
 केंद्रीयकर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
वस्तु : एव सेवा कर भवन सतवी मजिल पोलिटैकनिक के पास आम्बावाडी अहमदाबाद-380015	GST Building 7/Floor Near Polytechnic Ambavadi, Ahmedabad-380015	
079-26305065		टेलिफ़ैक्स : 079-26305136

क फाइल संख्या : File No : V2(39)99/AHD-III/2016-17 *SI 8*

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-080-17-18**

दिनांक Date : **28.08.2017** जारी करने की तारीख Date of Issue: *13/9/17*

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
AHM-CEX-003-ADC-DSN-44-45-16-17 दिनांक : **05.12.2016** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-DSN-44-45-16-17**, Date: **05.12.2016**
 Issued by: Additional Commissioner, Central Excise, Div:Gandhinagar,
 Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Mother Dairy, A unit of Gujarat Co-Operative Milk Federation Milk
 Marketing Federation 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.

घ 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:-

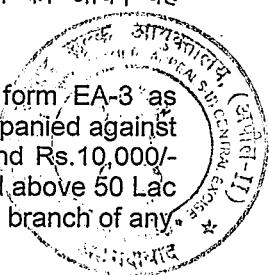
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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, मेघाणी 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 वहां 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 वहां 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 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ 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 अर्जी एवं अपील को लागू नहीं होंगे।

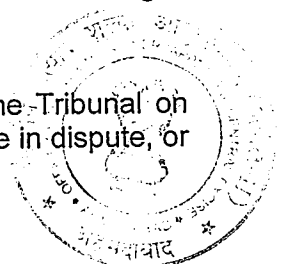
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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



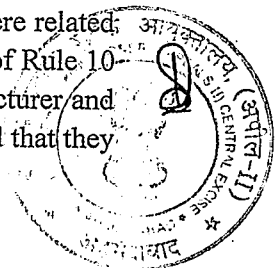
ORDER-IN-APPEAL

This appeal has been filed by M/s Mother Dairy (Packing Film Plant), a unit of Gujarat Co-operative Milk Marketing Federation, Section 25, GIDC, Gandhinagar, Gujarat (hereinafter referred to "the appellant") against Order-in-Original No.AHM-CEX-003-ADC-DSN-44-45-16-17 dated 05.12.2016 (hereinafter referred to as "impugned order) passed by the Additional Commissioner of Central Excise, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case is that the appellant is engaged in manufacturing of Printed Plastic Film (for short-PPF) and clears to various District Co-Operative Milk Producers Union (for short-DCMPUs) and also associated members affiliated to Gujarat Co-Operative Milk Marketing Federation Ltd (for short-GCMMF) on the rate pre-decided by GCMMF. It was observed that almost all the products manufactured by the appellant were sold to DCMPU and associate members of GCMMF; that the price at which the goods sold to DCMPUs is not as per the normal transaction value where the price is the sole consideration. On further detail verification, it was observed that GCMMF have effectively administrative control over the DCMPU and associated members union on their day to day activities. Since [i] the appellant and the buyers appear to be interconnected undertakings and related, in terms of sub-clause (iv) of sub section (3) of Section 4 of Central Excise Act, 1944 (Act), the value of the goods on which duty has been paid is not treated as "transaction value" in terms of clause (a) of Section 4(1) of the Act and the value is to be determined in terms of clause (b) of Section ibid read with Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000; and [ii] the buyer (related persons) does not sell the goods but consumes in the production, the differential value and the duty thereof is to be worked out in terms of provisions contained under Rule 10 (a) read with Rule 9 and 8 of Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000, two show cause notices were issued to the appellant for the demand of Rs.1,30,79,1014/- for the period of January 2015 to June 2015 and for Rs.1,35,31,752/- for the period of July 2015 to December 2015 with interest and imposition of penalty thereof. Vide the impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty of Rs.10,00,000/- for the period of January 2015 to 13.05.2015 under Rule 25 of Central Excise Rules, 2002 and Rs.12,00,000/- for the remaining period under Section 11AC(1)(b) of the Act.

