
	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
सत्यमेव जयते	दस्तावेज	एवं सेवा कर भवन	
	GSIT Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad - 380015		
	मालवी मंजिल पोलिटिकनिक के पास आम्बावाडी अहमदाबाद-380015		
	079-26305065		टेलफैक्स: 079-26305130

क फाइल संख्या : File No : V2/22/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-09-18-19**

दिनांक Date : **15/06/2018** जारी करने की तारीख Date of Issue: **25/6/2018**

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-AJS-023-17-18 दिनांक : **22/03/2018** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-AJS-023-17-18**, Date: **22/03/2018**
Issued by: Additional Commissioner, CGST, Div: RRA, Gandhinagar
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Wonder Packaging Industries

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।

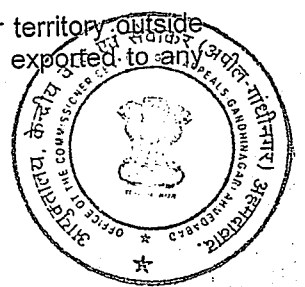
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

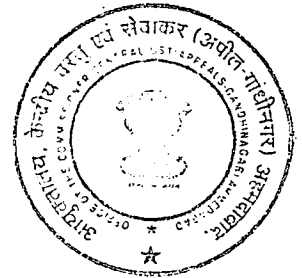
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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.

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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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।

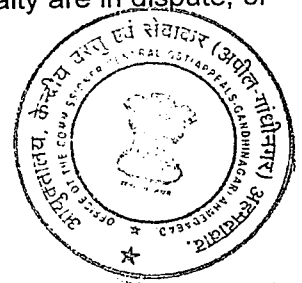
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

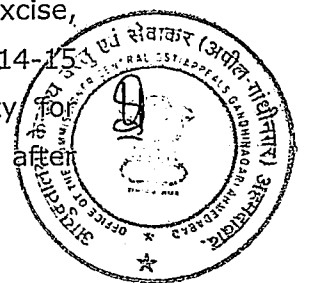


ORDER-IN-APPEAL

M/s. Wonder Packaging Industries, Plot No.C/1/B, 512/13, Phase-I, GIDC, Chhatral Mehsana Highway, Tal-Kalol, Dist-Gandhinagar (hereinafter referred to as 'the appellants') have filed an appeal against the Order-in-Original number AHM-CEX-003-ADC-AJS-023-17-18 dated 22.03.2018 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central Excise and CGST, Gandhinagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the appellants were holding Central Excise Registration number AAAEW9438GXM001 and are engaged in the manufacture of Corrugated Boxes falling under the Chapter 48 of Central Excise Tariff Act, 1985. They were availing the benefit of Notification No. 08/2003-CE dtd. 28.03.2003 as amended during the Financial Year 2008-2009, 2009-2010, and 2010-2011. The officers of Central Excise (Preventive) Ahmedabad-III, on 18.12.2010, intercepted a tempo for verification of bills covering the goods carried by the said tempo. The tempo stated to have been loaded from the factory premises of the appellants under invoice number 215, dated 18.12.2010. The officers visited the premises of the appellants to ascertain the genuineness of the said invoice and had drawn a panchnama dated 18.12.2010 for further proceedings. During the course of drawing the panchnama, the proprietor of the appellants stated that the unit M/s. Blue Star Packing (hereinafter referred to as 'BSP') was a trading unit selling packing materials, packing tools and corrugated boxes. Prior to the existence of BSP, M/s. R K Traders (hereinafter referred to as 'RKT') was in existence. RKT was also a trading unit. In a nutshell, the preventive officers alleged that the appellants had cleared the corrugated boxes under the invoices BSP and RKT to enable the appellants to avail exemption under Notification number 08/2003-CE dated 28.03.2003 and therefore the clearance value of BSP and RKT were clubbed with the clearance value of the appellants and demanded duty along with interest. The statements of the proprietors of M/s. Popular Packaging (hereinafter referred to as 'PP') were also recorded under Section 14 of Central Excise Act, 1944. After completion of investigation, a show cause notice dated 13.08.2013 had been issued to the appellants. The adjudicating authority had passed an order dated 28.05.2014 clubbing the value of corrugated boxes of RKT and BSP for the purpose of commuting the aggregate clearance value of the appellants under Notification number 08/2003 CE dated 28.03.2003 and confirming Central Excise Duty of ₹42,88,511/- along with interest and equivalent penalty under Section 11AC of Central Excise Act, 1944. Further, the adjudicating authority appropriated duty, interest and penalty amounting to ₹9,50,985/-, ₹1,28,714/- and ₹2,37,304/- respectively as deposited by the appellants.

3. Aggrieved with the aforesaid order dated 28.05.2014, the appellants had preferred an appeal before the then Commissioner (Appeals-I), Central Excise, Ahmedabad, who vide Order-in-Appeal number AHM-EXCUS-003-APP-173-14-15 dated 24.03.2015 remanded back the case to the adjudicating authority for verification and to re-quantify the demand afresh. The adjudicating authority, after



verification and re-quantification of the demand, has passed the impugned order without any change in duty demand with interest and imposition of penalty.

