आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 26305065-079 : टेलेफैक्स26305136 - 079 :

DIN-20211064SW0000B4A7

स्पीड पोस्ट

/3866 to 3870

क फाइल संख्या : File No : GAPPL/COM/CEXP/208/2020

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-003-APP-026/2021-22**
दिनाँक Date : 30.08.2021 जारी करने की तारीख Date of Issue : 28.10.2021

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No.**02/C.Ex./OA/NRM/2020-21 dated 31.08.2020** passed by the Assistant Commissioner, Central GST & Central Excise, Division – Himmatnagar, Gandhinagar Commissionerate.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Bloom Dekor Limited,
267, N.H.No.08, Oran-Prantij,
Taluka Prantij, District Sabarkantha- 383205,
Gujarat.

M/s Bloom Dekor Ltd.,
2-F, Sumel, S.G. Highway, Thaltej, Ahmedabad.

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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.

(क) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

(c) 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गतः–

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 रू.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 adjudicating 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 in invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील'** दाखिल करने **के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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।

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 is filed by M/s Bloom Dekor Limited, situated at Plot No.267, Village-Oran, N.H.No.8, Taluka: Prantij, District: Sabarkantha, Gujarat (hereinafter referred to as '*the appellant*') against the Order-in-Original No.02/C.Ex./OA/NRM/2020-21 dated 31.08.2020 issued on 07.09.2020 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, Central GST Division-Himmatnagar, Commissionerate-Gandhinagar (hereinafter referred to as '*the adjudicating authority*').

2. Briefly stated, the appellant is engaged in the manufacture of Laminate Sheets and Flush Doors falling under Chapter Heading 4823 and 4418 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as "*CETA*") and was holding Central Excise Registration No.AAACB6221BXM001. During the course of audit of the records of the appellant by the department, it was observed that they were selling their goods through their Depots/Consignment Agents at various places like Delhi, Nagpur, Bangalore, Calcutta, Chennai, Jaipur, Mumbai etc. and that the goods were removed from the factory on the basis of stock transfer and sold at an enhanced value from the depots/consignment agent premises. As per Section 4(3)(c) (iii) of the Central Excise Act, 1944 (hereinafter referred to as '*the Act*') read with Rule 7 & 2(b), 2 (c) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as '*the Valuation Rules*'), the value of goods for the purpose of assessment in such cases shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the nearest to the time of removal of goods under assessment. The appellant were found to be not assessing their duty liability correctly in the above said manner in respect of the goods removed from their depots/through consignment agents. Accordingly, various show cause notices were issued to them pertaining to period from April, 2009 to August, 2016 for recovery of central excise duty short paid along with interest and for imposition of penalty under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002. Thereafter, another periodical Show Cause Notice was issued in terms of Section 11A(7A) of the Central Excise Act, 1944 for the period from September 2016 to June 2017 involving a demand of central excise duty amounting to Rs.36,36,235/- which is under reference in the present appeal. This show cause notice was decided by the adjudicating authority vide the impugned order wherein he had confirmed the demand along with interest and imposed penalty equal to duty demanded under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.

3. Being aggrieved, the appellant has filed the present appeal contending, *inter alia*, that:

- The impugned order passed by the Assistant Commissioner is in gross violation of the principles of natural justice in as much as the Assistant Commissioner has

refused to follow the appellate order passed by the Commissioner (Appeals) in the appellant's own case on a baseless ground that the order passed by the Commissioner (Appeals) being a remand order and not a final order it would have no precedential value. The Commissioner (Appeals) had categorically held that in the facts of the present case, valuation could have been only done as per Rule 7 read with Circular No.251/85/96-CX dated 14.10.1996 to arrive at the differential value and that the method adopted by the department for calculating differential duty is contrary to the principles of valuation;

- It is a settled legal position that an adjudicating authority is bound by the orders passed by his superior appellate authority and an adjudicating authority can by no means by-pass the guidelines and views expressed by immediate superior in hierarchy;

- The Assistant Commissioner has chosen to shift the burden of calculating differential amount of duty on the Appellant, however it is the case of the revenue that the Appellant had not paid appropriate amount of duty, and therefore, it is the duty of the department to ascertain the correct amount of differential duty as per the principles enshrined in law while confirming demand;

- The differential duty is demanded on the price at which the goods were sold from the appellant's branches and the premises of consignment agents located at various places in the country by taking such price as the assessable value of the goods, which is ex-facie illegal and impermissible in view of the scheme of Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Since the Revenue has not ascertained the value of the goods in accordance with Rule 7 of the Central Excise Valuation Rules, the demand of differential duty based on the actual sale price of the goods from the branches and consignment agent's premises for the whole year is illegal and without jurisdiction;

