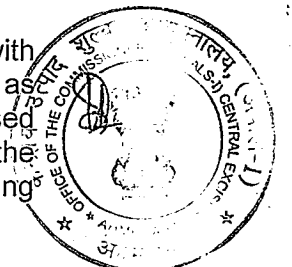
## ORDER-IN-APPEAL

M/s Varshil Packaging Pvt. Ltd., Plot No. 1/1, Survey no. 57, Near Olympic Laminates, Khatraj, Taluka: Kalol, District: Gandhinagar (hereinafter referred to as 'the appellant') is holding Central Excise Registration No. AADCV4116CXM001 and engaged in the manufacture of Multilayer Poly Film & Agricultural Mulch Film falling under CTH 39201012 of the first Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is also holding Service Tax Registration No.AADCV4116CST001 and is availing CENVAT credit under Cenvat Credit Rules, 2004 (CCR, 2004). The appellant has filed the present appeal being aggrieved by **Order-in-original No.GNR-STX-DEM-DC-18/2016 dated 11/08/2016** (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority').

2. During the course of audit of the records of the appellant such as Balance sheets and Ledgers for the years 2012-13, 2013-14 and 2014-15 (up to February-2015), it was observed that Shri Sanjaybhai Patel and Shri Chintanbhai Patel both Directors of the appellant company were owners of Plot No. 1/1, Survey No.57, Near Olympic Laminates, Khatraj, Taluka: Kalol, District: Gandhinagar housing the factory premises and they had jointly received monthly rent of Rs.30,000/- in F.Y. 2012-13; Rs.33,333/- in F.Y. 2013-14 and Rs.45,000/- for the period from April-2014 to February-2015. It appeared that in terms of Notification no. 30/2012-ST dated 20/06/2012, w.e.f. 07/08/2012, services rendered by Directors are to be considered as taxable service and Service Tax was payable on 100% on gross amount of payments for service received from the Directors. As provided in Rule 2(d) (EE) of Service Tax Rules, 1944, the person liable to pay Service Tax in relation to service provided or agreed to be provided by a Director of a company to the said company was the recipient of such service. However, the appellant had failed to declare such taxable value in their S.T.-3 returns and had failed to pay Service Tax under reverse charge mechanism on renting services received from its Directors. Therefore, a SCN F.No.VI/1(b)25/CIR-1/IA/15-16/AP-I dated 18/04/2016 (hereinafter 'the SCN') was issued to the appellant demanding Service Tax amounting to Rs.1,55,118/- under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter F.A.,1994); demanding interest under the provisions of Section 75 of F.A.,1944 and proposing penalty on the appellant under Section 78 of F.A.,1994. In the impugned order, the adjudicating authority has confirmed the demand for Service Tax and interest as proposed in the SCN and has imposed a penalty of Rs.1,55,118/- on the appellant under Section 78 of F.A.,1994.

3. The main grounds of appeal in the appeal filed by the appellant are as follows:

- 1) Making of provisions of Section 68(2) applicable by reading the same with Notification No. 30/2012-ST as amended, was related to specific services as mention in the notification and services for which the demand was being raised was erroneously considered as services rendered by the Directors through the amount paid by the company related to renting of immovable property rendering the impugned order bad in law and not maintainable.



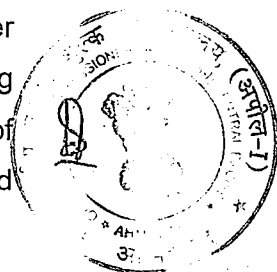
- 2) The Directors of the appellant company owned the property of the factory premises in joint name and had provided the same on rental basis to the appellant. The Directors had provided the service on joint basis and not on individual basis and therefore, the company was not liable to pay Service Tax under Notification No. 30/2012-ST dated 20/06/2012 read with Notification No. 45/2012-ST dated 07/08/2012. The Directors had not provided service in their personal capacity but had provided the service by lending their property owned by them in joint basis and the threshold turnover of Rs. 10 lakhs of value of services provided had not been crossed during any of the financial year in the period of dispute. There was no written agreement between the company and the Directors for providing of factory premises on rental basis to the appellant and therefore such services are not chargeable to Service Tax under reverse charge mechanism. Normally the liability to pay Service Tax lies with the service provider. He shall collect the Service Tax from the service recipients and thus pay it to the authorities. Reverse charge mechanism was introduced in Service Tax w.e.f. 01/07/2012.
- 3) The Government of India vide Notification no. 45/2012-ST dated 07/08/2012 amended Notification No. 30/2012-ST dated 20/06/2012 by inserting Sr. No. 5A, according to which services provided or agreed to be provided by a Director of a company to the said company was also brought under the purview of Section 68(2) of the Finance Act, 1994 and accordingly the service recipient company was made liable to pay service tax on services provided or agreed to be provided by a Director of the company. As per Sr. No. 6 of Notification No. 30/2012-ST dated 20/06/2012, services provided or agreed to be provided by government or local authority by way of support services excluding – (1) renting of immovable property and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D of the Finance Act, 1994 were covered under reverse charge mechanism making the service recipient pay service tax on the services provided by Government or local authority by way of support services but excluding renting of immovable property. Thus the services of renting of immovable property are business support services and are not in nature of services provided in personal capacity and hence the demand for service tax on renting of immovable property on reverse charge mechanism and confirmation thereof is illogical and beyond scope of law.
- 4) As the demand is not sustainable, the demand for interest is also not maintainable. The penalty imposed under Section 78 of the Finance Act, 1994 is also not sustainable as it is settled principle of law that where there is no demand of service tax, penalty cannot be imposed. Penalty under Section 78 of the Finance Act, 1994 is imposable only when there is an element of fraud, willful suppression or mis-statement of facts etc. with intent to evade payment of Service Tax. The present case involves a matter of interpretation and hence it is settled law that mandatory penalty under Section 73 of the Finance Act, 1994 is not imposable. It is therefore prayed that proceeding initiated for recovery of Service Tax of Rs.1,55,118/- along with demand of interest and imposition of penalty may kindly be set aside in the interest of justice.
4. Personal hearing in the appeal was held on 20/04/2017. Shri Anil Gidwani, Tax Consultant appeared on behalf of the appellant and reiterated the grounds of appeal. He submitted that the annual income is less than Rs. 10 lakhs in personal capacity for service of renting of immovable property.
5. I have carefully gone through the facts of the case on records and submissions made by the appellant. The issue for decision before me is whether the appellant company was liable to pay Service Tax under reverse charge mechanism in terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994 read with Notification No.30/2012-ST