4. Being aggrieved with the impugned order, the appellants preferred the present appeal on the grounds that the corrugated boxes cleared under the invoices of RKT were actually manufactured by PP on job work basis. To substantiate the facts, the appellants had already submitted before the adjudicating authority 21 delivery challans, issued by RKT to PP, supplying Kraft Papers and the 38 delivery challans issued by PP to RKT for supply of the corrugated boxes. They further submitted before the adjudicating authority the purchase bills of raw materials sent to PP to manufacture the corrugated boxes on job work basis. The appellants had also paid ₹27,62,774/- to PP as job charges, the bank statements thereof are also submitted. The statement of the proprietor of PP was recorded under Section 14, in which he clearly stated that they were manufacturing 100% goods for RKT. The appellants further argued that the adjudicating authority has not refuted the existence of PP and that PP was not a dummy job worker. On the allegation that the appellants did not produce job work invoices, the appellants argued that vide letter dated 20.04.2011, they had submitted before the adjudicating authority 21 delivery challans issued by RKT to PP supplying raw materials i.e. Kraft Papers and 38 delivery challans issued by PP to RKT for supply of finished goods i.e. corrugated boxes. On finding of the adjudicating authority that the matter of BSP attained finality, the appellants argued that even if the adjudicating authority held the matter of BSP as final, he continued narrating the matter of BSP in his findings/discussions of the impugned order. They further informed that the corrugated boxes cleared under the invoices of BSP were actually manufactured by the appellants on job work basis and BSP purchased the raw materials and sent directly to the appellants to manufacture the corrugated boxes on job work basis. BSP had paid ₹7,54,921/- through cheques to the appellants as job charges and submitted the bank statements as evidences. So far as the delivery challans/bills for job work are concerned, the appellants contended that the office of BSP and office/manufacturing premises of the appellants is situated in the same premises. Therefore, the delivery challans/bills were not required. The appellants submitted that this is a technical error, a procedural lapse and it may be ignored. The appellants further alleged that the preventive officers had not produced any evidence to allege that there was any procurement/purchase of raw materials by the appellants to manufacture the corrugated boxes cleared under the invoices of RKT and BSP. The preventive officers did not conduct any investigation/inquiry against the suppliers of raw materials purchased and used by the appellants in the manufacture of corrugated boxes cleared under the invoices of RKT and BSP. They claimed that there is no evidence at all of money paid by the appellants to the suppliers against the raw materials purchased and used in manufacture of goods cleared by RKT and BSP.

5. Personal hearing in the matter was conducted on 15.05.2018. Shri K. P. Nagar, Tax Consultant and Shri R. K. Rathod, the owner of the company of the



appellants, appeared before me and reiterated the grounds of appeals.

6. I have carefully gone through the impugned order, the appeal memorandum and contention made at the time of personal hearing by the appellants. I proceed to decide the appeal on merits itself. The limited issues to be decided in the present appeal are as below;

i) Whether the value of the goods cleared under the invoices of RKT and BSP can be clubbed with the value of the appellants.

ii) Whether the appellants are entitled for the benefit under Notification number 08/2003-CE dtd. 28.03.2008.

7. In respect of first question, regarding the clubbing of value, I find that the adjudicating authority observed that RKT and BSP were engaged in trading and did not have any machinery or infrastructure to manufacture corrugated boxes and therefore, the corrugated boxes cleared under invoices of RKT and BSP were manufactured by the appellants. Further, RKT and BSP had not paid any job charges and rent to the appellants for manufacture of corrugated boxes or for use of machineries, and therefore the total value of goods cleared by RKT and BSP were clubbed along with the clearance of value of the appellants for the purpose of computing the aggregate clearance value of the appellants under Notification number 08/2003-CE dated 28.03.2003. In this regard, I would like to examine the contentions of the appellants that the corrugated boxes, cleared under the invoices of RKT were actually manufactured by PP on job work basis.

(i) I find from the facts that the appellants had already submitted before the adjudicating authority the 21 delivery challans issued by RKT to PP supplying raw materials i.e. Kraft Papers and the 38 delivery challans issued by PP to RKT for supply of finished goods i.e. corrugated boxes, as shown in the paragraph 11.5 of the impugned order.

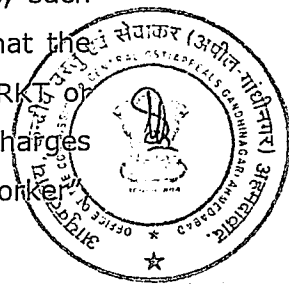
(ii) I have noticed that the appellants also submitted before the adjudicating authority the purchase bills of raw materials sent to PP to manufacture the corrugated boxes on job work basis.

(iii) I have also observed that the appellants had claimed to have paid ₹ 27,62,774/- to PP as job charges.

(iv) The appellants had submitted the bank statements as corroborative evidences to the effect that they had paid job charges through cheques.

(v) I also find that the appellants, vide letter dated 19.03.2018, produced before the adjudicating authority the purchase register and purchase invoices.

In view of the above facts, I am not convinced by the findings of the adjudicating authority that since RKT had not issued any job charges bills and rent to the appellants for manufacture of corrugated boxes or for use of machineries, such payment of ₹ 27,62,774/- are not the job charges but purchases. I find that the original authority has not bothered to even examine the purchase bills of RKT or BSP and jumped to the conclusion that ₹ 27,62,774/- were not job work charges but bur purchase from PP. However, before rejecting the plea of the "job worker

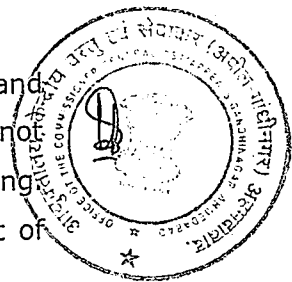


the raw material purchase bills should have been dealt with. What happened to such a large quantity of raw material (duly VAT paid)? The adjudicating authority has nowhere stated that these purchases were not genuine. This is a very vital aspect of the entire case. Despite such clear cut findings of the then Commissioner (Appeals-I), these issues have not been dealt with in a judicious manner. In view of the VAT paid receipt showing purchase of the raw materials and bank transactions in this regard, there is a point in the argument of the appellants that all the documents substantiate the facts that RKT has cleared the corrugated boxes manufactured by PP on job work basis and therefore, the clearance value of the goods cleared under the invoices of RKT cannot be clubbed along with the clearance value of the appellants to compute the aggregate clearance value of the appellants. The adjudicating authority did not adduce any evidence to support his finding of clubbing of clearance of RKT with the clearance of WPI.