3. Being aggrieved, the appellant has filed the present appeal on the following grounds:

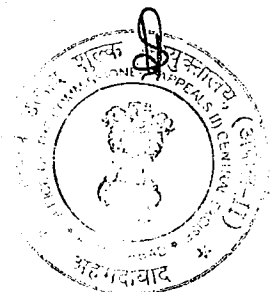
- The adjudicating authority has committed a grave error in relying Section 4(3)(b)(i) of the Act for holding that the parties involved in this case were related, in as much as the section ibid has no independent application by virtue of Rule 10 of Valuation Rules and the value has to be determined as if the manufacturer and buyer were not related persons if the undertakings were not so connected that they were related in terms of Section 4(3)(b)(ii) or (iii) or (iv)



- The adjudicating authority has not followed Board's circular No.354/81/2000-TRU dated 30.06.2000, wherein it has been clarified that the transaction value will be rejected in case of interconnected undertakings only when they were related in the sense of any of clause Section 4(3)(b)(ii) or (iii) or (iv) and that in essence the scope of substituted Section 4 was not much different from the old section 4 definition notwithstanding the change in definition of related person in new section 4.
- The bye-laws and balance sheet of the GCMMF relied by the adjudicating authority is factually incorrect and totally irrelevant for establishing mutuality of interest in the business of each other in so far as the GCMMF and DCMPU were concerned; This issue was finalized by Hon'ble High Court of Gujarat and Hon'ble Apex Court in the case of M/s Kaira Disit Co-Operative Milk Producers Union Ltd.
- The adjudicating authority has erred in holding that the nature of relation between GCMMF and other units of them, resulting in higher valuation; that the appellant and the other unit where milk was produced being units of the co-operative society are one and same entity, therefore, no question of mutuality of interest was involved such transaction.
- DCMPU have purchased PPF from the appellant but other unit of dairy have procured PPF from the manufacturing plant of the appellant and being used for milk packaging; the appellant has discharged liability of duty delivered to other units by taking the price at which the goods were sold to DCMPU because DCMPU were independent buyers from whom the transaction value was recovered. The Hon'ble Tribunal has held in Ispat Industries Ltd that when a part of production was transferred to another plant of the same assessee and part production was sold to independent buyers then Rule 8 of Valuation Rules would not apply.
- The adjudicating authority has demanded differential duty of such quantity of PPF though no question of mutuality of interest arose for PPF delivered to Diaries because the plant of the appellant where PPF were produced and the other of the appellant where a part of such production of PPF was used were not different or separate entities.
- The definition of the term "Interconnected Undertakings" under Section 2(g) of the MRTP Act was also not attracted in the case as none of the manners or conditions or ingredients of the said Section was satisfied in case the appellant and the DCMPU;
- Penalty and interest cannot be imposed.

4. A personal hearing in the matter was held on 20.07.2017. Shri Aditya S Tripathi, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal and further relied on Hon'ble Supreme Court's decision in case of Union of India Vs Kaira Distt. Co-Operative Milk Producers Union Ltd, reported at 2002 (146) ELT 502 (SC) and decision of Hon'ble High Court of Gujarat in SCA No.3236 of 1981 in case of Kaira Distt. Co-Operative Milk Producers Union Ltd.

5. I have carefully gone through the facts of the case, submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing.



6. The issues to be decided in the instant appeal is relating;-

- [i] Whether the appellant, (a unit of GCMMF) is related to DCMPUs and Associated members affiliated to GCMMF, as defined under Section 4(3)(b) of the Act;
- [ii] Whether the clearance made by the appellant as alleged would be governed by Rule 8 read with Rule 9 of Central Excise Valuation (Determination of Price of Excisable goods) Rules 2000 or under Section 4 of the Act as contended by the appellant; and whether the demand confirmed thereof for the period from January 2015 to December 2015 and penalty imposed are sustainable.

6. I have briefly laid out the facts of the case mentioned above. In short, I observe that GCMMF is registered under Gujarat State Co-operative Societies Act, 1961 and carried out various activities viz marketing of milk and dairy products etc under by-laws of GCMMF approved and registered under the said Co-operative Society Act; that the appellant had cleared the goods viz. Printed Plastic Film (PPF) to DCMPU and associated members affiliated to GCMMF and GCMMF purchases milk and milk products from DCMPU and sells to the customers also to the associated members of GCMMF.