- For ascertaining the assessable value in the present case, in accordance with Rule 7 of the Valuation Rules, the Revenue had to compare the normal transaction value at which the goods were sold from a particular branch or a particular consignment agent's premises to the goods being removed from the appellant's factory and assessment of excise duty had to be made on such value. The assessable value of the goods cleared from the factory was to be determined on the basis of the transaction value of goods sold from the depot, etc. at or about the same time when the goods were cleared from the factory. But instead, the Revenue has taken the sum total of price at which all the goods were sold from all the branches and all the consignment agent's premises during the year, and excise duty is worked out on such figure and the differential duty demand is then worked out by deducting the excise duty paid by the appellant at the factory date during such period i.e. the whole year. The manner and method of ascertaining assessable value and

consequently the differential duty demand are therefore wholly illegal and liable to be set aside;

- The Assistant Commissioner had no jurisdiction to reject the appellant's submission about Rule 7 of the Valuation Rules on a specious observation that the demand of duty was worked out on the basis of information of clearances of goods submitted by them vide their letter dated 30.06.2018. When the appellant had submitted the information in the format prescribed by the Range Superintendent but such information was not as laid down under Rule 7 of the Valuation Rules, the information supplied by the appellant was of no relevance or consequence for determining assessable value of goods cleared from the factory for sale from depots and premises of consignment agents;

- The appellant submits that it has sold the goods at its factory gate against valuable consideration and the dealers are neither depots nor branches of the appellant. The appellant has sold the goods at its factory gate on principal to principal basis to such dealers who are not related to the appellant and price was the sole consideration for such sale transactions. Therefore, the case of the appellant falls under Section 4(1)(a) of the Act and value charged from these buyers (dealers) shall be transaction value.

- The Assistant Commissioner has failed to consider the fact that the appellant has sold the goods to its buyers at factory gate against valuable consideration and subsequently, such buyers have sold the goods in market independently and not as a branch/depot of the appellant. Rule 7 of the Central Excise Valuation Rules would be applicable when the appellant has not sold the goods at its factory gate and transferred such goods to its depot, premises of a consignment agent or any other place or premises from where such goods were actually sold by the appellant;

- The action of imposing penalty on the allegation of duty payment evaded by the appellant is unreasonable when there was doubt about duty liability on part of the appellant. Penalty is a quasi-criminal matter and can be imposed in case where malafide intention or guilty conscious of an assessee is established and in this case there is no suggestion or allegation of any malafide intention to evade payment of duty; reliance is placed on the judgement of Apex Court in case of M/s. Hindustan Steel Ltd. reported at 1978 ELT (J159) wherein it is said that penalty should not be imposed merely because it was lawful to do so and in their case they did not act dishonestly or contumaciously; and

- The action of ordering recovery of interest under Section 11AA of the Act is also without any authority in law in as much as the provision of Section 11AA is not attracted in the instant case as there was no intention to evade payment of duty.

4. Personal hearing in the matter was held on 23.06.2021 through virtual mode. Shri Amal P. Dave and Shri Sudhanshu Bissa, Advocates, appeared on behalf of the appellant for hearing. They reiterated the submissions made in the appeal memorandum. It was stated that the demand for earlier period was decided by the Commissioner (Appeals), who remanded the matter back to the adjudicating authority for re-quantification.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of personal hearing. The issue under dispute in the case is valuation of excisable goods sold through depots and consignment agents of the appellant for the purpose of assessment of central excise duty under the provisions of Central Excise Act, 1944.

6. It is observed that the present demand in the case is issued under the provisions of Section 11A(7A) of the Central Excise Act, 1944 with reference to and in continuation to the six demand notices issued in the matter as detailed in Para 2 of the impugned order. The demand notices were issued on the ground that in respect of the goods sold by the appellant through their Depots/Consignment Agents, they were required to pay central excise duty on the transaction value to be determined in terms of Rule 7 of the Valuation Rules read with Section 4(1) of the Act. All the said previous demands confirmed the valuation of goods in terms of Rule 7 of the Valuation Rules in the case. The matter was also decided on merits against the appellant vide Hon'ble Tribunal, Ahmedabad vide their Order No.A/10373/2018 dated 19.02.2018 in respect of the demand under principal Show Cause Notice dated 23.08.2013 covering the period from April 2009 to December 2012. Thus, the issue in this case stand settled on merits that the valuation of goods sold by the appellant through their Depots/Consignment Agents has to be in terms of Rule 7 of the Valuation Rules and central excise duty has to be paid accordingly. The appellant has also accepted this legal position in the case, as evidenced from their submission/contentions in the appeal.