7.1. Further I find that RKT purchased the raw materials and sent to PP to manufacture the corrugated boxes on job work basis. M/s. PP manufactured the corrugated boxes out of the raw materials on job work basis and sent the same to RKT. The statement of Shri Chetansingh D. Kher, the proprietor of PP recorded under Section 14, in which he clearly stated that they were manufacturing 100% goods for RKT goes in favour of the appellants. I further find that the then Commissioner (Appeals-I), Ahmedabad vide OIA No. AHM-EXCUS-003-APP-173-14-15 dated 14.03.2015 substantiated the facts of the case of the appellants. The relevant findings recorded by the then Commissioner (Appeals-I), Ahmedabad, which is worthy of reproduction as below: -

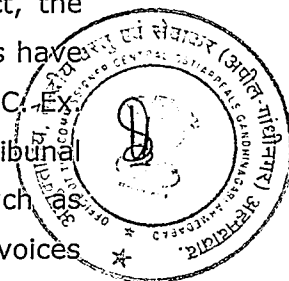
"6.3 I find strong force in the arguments of the appellant that all the goods manufactured by M/s. PP were on account of M/s. RKT on 100% job work basis; however, the impugned notice does not have even an iota of evidence refuting the same and without disproving the statement of Shri Chetansingh D. Rathod; that the amount of Rs. 27,62,774/- was paid to M/s. PP for job work has been taken in the impugned order as payment for purchase of goods; that the physical truth of existence of M/s. PP has not been refuted; that the fact of non-recording of the statement of Shri Vishnubhai Patel and ignoring of the statement of Shri Chetansingh D. Kher clearly shows that the investigations were done with a prejudiced mind; that the total sale by M/s. RKT as per the impugned notice in the years 2008-2009 and 2009-2010 is Rs. 3,31,52,047/-; that the total value of the goods manufactured by M/s. PP comes to Rs. 3,22,32,368/- approximately; that all documents of M/s. PP were withdrawn by the department and these being non-relied on documents these were not made available to us; that the total value for 2008-2009 and 2009-2010 comes to Rs. 3,22,32,368/-, which is approximately equal to the value in the impugned notice".

I have examined the aforesaid finding of the then Commissioner (Appeals-I) and noticed that there is strong force in the arguments of the appellants which has not been examined judiciously by the adjudicating authority in the remand proceeding. I find from the above that all the goods manufactured by PP were on account of



RKT on job work basis; and the show cause notice could not produce even an iota of evidence refuting the same and without disproving the statement of Shri Chetansingh D. Kher. The adjudicating authority observed that the payments of ₹ 27.62 lakhs made to PP by RKT were for purchase of the corrugated boxes. To examine the issue, I have studied the facts of the case and I am convinced that the adjudicating authority has not refuted the existence of PP and that PP is not a dummy job worker. The appellants, in their reply to the notice as well as statement, have nowhere stated that the said payments were related to purchase of the boxes. In fact, the appellants stated that the said payments were made to PP by RKT for manufacture of goods on job work basis. I find that the payments made by RKT to PP were for job work and the same is corroborated by the statement of Shri Chetansingh D. Kher in which he has stated that PP was doing 100% manufacture for RKT. In such a scenario, the finding of the adjudicating authority that RKT was floated for evading duty on the goods manufactured by the appellants and that their clearance has to be clubbed, cannot be appreciated and upheld. I find no merits in the adjudicating authority's stand.

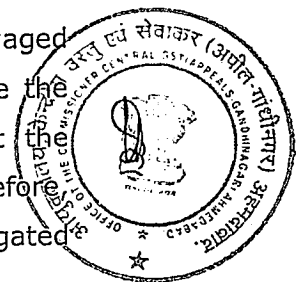
7.3 I further find that the adjudicating authority observed in paragraph 11.8 of the impugned order that the appellants did not produce job work invoices received by RKT from PP. In this regard, I find that the appellants, vide letter dated 20.04.2011, had submitted 21 delivery challans issued by RKT to PP supplying raw materials i.e. Kraft Papers and also submitted 38 delivery challans issued by PP to RKT for supply of finished goods i.e. corrugated boxes, as seen from paragraph 11.5 of the impugned order. In paragraph 4.2 of their appeal, the appellants have given a calculation that the average per kg cost of manufacture was ₹3 and total payment made by RKT during the years 2008-08 and 2009-10 was ₹27,62,774/- which translated into 9,20,925 kgs. of material. Totally 23,02,312 boxes were manufactured and therefore, total clearance of PP came to ₹3,22,32,368/- (approximate weight of each box being 0.4 kgs costing ₹14 per box). This calculation appears to be quite logical and fits into total purchase by RKT. Hence, I find that the appellants had followed all the procedures for the manufacture of the goods on job work basis. Similar stand has been made amply clear in the case of Commissioner of C. Ex., Chennai-II Vs. Malavika Metals (P) Ltd. reported in 2008(230) ELT 469 (Tri.-Chennai) in which M/s. Malavika Metals (P) Ltd. did not issue Rule 57F(3) challans to the job worker. The Tribunal has dismissed the appeal filed by the Department observing that barring the minor defect, the scheme of things in this case was in accordance with the law governing exemption available to job workers. From the above judgment, it transpires that non-producing of job work invoices by the appellants is a minor defect. Barring the said minor defect, the appellants had followed all the proper procedures of job work. The appellants have further relied in the case of Jyoti Ceramic Industries Pvt. Ltd. Vs. Collector of C. Ex., Aurangabad reported in 2017(351) ELT 302 (Tri. Mumbai) in which the Tribunal held that the job work was done, even if no documents were issued such as delivery challans. Merely because the appellants did not produce job work invoices received by RKT from PP, will not make PP-a dummy unit. However, as I observed



herein above, the appellants had already produced before the adjudicating authority the delivery challans of the job work done by PP for them. Thus, there is no force in this finding of the impugned order as the adjudicating authority has not produced any corroborated evidence to substantiate his finding. Therefore, the finding of the adjudicating authority that the appellant did not produce job work invoices received by RKT from PP is not tenable in the eyes of law.