dated 20/06/2002 towards Renting of immovable property service received from Shri Sanjaybhai Patel and Shri Chintanbhai Patel both Directors of the appellant company.

6. In terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994, as amended vide Notification No. 46/2012 dated 07/08/2012, the person liable for paying tax in relation to service provided or agreed to be provided by a Director of a company to the said company is the recipient of such service. Further in terms of Notification No.30/2012-ST dated 20/06/2002, as amended vide Notification No. 45/2012-S.T. dated 07/08/2012, in respect of services provided or agreed to be provided by a Director of a company to the said company, 100% of the tax is payable by the person receiving the service. The demand along with interest has been confirmed in the impugned order and penalty under Section 78 of FA, 1994 has been imposed on the appellant for failure to pay Service Tax in accordance with Rule 2(1)(d)(EE) of Service Tax Rules, 1994 read with Notification No. 46/2012 dated 07/08/2012 with regards to such services that were held as provided by its Directors to the appellant company. The contention of the appellant in the grounds of appeal is that the Renting of immovable property service provided by the Directors were chargeable to Service Tax at the end of the Directors and was not to be charged from the appellant as reverse charge mechanism was not applicable to such services. The appellant has also contended that the Directors in their capacity as service providers had not exceeded the stipulated threshold limit of exemption under small service provider exemption scheme and hence they had not paid the impugned Service Tax.

8. The undisputed fact in the present case is that the plot of land where the factory of the appellant is situated was jointly owned by persons who were also Directors of the appellant. However, it does not mean that the Directors had rendered service to the appellant company. The rent received by both the persons was in their personal capacity and not in their capacity as Directors of the appellant company. Therefore, Service Tax was payable by the individual persons and by virtue of the fact that they had not crossed the threshold limit of Rs.10 Lakhs, no Service Tax is liable to be recovered in the present case. There is no merit in the charge made by department that the impugned activity attracted Service Tax under the reverse charge mechanism in terms of Rule 2(d)(EE) of Service Tax Rules, 1994 and Notification No.30/2012-ST as amended. Therefore, the demand for Service Tax and interest as confirmed in the impugned order is not sustainable and is liable to be set aside. Moreover, this is a case of interpretation and just because the appellant was holding a different opinion from the stand taken in the audit objection against them, it does not mean that there was suppression of facts on part of the appellant. The ingredients such as suppression of facts, mis-statement, mis-declaration, fraud etc. with intent to evade payment of Service Tax is required to be substantiated with evidence in order to impose penalty under Section 78 of the Finance Act, 1994. However, the only ground adduced for upholding suppression of facts in the impugned order is that the lapse was detected during audit of the records by the officers of the department, which is not sufficient to invoke extended



period or penal provisions under Section 78 of the Finance Act, 1994. Penalty imposed on the appellant under Section 78 is not legally tenable in the present case. In view of the above discussion, the impugned order is liable to be set aside. The appeal filed by the appellant is allowed.

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

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 27/06/2017

Attested

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

By R.P.A.D.

To  
M/s Varshil Packaging Pvt. Ltd.,  
Plot No.1/1, Survey No. 57,  
Near Olympic Laminates, Kahtraj  
Taluka: Kalol, District: Gandhinagar.

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 A.C. / D.C., Service Tax, Gandhinagar Division, Ahmedabad-III.
- ✓ 5. Guard File.
6. P.A.