7. In the present case, on going through the impugned order, it is seen that the adjudicating authority has confirmed the demand by observing that when the goods were finally "sold" to an independent buyer at a higher price from their depots/consignment agents, the value under Section 4(1)(a) is available and it is never influenced by Rule 7. This view of the adjudicating authority does not seem to be in accordance with the grounds stated in the principal show cause notice and subsequent periodical show cause notices issued in the matter for the demand of duty wherein the department has sought the valuation of goods sold through depots/consignment agents in terms of Section 4(1)(b) of the Act read with Rule 7 of the Valuation Rules. Since the present demand was issued with reference to and in continuation to previous demands issued in the matter, the adjudicating authority is not permitted to take a different or fresh ground for the demand in

the case as he cannot go beyond the allegations/charges made in the Notices. The Show Cause Notice dated 03.08.2018 issued by the department in the case on hand clearly mentions the Notice as being issued in terms of Section 11A(7A) of the Act stating expressly that *"the facts, circumstances and contraventions of the provisions of the Central Excise Act, 1944 and the rules made there under and the grounds relied upon in the present notice are same/similar to those discussed in the earlier show cause notices mentioned at Sr.No.1 to 6 of Table-I above"*. Therefore, it appears that the adjudicating authority has travelled beyond the scope of show cause notice while deciding the issue, which is not permitted in law.

7.1 Further, the adjudicating authority has also erred in not taking cognizance of the decisions of the higher appellate authorities/forums in respect of the previous demands on the same issue. He ought to have considered the outcome of the previous demands before arriving at his decision especially when the demand being decided by him was issued with reference to and in continuation of the previous demands and no fresh grounds were taken therein. Thus, the adjudicating authority has acted in defiance of the settled principles of law and in gross violation of the principles of judicial discipline, which requires that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. This view has been consistently emphasized by the various judicial forums including the apex court in catena of decisions and the CBEC has also issued an Instruction F.No.201/01/2014-CX.6 dated 26.06.2014 in this regard directing the all adjudicating authorities to follow judicial discipline scrupulously. In spite of referring to six previous demand notices issued in the case in the Notice, the adjudicating authority has discussed only one decision of the appellate authority which was referred by the appellant in their submission wherein the appellate authority has in fact remanded the matter to the original authority for deciding the case afresh after recalculation of the demand in terms of Rule 7 of the Valuation Rules and the guidelines issued by the Board vide Circular No.251/85/96-CX dated 14.10.1996. Notably, the appellant in the said appeal has not disputed the department's contention of liability under Rule 7 in the case but was only disputing that the duty has not been calculated as per the Rule 7 ibid and Circular referred above. The adjudicating authority has failed to take note of this vital point and wrongly understood the appellate authority's decision as an order not deciding the core issue. The impugned order passed by the adjudicating authority is, therefore, bad in law for travelling beyond the charges in SCN and for gross violation of principles of judicial discipline and is liable to set aside for that reasons.

7.2 Notwithstanding the above facts, the ground taken by the adjudicating authority for confirming demand in the case is even otherwise not legally sustainable for being not in accordance with the provisions of law in this regard, the relevant portions of which reads as under:

Section 4- valuation of excisable goods for the purposes of charging of duty of excise

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

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

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

The phrases 'place of removal' and 'time of removal' are defined under sub-section (3) (c) and (cc) to mean as under:

*(c) "**place of removal**" – means*

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

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

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

from where such goods are removed;

*(cc) "**time of removal**", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;*

From the above provision of law, it is abundantly clear that in the case of sales of excisable goods from depot/premises of a consignment agent, the assessable value for the purpose of assessment of duty would be the transaction value of such goods at the said depot/premises of consignment agent at the time of their clearance from the factory. Therefore, in respect of goods cleared from a depot or the premises of consignment agent, central excise duty is to be paid on such goods at the time of their removal from the factory assessed on the basis of transaction value of such goods prevailing at such places viz. depot or premises of consignment agent at or about the same time or at the time nearest to the time of removal of goods under assessment from the factory. It is apparent that the transaction value for the purpose of assessment in such cases has to be with reference to the time of removal of such goods from the factory and not from such places. Hence, the transaction value of any goods cleared from the depot or premises of consignment agent at their real time of delivery to buyers from such places is not relevant for the purpose of assessment of duty in the case. The argument by the adjudicating authority in this regard along with illustration at para 4.11 of his Order is, therefore, totally fallacious and has arisen out of

improper reading and understanding of the provisions of Section 4 of the Act and is liable to be rejected being devoid of any merits.