8. In the impugned order, the adjudicating authority held that the matter of M/s. Blue Star Packaging (BSP) attained finality as the appellants had not preferred an appeal before CESTAT against OIA dated 24.03.2015 thus, they have accepted duty liability of BSP. In this regard, I find that even if the adjudicating authority held the matter of BSP as final, he continued narrating the matter of BSP in his findings/discussions in paragraphs 11.2.2, 11.3, 12, 14 and 17 of the impugned order. Hence, the contradictory point of view of the adjudicating authority has been brought out in the matter. The appellants submitted before me that in the interest of justice, the case may be decided on merit. I have examined the matter and found that the appellants had submitted the purchase invoices of raw materials and claimed that they have sent the raw material direct to premises of the appellants from the suppliers of the raw materials to manufacture the corrugated boxes on job work basis. To substantiate the facts, the appellants were paid ₹7,54,921/- through cheques as job charges. As evidence, the appellants submitted bank statements for the same. I am convinced that so far as the delivery challan/bill for supplying raw material and receiving the corrugate boxes are concerned, the appellants stated that the office of BSP and the office/manufacturing premises of the appellants are in the same premises and therefore, the delivery challan/bill were not necessary. The appellants have relied in the aforesaid judgment of Jyoti Ceramic Industries Pvt. Ltd. and further submitted that this was a technical error, a procedural lapse and which may be ignored. I further find that all the documents substantiate the facts that BSP have cleared the corrugated boxes manufactured by the appellants on job work basis and therefore, the clearance value of the goods cleared under the invoices of BSP cannot be clubbed along with the clearance value of the appellants to compute the aggregate clearance value of the appellants. I find that the appellants have not denied the fact that they had manufactured corrugated boxes for BSP on the basis of job work and received ₹7,54,921/- as job charges from BSP. In view of the above, purely on appreciation of the evidences, I have arrived at the conclusion and in my opinion that there is no question of law involved in clubbing the clearance value of BSP with the clearance value of the appellants and denying benefit under Notification No. 08/2003-CE dated 28.03.2003 to the appellant for the year 2010-2011.

8.1. I further find that the adjudicating authority alleged that BSP were engaged in trading and did not have any machinery or infrastructure to manufacture the corrugated boxes. In this regard, the appellants submitted that BSP got the corrugated boxes manufactured by the appellants on job work basis and therefore BSP needs not to have any machinery or infrastructure to manufacture corrugated



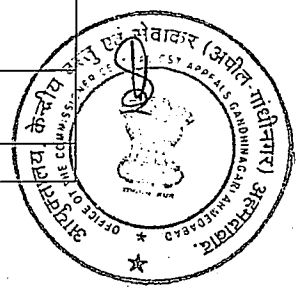
boxes. I noticed that the adjudicating authority did not adduce any cogent and positive evidences to support his finding of clubbing of clearance of BSP with the clearance of the appellants. Further, as regard the filing of an appeal before CESTAT against the OIA, I agree with the contention of the appellants that they did not prefer an appeal before CESTAT against the OIA dated 14.03.2015 of the then Commissioner (Appeals-I), Ahmedabad as the Commissioner (A) remanded back the matter to the adjudicating authority for verification and re-quantify the demand afresh for RKT and BSP i.e the matter has not been finalized. Further, I am forced to look into the details of the invoices, bank details etc. which were required to be looked into by the adjudicating authority as per the direction of the then Commissioner (Appeals-I) in the remand proceedings. However, I find that instead of looking into the vital aspects of the case e.g. invoices of raw materials purchased by RKT and BSP and the bank details thereof, the adjudicating authority, in paragraph 11.6, has dealt with matters like lease agreements and violation of GIDC allotment rules etc. which will have no bearing on a case of anti evasion. Even if it is presumed that the lease agreements are not proper and there is violation of GIDC rules in sub letting the premises, can duty be demanded on the basis of such violations? The simple answer is "No". I have verified the bank statements and details of raw materials purchased by RKT and BSP. A clear picture of the same is reflected in the tables below;

Table 1:- Job charges paid by RKT and BSP to PP and the appellants respectively

(A) M/s. R. K. Traders had paid ₹ 27,62,774/- as job charges to M/s. Popular Packaging.

BANK STATEMENT

Sr. No.	Date	Accounts No.	Amount
1	08.11.2008	08942320000164	250000
2	21.11.2008	08942320000164	30000
3	22.12.2008	08942320000164	50000
4	27.12.2008	08942320000164	50000
5	03.02.2009	Cheque Paid MICR	25000
6	10.04.2009	08942560000451	120000
7	29.04.2009	08942560000451	120000
8	12.05.2009	08942560000451	530000
9	06.06.2009	Cheque Paid MICR	65774
10	20.06.2009	Cheque Paid MICR	400000
11	26.06.2009	Cheque Paid MICR	400000
12	01.07.2009	Cheque Paid MICR	400000



13	06.07.2009	Cheque Paid MICR	322000
TOTAL			27,62,774/-

(B) M/s. Blue Star Packaging paid job charges of ₹25,25,000/- to the appellants

BANK STATEMENT

Sr. No.	Date	Cheque No.	Amount
1	11.08.2010	56252	50,000
2	08.09.2010	56260	5,00,000
3	13.09.2010	56261	5,00,000
4	13.09.2010	56263	5,00,000
5	22.09.2010	56267	4,00,000
6	28.09.2010	56270	5,75,000
TOTAL			25,25,000

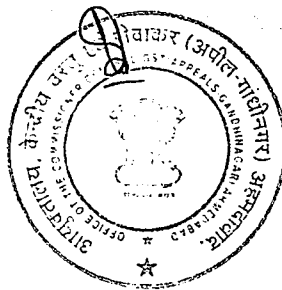
Table 2:- Raw materials purchased by RKT and BSP