7. Now I take up the issue mentioned at para 6 above for discussion.

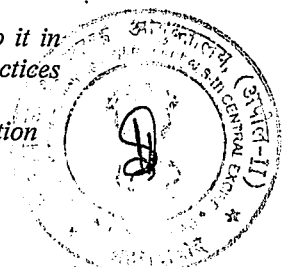
As regards [i] above whether the appellant, (a unit of GCMMF) is related to DCMPUs and Associated members affiliated to GCMMF, as defined under Section 4(3)(b) of the Act, I observe that the adjudicating authority has contended that [i] since the appellant who is a unit of GCMMF clearing PPF to DCMPU (a member of GCMMF) as well as other associated members of GCMMF and also their own manufacturing unit located at other place, the clearance of the said goods are not only treated as to the "related persons" but the element of "mutuality of interest" in the business of each other; [ii] that GCMMF has direct control over all activities and profit or loss of appellant and its other unit ultimately bearing by GCMMF; and [iii] that DCMPU who are engaged in processing of milk products and used the goods manufactured by the appellant have a financial impact on both of them which nothing but a mutuality of interest.

8. 'Related' is defined under Section 4(3)(b) the Act, which is reproduced below :

- (b) persons shall be deemed to be "related" if -
 - (i) they are inter-connected undertakings;
 - (ii) they are relatives;
 - (iii) amongst them the buyer is a relative and distributor of the assessee, or a sub-distributor of such distributor; or
 - (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

Explanation. - In this clause -

- (i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of Section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (64 of 1969); and
- (ii) "relative" shall have the meaning assigned to it in clause (41) of Section 2 of the Companies Act, 1956 (1 of 1956)

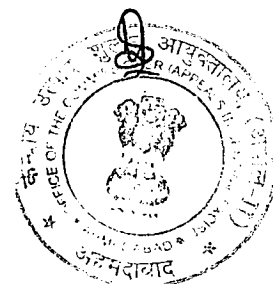


9. Further, "Inter-connected undertakings" under clause (g) of Section 2 of the Monopolies and Restrictive Trade Practice Act, 1969, means two or more undertaking which are inter-connected with each other in any of the following manner, namely :-

- (i) if one owns or controls the other,
- (ii) where the undertakings are owned by firm, if such firms have one or more common partners.
- (iii) Where the undertakings are owned by bodies corporate,
 - (a) if one body corporate manages the other body corporate, or
 - (b) if one body corporate is a subsidiary of the other body corporate, or
 - (c) if the bodies corporate are under the same management, or
 - (d) if one body corporate exercise control over the other body corporate in any other manner;
- (iv) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firms,
 - (a) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate, or
 - (b) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate.
- (v) if one is owned by a body corporate and the other is owned by firm having bodies corporate as its partners, if such bodies are under the same management.
- (vi) if the undertakings are owned or controlled by the same person or (by the same group).
- (vii) If one is connected with the other either directly or through any number of undertakings within the meaning of one or more foregoing sub-clauses.

Explanation I. - For the purpose of this Act, (two bodies corporate), shall be deemed to be under the same management,-

10. I observe that the object of GCMMF has been laid down in Article 2 of their by-law. As per the said by-laws, the main object of the Federation is to carry out activities for the economic development of agriculturists by efficiently organizing marketing of milk and dairy produce, veterinary medicines, vaccines and other animal health products, agricultural produce in raw and/or processed form and other allied produce. To achieve the said objective, GCMMF/obligation of members of GCMMF and distribution of profits have been laid down at 5.2, 9 and 29 of the by-laws as narrated in the impugned order (para 7, 8 and 10). On perusal of the said by-laws, I observe that GCMMF is comprehensively controlling all the business activities of their members. Therefore, the activities carried out by the appellant, a unit of GCMMF, between DCMPU and associates of GCMMF undoubtedly falls within the definition of "related persons/interconnected undertakings" as defined in Section 4 (3) (b) of the Act read with clause (g) of Section 2 of the Monopolies and Restrictive Trade Practice Act, 1969. In the circumstances, the argument of the appellant that DCMPU is an independent buyer does not have any merit. Therefore, looking into the facts as discussed above, I do not find any merit to interfere the decision of the adjudicating authority by holding that the appellant and their buyers are interconnected undertakings and related in terms of Section 4(3)(b) the Act read with clause (g) of Section 2 of the Monopolies and Restrictive Trade Practice Act, 1969 *supra*.