7.3 Further, it is an undisputed fact that in the case of excisable goods removed to depots or premises of consignment agents from the factory, there is no sale at the factory gate and hence, on such removals, provisions of valuation as per clause (a) of sub-section (1) of Section 4 of the Act would not be applicable and the value for the purpose of assessment of duty in such cases has to be ascertained in terms of clause (b) of sub-section (1) of Section 4 ibid in the manner prescribed under Rule 7 of the Valuation Rules. As per provisions of Rule 7 ibid, the transaction value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment. To illustrate, suppose the appellant cleared the goods, laminate sheets from their factory to their depot at Bangalore during the period from 01.09.2016 to 01.10.2016 and the goods cleared on 01.09.2016 to the said depot from the factory gate at the rate of Rs.1000/- per sheet was further sold from the said depot on 10.09.2016 at the rate of Rs.1200/-per sheet, then the transaction value of the goods to be cleared on or after 10.09.2016 from the factory gate to the said depot shall be Rs.1200/-. If the goods cleared from the factory gate on 10.09.2016 at the rate of Rs.1200/- were further sold from depot on 20.09.2016 at the rate of Rs.1000/-, then the transaction value of the goods to be cleared on or after 20.09.2016 from the factory gate to the said depot shall be Rs.1000/- and so on. If goods were removed from the factory to the said depot on 15.09.2016, then as per provisions of Rule 7 *ibid*, the transaction value of the goods cleared on 15.09.2016 from the factory gate to the said depot shall be the value of goods cleared on 10.09.2016 viz.Rs.1200/-. Central excise duty in the case is required to be assessed and paid on the transaction value determined in the above manner.

7.4 It is the main contention of the appellant that the duty demand in the case has not been done by the Revenue as per Rule 7 of the Valuation Rules. I find that the differential duty demand in the case has been worked out on the basis of details submitted by the appellant with regard to their sales of goods through depots or consignment agents as obtained from them. Since the demand in the case is with reference to and in continuation to the previous demands on the issue, it is quite evident that the said details for the period under dispute were called for from the appellant with reference to the previous demands in the case which is obviously with reference to Rule 7 of the Valuation Rules. The Annexure-A to the appeal filed in the case unambiguously supports this fact. That being the case, the contention by the appellant that the information called for from them was not in accordance with the requirement of Rule 7 of the Valuation Rules does not hold water. Even if it is so, it is not clear as to what prevented the appellant from assessing their duty liability in the case in terms of Rule 7 ibid. The appellant having accepted the valuation

of goods in the case under Rule 7 ibid, should have assessed and discharged their duty liability in the case accordingly without any dispute. It is more so as it was well within the knowledge of the appellant that the issue and the demand under the principal show cause notice in the case was decided against them by the Hon'ble Tribunal vide their No.A/10373/2018 dated 19.02.2018. Further, there is nothing either on records or in the appellant's submissions that the said decision was further challenged by the appellant in any other higher judicial forum. Similar is the case with the subsequent demands in the matter except the one which was remanded back to the original authority that too for recalculating duty liability in terms of Rule 7 ibid. That being the case, the facts that the issue under the principal show cause notice in the case stand decided against the appellant and there being no dispute now from them on the aspect of valuation of goods in the case in terms of Rule 7 of the Valuation Rules as evidenced from their own submissions, it inevitably cast an obligation upon the appellant to self assess their duty liability in the case in accordance with the accepted manner under Rule 7 ibid. Nobody prevented the appellant from presenting their take on the duty liability in the case if they believe that the demand made in the case is not correct in any manner. It is pertinent to note that it is not the case of the appellant that they had in fact discharged their duty liability in the case correctly under Rule 7 ibid. It is undisputed that the duty liability in the case was not discharged by them in the said manner and it is for that reason, the demands for differential duty in the case have arisen. Therefore, the appellant cannot throw the burden of calculation of duty liability simply on the Revenue. They were also bound to assess their duty liability correctly though later after the issuance of show cause notice especially when they principally accepted the valuation of impugned goods under Rule 7 of the Valuation Rules as contended by the Revenue and after the Hon'ble Tribunal's Order on the principal show cause notice. Further, it is a fact that the data required for ascertaining the valuation of goods in the case lies solely with the appellant and the Revenue does not have any access to it. The Revenue has worked out the duty liability based on the data that was made available to it by the appellant. Therefore, the appellant always could have worked out their duty liability in terms of Rule 7 ibid even though in a later stage after accepting the method of valuation under Rule 7 and presented it before the adjudicating authority, making their stand clear on the issue. But they failed to do so.