(A) Raw materials purchased by RKT

R k Traders				2008-09	
Purchase register					
DATE	INVOICE NO	PARTY NAME	QTY	TOTAL	
18.05.2008	20	MAHENDRA INDUSTRIES	30	9135	
31.05.2008	161	SARDAR PAPER MILL PVT. LTD.	8023	208408	
			4423		
19.06.2008	30	MAHENDRA INDUSTRIES	9	2835	
28.06.2008	23	MAHENDRA INDUSTRIES	27	8505	
29.06.2008	203	SIDDHESWARI TRADERS	4708	84285	
02.09.2008	50	MAHENDRA INDUSTRIES	30	9765	
13.09.2008	356	SIDDHESWARI TRADERS	6409	124831	
19.09.2008	370	SIDDHESWARI TRADERS	2263	44078	
24.09.2008	377	SIDDHESWARI TRADERS	11244	219005	
26.09.2008	380	SIDDHESWARI TRADERS	6004	116943	
10.10.2008	408	SIDDHESWARI TRADERS	11584	221626	
12.10.2008	109	FINE PACK	1567	32907	
20.10.2008	440	SIDDHESWARI TRADERS	11044	240622	
31.10.2008	3638	KUSHAL TRADELINK PVT. LTD.	7105.1	160398	
31.10.2008	3639	KUSHAL TRADELINK PVT. LTD.	5872.9	132581	
31.10.2008	3640	KUSHAL TRADELINK PVT. LTD.	2194.2	49534	
25.01.2009	608	SIDDHESWARI TRADERS	5395	86388	
26.01.2009	3975	KUSHAL TRADELINK PVT. LTD.	4903	108116	
27.01.2009	618	SIDDHESWARI TRADERS	5455	87349	
31.1.2009	1122	SUNIL AGENCIES	5726	133498	
31.01.2009	1123	SUNIL AGENCIES	2681.6	87284	
02.02.2009	4076	KUSHAL TRADELINK PVT. LTD.	7259	187119	
18.02.2009	674	SIDDHESWARI TRADERS	5457	88813	
				2444025	



R k Traders [2009-10]				
Purchase register				
DATE	INVOICE NO	PARTY NAME	QTY	TOTAL
25.04.2009	40	SHIV OFFSET (GUJ.) PVT. LTD.	40000	42000
26.04.2009	44	SHIV OFFSET (GUJ.) PVT. LTD.	30000	31500
27.04.2009	45	SHIV OFFSET (GUJ.) PVT. LTD.	40000	42000
09.05.2009	61	SHIV OFFSET (GUJ.) PVT. LTD.	35000	36750
11.05.2009	65	SHIV OFFSET (GUJ.) PVT. LTD.	60000	63000
23.05.2009	88	MAHAVIR AGE	16216	258512
23.05.2009	148	SIDDHESWARI TRADERS	15721	313634
25.05.2009	282	RAMJI BOARD & PAPER MILL PVT. LTD.	16216	258516
26.05.2009	155	SIDDHESWARI TRADERS	9699	130765
04.06.2009	40	POPULAR PACKAGING	3035	58515
4.6.2009	1494	KUSHAL TRADELINK PVT. LTD.	2048	34084
07.06.2009	1560	KUSHAL TRADELINK PVT. LTD.	10396	193756
09.06.2009	1621	KUSHAL TRADELINK PVT. LTD.	10060	187494
10.06.2009	1692	KUSHAL TRADELINK PVT. LTD.	2940	153252
			5138	
18.06.2009	1878	KUSHAL TRADELINK PVT. LTD.	10571	197018
23.6.2009	1974	KUSHAL TRADELINK PVT. LTD.	3751	64987
23.06.2009	39	PARTH PRINTING & PACKING	8415	57432
25.06.2009	111	SHIV OFFSET (GUJ.) PVT. LTD.	50000	52500
26.06.2009	40	PARTH PRINTING & PACKING	9000	61425
27.06.2009	145	VIAJ SALES AGENCY	17652	319092
29.06.2009	116	SHIV OFFSET (GUJ.) PVT. LTD.	50000	52500
01.07.2009	46	PARTH PRINTING & PACKING	3843	26228
09.07.2009	119	SHIV OFFSET (GUJ.) PVT. LTD.	42500	44625
05.07.2009	273	SIDDHESWARI TRADERS	5545	109167
10.07.2009	576	KUSHAL TRADELINK PVT. LTD.	744	17577
18.07.2009	314	SIDDHESWARI TRADERS	5742	97973
18.07.2009	181	VIAJ SALES AGENCY	8812	139066
18.07.2009	3124	KUSHAL TRADELINK PVT. LTD.	11424	182927
23.07.2009	9	PARTH PRINTING & PACKING	2485	57404
26.07.2009	340	SIDDHESWARI TRADERS	10723	184746
27.07.2009	3351	KUSHAL TRADELINK PVT. LTD.	2612	83452
03.09.2009	171	SHIV OFFSET (GUJ.) PVT. LTD.	7900	55325
03.09.2009	3518	KUSHAL TRADELINK PVT. LTD.	10115	177898
05.09.2009	714	KUSHAL TRADELINK PVT. LTD.	3019	69739
09.09.2009	3680	KUSHAL TRADELINK PVT. LTD.	3547	81955
16.09.2009	398	KARAN PAPER MILL PAPER MILL	9086	163103
21.09.2009	203	MAC PAPER MILL	10176	177100
25.09.2009	205	SHAKTI INDUSTRIES	150	5512
15.10.2009	221	SHIV OFFSET (GUJ.) PVT. LTD.	35000	36750
16.10.2009	222	SHIV OFFSET (GUJ.) PVT. LTD.	45000	47250
23.10.2009	223	SHIV OFFSET (GUJ.) PVT. LTD.	40000	42000
25.10.2009	224	SHIV OFFSET (GUJ.) PVT. LTD.	37000	38850