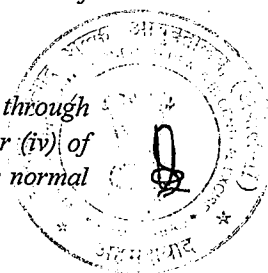
11. The appellant heavily discussed and argued applicability of Hon'ble High Court of Gujarat's decision in SCA No.3236 of 1981 of M/s Kaira District Co-operative Milk producers Union Ltd and Hon'ble Apex decision in case of Union of India Vs M/s Kaira Dist. Co-Op Mil Producers Union Ltd [2002 (146) ELT 502]. Comparison of higher aspect of the decisions above with facts of the instant has been discussed at length by the adjudicating authority in para 27 to 27.5 of the impugned order. The fact on the basis which the cases decided was relating to relation between GCMMF and DCMPU as well as other associate members of GCMMF in the context of whether to include commission charged by GCMMF in the assessable value manufactured by DCMPU. In the instant case, the situation is different that the appellant, a unit of GCMMF is engaged in clearance of goods to DCMPU and associate members of GCMMF, in violation to amended Section 4(3) (b) of the Act and Rule 8 and 9 of Central Excise Valuation (Determination of Price of Excisable goods) Rules 2000. Further, it is pertinent to point out here that the provisions of Section 4 of the Act has been ornately amended with effect from July 2000 and the word "related" has also been defined broadly under Section 4(3)(b) the Act, whereas, prior to that, the definition of "related" was defined under Section 4 (4) (c) of the Act restrict to as *"a person who is associated with the assessee that they have interest, directly or indirectly, in the business of each other includes holding company, subsidiary company, a relative and a distributor of the assessee, and any sub distributor of such distributor"*. Looking into the present definition of the word "related" as defined under Section 4(3) (b) of the Act *ibid* and the activities carried out between the appellant (a unit of GCMMF) with DCMPU and associate members of GCMMF clearly leads to the conclusion that the appellant and their buyers are interconnected undertakings and related. Hence, with all respect to the decision of Hon'ble High Court and Apex Court, I am of the view that the situation prior to amendment of Section 4 of the Act, discussed by the Hon'ble Courts is not in fact applicable to the present case.

12. Now the question arises whether the clearance made by the appellant as alleged would be governed by Rule 8 read with Rule 9 of Central Excise Valuation (Determination of Price of Excisable goods) Rules 2000 or under Section 4 of the Act as contended by the appellant, mentioned at [ii] above.

13. The period involved in the instant case is from January 2015 to December 2012. During the relevant period the Rule 8 and 9 *ibid* states as under:

Rule 8:- Where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods. "

Rule 9: Where whole or part of the excisable goods are not sold by the assessee to or through a person who is related in the manner specified in any of the sub clause (ii), (iii) or (iv) of Clause (b) of Section (3) of Section 4 of the Act, the value of such goods shall be the normal



transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail:

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.

14. As discussed above in para 10 and 11, it has come to the conclusion that the appellant and DCMPU and other associates of GCMMF are interconnected and related. From the facts of the case, it is very much clear that the goods PPF cleared to DCMPU and other associates of GCMMF are used/consumed in the production or manufacture of goods. In the circumstances, proviso to Rule 9 ibid can be applied directly. Therefore, the impugned order under which the transaction value confirmed by the adjudicating authority as per provisions of Rule 8 of the Valuation Rules does not require any interference.

15. In view of above discussion, the demand with interest confirmed by the adjudicating authority is correct and proper during the relevant period. As regards penalty imposed, I am of the considered view that the adjudicating authority has imposed penalty, looking into the apt of the case. Accordingly, I also uphold the same.

13. In view of the foregoing, I reject the appeal filed by the appellant and uphold the impugned order. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/08/2017

Attested

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

BY R.P.A.D.

To,
M/s Mother Dairy (Packing Film Plant),
(a unit of Gujarat Co-operative Milk Marketing Federation)
Section 25, GIDC, Gandhinagar, Gujarat

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Gandhinagar
3. The Additional Commissioner (System), Central Excise, Gandhinagar
4. The Dy/Assistant Commissioner, Central Excise, Gandhinagar Division.I.
- ✓ 5. Guard file.
6. P.A.