7.5 After going through the Annexures showing the calculation of central excise duty liability worked out in the case, prima facie, it appears that the method of calculation adopted by the Revenue for arriving at the differential excise duty payable by the appellant is not in accordance with the manner specified under Rule 7 ibid. It appears that the differential duty has been worked out straight away on the difference amount between depot and factory sale value of the impugned goods. In view of the settled legal position that the valuation of goods sold through the depots and consignment agents have to be in terms of Rule 7 of the Valuation Rules read with Section 4(1)(b) of the Act, it is

imperative to work out the duty liability accordingly especially when the demand was made on the said ground. Therefore, I am of the considered view that the case should go back to the original adjudicating authority for fresh calculation of demand of differential duty in terms of Rule 7 of the Valuation Rules as discussed above. The appellant is directed to produce before the adjudicating authority all the material information/data required for computation of value in terms of Rule 7 ibid for the assessment of duty payable on the goods cleared in the case along with necessary supporting documents like invoices issued from factory gate and from the depot/premises of consignment agent during the period under dispute in the case. They may also submit a work sheet showing the working of differential duty payable by them in the case as per their version along with any other material evidences they want to rely on to the adjudicating authority in support of their contention along with the above information/data within one month from the date of receipt of this order. The adjudicating authority, after due compliance of the principles of natural justice and proper appreciation of facts in the case and taking into consideration the facts discussed in this order, may recalculate the duty payable by the appellant in the case and pass a fresh well reasoned order accordingly.

7.6 The appellant has also raised a contention in their appeal that they have sold the goods at its factory gate against valuable consideration and the dealers are neither depots nor branches of the appellant and the sale was on principal to principal basis to such dealers who are not related to the appellant and price was the sole consideration for such sale transactions and therefore, their case falls under Section 4(1)(a) of the Act and value charged from these buyers (dealers) shall be transaction value and duty has been accordingly correctly paid by them. This contention of the appellant seems to have been made out of context and does not have any relevance to the facts of the case especially when it clearly stand established from the data/information supplied by the appellant themselves that there were sales of excisable goods removed from the factory from their depots across the country and the premises of consignment agents. Hence, the above contention of the appellant does not merit any discussion on the facts of the case and is rejected being devoid of any merits.

8. Further, it is made clear that interest under Section 11AA of the Act would be payable on the amount of duty payable by the appellant in the remand proceedings. The contention by the appellant that the provisions of Section 11AA is not applicable in the case as there being no intention to evade payment of duty in the case is devoid of any merits as the said Section does not contain any such restriction/condition and it clearly provides for payment of interest in addition to duty payable in all cases where the duty is not paid by the due date.

9. As regards penalty, it is observed that the penalty equivalent to duty imposed by the adjudicating authority in the case is not sustainable as the penalty in the case has been

proposed in the Notice under Section 11AC(1)(a) of the Act, according to which the maximum penalty imposable in the case is ten percent of the duty determined in the case. Needless to say the adjudicating authority has acted beyond the scope of SCN in imposing the penalty equivalent to duty payable in the case. Therefore, the penalty imposed vide the impugned order is set aside for being not legal and proper. However, it is made clear that penalty would be payable in the case if found to be payable during remand proceedings but in terms of 11AC(1)(a) of the Act as proposed in the Notice.

10. In view of the above discussions, the impugned order passed by the adjudicating authority is set aside and the appeal filed by the appellant is allowed by way of remand for deciding the case afresh by the adjudicating authority as per discussions and directions given hereinabove in this order.

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

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

30th August,20

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 30.08.2021

Attested

(Anilkumar P.)
Superintendent (Appeals)
CGST, Ahmedabad.

BY SPEED POST/ RPAD

To

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267, N.H.-08, Oran-Prantij,
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Copy to:-

1. 1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Assistant Commissioner, CGST & Central Excise, Himmatnagar Division, Gandhinagar Comm'rate.
4. The Asstt. Commissioner, System, CGST & Central Excise, Gandhinagar Comm'rate.
5. Guard File.
6. P.A. File.