27.10.2009	45	MAHENDRA INDUSTRIES	28	9702
28.10.2009	37	ANERI INDUSTRIES	1000	34650
11.11.2009	469	AMBICA AGENCY	17300	308329
14.11.2009	151	RUCHI SOYA INDUSTRIES LTD.	4720	42126
14.11.2009	241	SHIV OFFSET (GUJ.) PVT. LTD.	36400	18302
17.11.2009	842	TEJAL PAPER MILL PVT. LTD.	3923	56532
17.11.2009	5519	KUSHAL TRADELINK PVT. LTD.	10597	172467
17.11.2009	248	SHIV OFFSET (GUJ.) PVT. LTD.	35000	36750
17.11.2009	61	ANERI INDUSTRIES	2000	46200
17.11.2009	156	RUCHI SOYA INDUSTRIES LTD.	3990	35611
18.11.2009	249	SHIV OFFSET (GUJ.) PVT. LTD.	32000	33600
19.11.2009	251	SHIV OFFSET (GUJ.) PVT. LTD.	40100	29474
19.11.2009	5598	KUSHAL TRADELINK PVT. LTD.	10104	140572
19.11.2009	5590	KUSHAL TRADELINK PVT. LTD.	10804	150311
20.11.2009	253	SHIV OFFSET (GUJ.) PVT. LTD.	30000	31500
21.11.2009	350	TEJAL PAPER MILL PVT. LTD.	5944	82802
21.11.2009	254	SHIV OFFSET (GUJ.) PVT. LTD.	40000	42000
22.11.2009	256	SHIV OFFSET (GUJ.) PVT. LTD.	30000	31500
24.11.2009	259	SHIV OFFSET (GUJ.) PVT. LTD.	26600	19551
28.11.2009	255	NOVA WINZE	1888.3	86409
29.11.2009	365	TEJAL PAPER MILL PVT. LTD.	1532	21341
30.11.2009	171	RUCHI SOYA INDUSTRIES LTD.	3000	26775
01.12.2009	264	SHIV OFFSET (GUJ.) PVT. LTD.	30000	31500
01.12.2009	263	SHIV OFFSET (GUJ.) PVT. LTD.	26000	27300
02.12.2009	265	SHIV OFFSET (GUJ.) PVT. LTD.	45000	47250
04.12.2009	267	SHIV OFFSET (GUJ.) PVT. LTD.	35000	36750
05.12.2009	175	RUCHI SOYA INDUSTRIES LTD.	3965	35388
08.12.2009	376	TEJAL PAPER MILL PVT. LTD.	845	22094
			741	
08.12.2009	176	RUCHI SOYA INDUSTRIES LTD.	2620	23384
09.12.2009	274	SHIV OFFSET (GUJ.) PVT. LTD.	15200	12768
12.12.2009	381	TEJAL PAPER MILL PVT. LTD.	8942	124566
13.12.2009	279	SHIV OFFSET (GUJ.) PVT. LTD.	9250	10684
16.12.2009	359	UNIQUE PRINTCITY	24450	19254
21.12.2009	6284	KUSHAL TRADELINK PVT. LTD.	3537	56637
22.12.2009	282	SHIV OFFSET (GUJ.) PVT. LTD.	2500	26250
23.12.2009	283	SHIV OFFSET (GUJ.) PVT. LTD.	30000	31500
27.12.2009	75	SHREE UMIYA PACKGING	646	10276
29.12.2009	399	TEJAL PAPER MILL PVT. LTD.	3502	48784
03.01.2010	225	UTKARSH CORPOR	9627	139192
03.01.2010	291	SHIV OFFSET (GUJ.) PVT. LTD.	33000	34650
09.01.2010	296	SHIV OFFSET (GUJ.) PVT. LTD.	38000	39900
12.01.2010	109	ANERI INDUSTRIES	1000	25200
18.01.2010	303	SHIV OFFSET (GUJ.) PVT. LTD.	53900	39617
19.01.2010	240	UTKARSH CORPOR	9911	148501
20.01.2010	306	SHIV OFFSET (GUJ.) PVT. LTD.	11800	7434



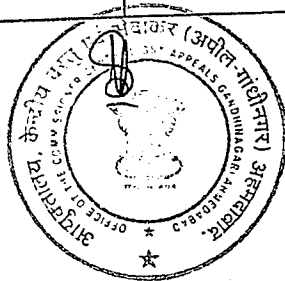
25.01.2010	309	SHIV OFFSET (GUJ.) PVT. LTD.	14600	12264
30.01.2010	260	UTKARSH CORPOR	10264	156485
02.02.2010	78	MAHENDRA INDUSTRIES	15	5198
02.02.2010	372	SHAKTI INDUSTRIES	300	10710
22.02.2010	1486	KUSHAL TRADELINK PVT. LTD.	683	11654
22.02.2010	1487	KUSHAL TRADELINK PVT. LTD.	3614	95494
26.02.2010	500	TEJAL PAPER MILL PVT. LTD.	2389	40187
28.02.2010	8005	KUSHAL TRADELINK PVT. LTD.	6856	134978
11.03.2010	84	MAHENDRA INDUSTRIES	30	11823
			7461555	

8



(B) Raw materials purchased by BSP:-

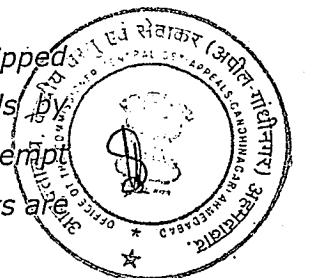
WORKSHEET OF RAW MATERIAL PURCHASED BY M/S. BLUE STAR PACKAGING				
Sr. No.	Invoice No. & Dt	Name of supplier	Description of goods	Value
1	10-11/T3171, 09.08.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	208740
2	10-11/T3131, 07.08.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	210315
3	10-11/T3409, 20.08.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	237930
4	10-11/T3460, 23.08.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	409955
5	10-11/T5360, 30.10.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	206491
6	10-11/T5295, 28.10.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	308882
7	10-11/T5385, 31.10.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	231063
8	10-11/T0060, 02.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	248622
9	10-11/T0080, 19.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	257820
10	10-11/T0590, 16.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	243125
11	10-11/T0484, 14.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	238944
12	10-11/T0530, 15.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	240149
13	10-11/T0076, 02.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	251823
14	10-11/ST0008, 02.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	206424
15	10-11/T0735, 20.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	289041
16	10-11/T1032, 29.04.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	197009
17	10-11/T1538, 15.05.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	180684
18	10-11/T1915, 04.06.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	212818
19	10-11/T1914, 04.06.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	40918
20	10-11/T1993, 07.06.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	286320
21	10-11/T2026, 08.06.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	169974
22	10-11/T2248, 18.06.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	137183
23	10-11/T2369, 24.06.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	261086
24	10-11/T2596, 05.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	155964
25	10-11/T2411, 26.06.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	75584



26	10-11/T2645, 08.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	223301
27	10-11/T2640, 08.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	271280
28	10-11/T2663, 09.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	243989
29	10-11/T2710, 13.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	113015
30	10-11/T2898, 26.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	216930
31	10-11/T2791, 20.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	225750
32	10-11/T2805, 20.07.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	222180
33	10-11/T3497, 25.08.2010	KUSHAL TRADELINK PVT. LTD.	KRAFT PAPER	203727
34	675/18.09.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	106728
35	688/20.09.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	212573
36	636/09.09.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	192834
37	784/10.10.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	219930
38	A/678/19.09.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	222348
39	785/10.10.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	208759
40	786/10.10.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	103692
41	803/13.10.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	91874
42	766/07.10.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	163968
43	767/07.10.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	223911
44	725/30.09.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	238042
45	727/30.09.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	201548
46	775/09.10.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	238667
47	632/08.09.2010	VADIAWALA ASSOCIATES	KRAFT PAPER	138585
48	8/30.09.2010	SHREE GOPINATH PAPER MILLS P.LTD	KRAFT PAPER	228133
49	30/19.09.2010	SHREE GOPINATH PAPER MILLS P.LTD	KRAFT PAPER	210289
50	146/22.05.2010	PAPERS PVT. LTD	KRAFT PAPER	205264
51	18/09.04.2010	UTKARSH CORPORATION	KRAFT PAPER	73836
TOTAL				10508017

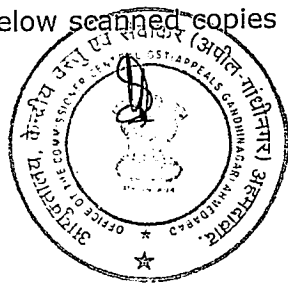
9. The appellants further contended that RKT got the corrugated boxes manufactured from PP on job work basis and BSP got the corrugated boxes manufactured from the appellants on job work basis. The physical existence of PP and the appellants has not been refuted. The adjudicating authority has also confirmed in paragraph 11.6 of the impugned order that in the show cause notice, the existence of PP has not been disputed. In other words, there is no dispute between the appellants and the Department in respect to the physical existence of PP and the appellants. Thus, it is factually correct that PP and the appellants had machines and equipments to manufacture the corrugated boxes for RKT and BSP on job work basis i.e. they are not the dummy job workers. I am convinced by the argument of the appellants that since PP and the appellants have existed in the material time, the manufacture of corrugated boxes on job work basis by both PP and the appellants cannot be denied. This stand has been made fully clear in the case of C.C.E., C & S.T., Hyderabad-III Vs. Beaver Engineering Corporation reported in 2017(353) ELT 126 (Tri.-Hyd) in which the Tribunal viewed as below;

"114.1 There is no proof that the other units are non-existent, not equipped with any manufacturing capabilities, non-procurement of raw materials by them or engaged in sale of goods manufactured by BEC, etc. and no attempt has been made in any of these aspects by the Department. The other units are



legal entities registered with different statutory authorities including Central Excise, they have separate land, buildings and machinery and are engaged in normal manufacturing activity."

10. The appellants further contended that the preventive officers had not produced even an iota of evidence to allege that there was any purchase of excessive raw materials by the appellants to manufacture the corrugated boxes cleared under the invoices of RKT and BSP. I find that when the preventive officers had visited the premises of the appellants, nothing on record was found by them, which showed that unrecorded raw materials were purchased or consumed by the appellants or that the appellants had clandestinely manufactured or removed the goods under the invoices of RKT and BSP. Be that as it may be, it is to be noted that to manufacture of the corrugated boxes requires the use of Kraft Papers as inputs/raw materials. On careful perusal of the entire records of the case, I find that there is nothing on record as to unrecorded purchases or consumption of raw material in the manufacture of the corrugated boxes, there is also nothing on record to indicate that the appellants had purchased the Kraft Papers and without accounting them used for the manufacture of the corrugated boxes and cleared under the invoices of RKT and BSP. There is also nothing on record nor did any statement of the supplier of the raw materials, which would indicate that the appellants had received unaccounted raw materials from the suppliers of these raw materials. The investigation has not proceeded further to bring on record the unaccounted purchases of the raw materials required for manufacturing of the corrugated boxes. In absence of any material evidence reflecting the purchase of excessive raw material, excess consumption of power like electricity, I noted and held that there was nothing to bank upon except the confessional statements of Shri R. K. Rathod and such statements were retracted by him. The Revenue did not discharge its burden by corroborative evidence such as clandestine purchase of raw materials and manufacture and removal of finished product. The initial burden was on the Department to prove the allegations of the clandestine receipt of raw material or manufacture and removal of the final products as held in the case of CCE v. Shakti Zarda Factory (I) Ltd. - 2015 (321) E.L.T. 438 which was affirmed by Supreme Court in Commissioner v. Shakti Zarda Factory (I) Ltd. - 2015 (321) E.L.T. A210 (S.C.). However, I find that the appellants had already produced the VAT paid bills/invoices of the raw materials purchased by RKT and BSP to manufacture the goods on job work basis. In absence of any rebuttal or any contrary evidence of non existence of such huge quantity of raw materials worth ₹ 2,05,13,597/-, this evidence cannot be ignored and it is very vital aspect of the whole case. I also note that all bills are VAT paid and some of them are pertaining to the years 2008 to 2011. I reflect below scanned copies of two specimen bills for better understanding;



TAX INVOICE

VADIAWALA ASSOCIATES
 KIRTIKUNJ SOCIETY
 BOMBAY HOUSING COLONY,
 MAHALAM TOLNAKA
 HMEDABAD

Buyer
Blue Star Packaging
 513/A, Phase I
 G D C Chhatral

Invoice No.
688

Delivery Note

Supplier's Ref.

Buyer's Order No.

Despatch Document No.

Despatched through

Terms of Delivery

id
Sep-2010
 le/Terms of Payment

er Reference(s)

Dated

Dated

Destination

Description of Goods	Quantity	Rate	per	Amount
Kraft Paper Reel	10,199 kgs	19.85	kgs	2,02,450.00
			4 %	8,098.00
			1 %	2,025.00
	Total 10,199 kgs			2,12,573.00

PAID
 Ch.NO: 056273
 DATE: 12-10-2010
 AMT.: 2,12,573.00

PAID
 Ch.NO:
 DATE:
 AMT:

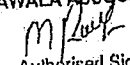
Vat-4%
 Add Vat-1%

E & O.E

Amount Chargeable (in words)
 Two Lakh Twelve Thousand Five Hundred Seventy
 Three Only

Company's VAT TIN : 24071502586
 Buyer's VAT TIN/Sales Tax No. : 24011004108

Declaration
 We declare that this invoice shows the actual price of the
 goods described and that all particulars are true and correct.

for VADIAWALA ASSOCIATES

 Authorized Signatory

This is a Computer Generated Invoice



ORIGINAL

TAX INVOICE

KUSHAL TRADELINK PVT. LTD.

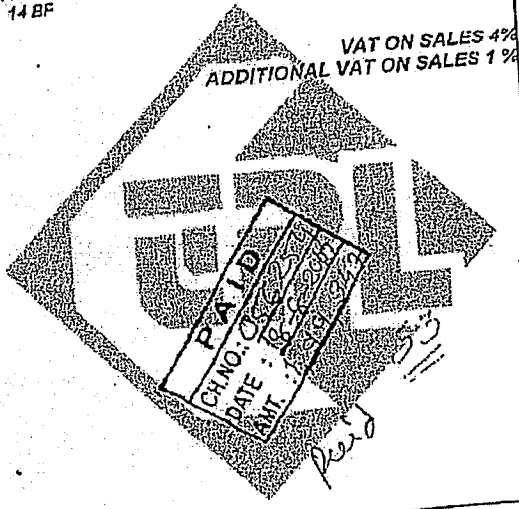


Plot No. 43, B/s. Navneet Prakashan Press,
B/h. Govt. 'G' Colony, Sukhramnagar,
Gomtipur, Ahmedabad-380 023.
Phone : 2272991-95; Fax : 22762670 E-mail : kushaltradelink@gmail.com

Invoice No. 10-11/T3171	Date 8-Aug-2010
Order No. VERBAL	Terms of Payment 90 DAYS
Other Detail	
Challan No. T3171	Date 8-Aug-2010
L.R. No.	Date 8-Aug-2010
Despatched Through GJ 1 X 4493	Destination
Delivery BLUE STAR PACKAGING CHHATRAL, TA-KALOL, GANDHINAGAR.	

M/s.
BLUE STAR PACKAGING
513/A, C-1/B,
PHASE I,
G.I.D.C.,
CHHATRAL,
TA-KALOL,
DIST - GANDHINAGAR.

Description of Goods	Quantity	Rate	Amount
KRAFT PAPER 14 BF	20.00 Kgs.		1,986,000.00
		4 %	7,952.00
		1 %	1,988.00
Total 9,940,000 Kgs.			2,08,740.00 E & OE

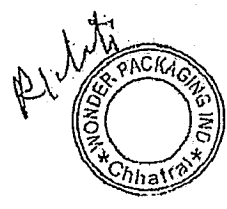


Amount Chargeable (In words) **RS Two Lakh Eight Thousand Seven Hundred Forty Only**
 • 30% P.A. Interest Will be Charged on all Account remain unpaid after due time.
 • No. allowance for short or change in quality unless notice is given immediately on receipt of goods.
 • Our risk and responsibility ceases on delivery of goods.
 • All Transaction are Subject to Ahmedabad Jurisdiction.
 • GST TIN No. : 24072100201-W.E.F. 01-09-2005 • CST TIN No. : 24572100201 W.E.F. 01-09-2005

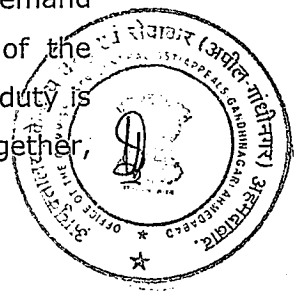
Company's VAT TIN : 24072100201 Dt 01.09.2005
 Company's CST No. : 24572100201 Dt 01.09.2005
 Buyer's VAT TIN : APPLIED FOR

For, Kushal Tradelink Pvt. Ltd.
 Authorised Signatory: *[Signature]*

Declaration
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.



Such VAT paid bills could not have been generated in December 2010, when the case was booked. Thus, in absence of any sound and positive evidence by the adjudicating authority, I hold that the impugned order which confirmed the demand by clubbing the clearance value of RKT and BSP with clearance value of the appellants is not sustainable and is liable to be set aside. As the demand of duty is not sustainable on the charges, i.e., clubbing of clearances of the units together,

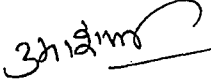


therefore, penalty on the appellants is not sustainable. Consequently, penalty on the appellants is also set aside.

11. Accordingly, I set aside the impugned order and allow the appeal, with consequential relief, if any.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

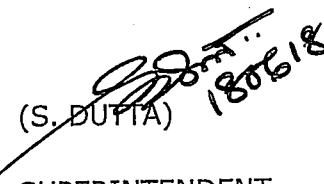
12. The appeal filed by the appellants stands disposed off in above terms.


(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED


(S. DUTTA) 180618

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

To,

M/s. Wonder Packaging Industries,
Plot No.C/1/B, 512/13, Phase-I, GIDC,
Chhatral Mehsana Highway, Tal-Kalol,
Dist-Gandhinagar.

Copy to:-

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Gandhinagar.
- 3) The Dy./Asst. Commissioner, Central Tax, Kalol Division, Gandhinagar.
- 4) The Asst. Commissioner (System), Central Tax, Hq., Gandhinagar.
- 5) Guard File.
- 6) P. A. File.

