



सत्यमेव जयते

::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7th मंजिल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटिकनिक के पास,
आम्बवाडी, अहमदाबाद : 380015



रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.): V2(85) 3/EA-2/Ahd-II/Appeals-II / 2015-16 / 3443 to 3447
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 070 -16-17
दिनांक (Date): 30.11.2016, जारी करने की तारीख (Date of issue): 06/12/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No. MP/07/Dem/AC/2016/PKS Dated: 17-05-2016
issued by: Assistant Commissioner.,Central Excise (Div-II), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Ambica 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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अंतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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:

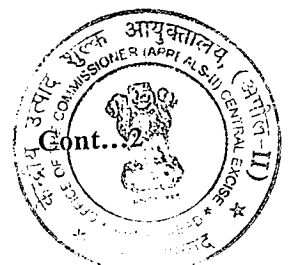
(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

G. file

Received
23/11/17
Supt. Secy



- (c) 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 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 हों।

- (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-बी/35-इ के अंतर्गत:-

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

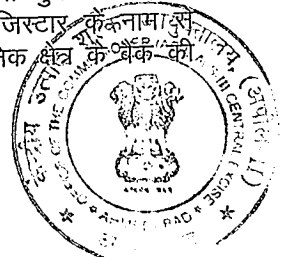
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

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

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नामावली के अनुसार रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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।

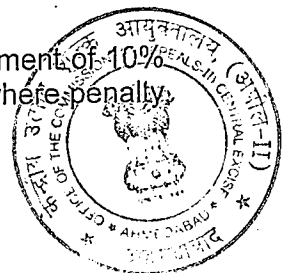
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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, where penalty alone is in dispute."



Order in appeal

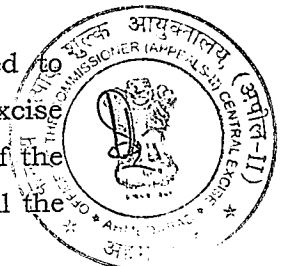
The subject appeal is filed by the department (hereinafter referred to as 'the appellant') Under Section 35(2) Of Central Excise Act,1944, against OIO No. MP/07/Dem/AC/2016/PKS [hereinafter referred to as 'the impugned order) passed by the Assistant Commissioner, Central Excise,Div-II, Ahmedabad-II, hereinafter referred to as 'the adjudicating authority') in the case of M/s. Ambica Industries, Survey no. 364, Ganpati Estate, Saraswati Ceramic Compound, Saijpur Bogha, Naroda Road, Ahmedabad.(hereinafter referred as 'the respondent') the respondent is engaged in manufacture of Electrical PVC cables and Wires falling under Chapter 85 of the Central Excise Tariff Act,1985 [hereinafter referred as CETA-1985].

2. Briefly stated the fact of the case is, on the basis of the intelligence that the respondent was involved in clandestine removal of finished goods and wrongly availing SSI benefit under Central Excise Notification No. 08/2003 CE dated 01.3.2003, the said unit was searched by the officers of Central Excise (Preventive), it was found that, finished goods for which no invoice were prepared and the same were not accounted for in their regular books of account. It was found that clearance value for the FY 2015-16 (up to 09.12.2015) had already crossed SSI exemption limit of Rs. 150 lacs. the PVC cables and Wires of various brands valued Rs. 19,79,344/- in ready to dispatch condition .Whereas during the statement of Shri Murli Tulsyani, proprietor of M/s. Ambica Industries recorded on 09.12.2015, he deposed that he was aware of the excise law and dealt with excise related matter; that he looked after all the affairs of the unit including Purchase, Production, sales and Administration; He admitted that they had cleared the finished goods on delivery challans without preparing any type of invoice so as to keep the total turnover below the SSI exemption limit to evade payment of Central Excise duty. He further agreed to pay the Central Excise duty leviable on the stock of finished goods .The said unit had contravened the provisions of Rules of the CER,2002. And committed by reasons of willful misstatement, suppression of facts with intent to evade the payment of Excise duty. The offence under Section 11 AC of the CEA, 1944 read with Section 25 of the CER, 2002. Therefore they were liable to penalty under Section 11 AC of the CEA, 1944 read with Rule 25 of the CER, 2002. . Whereas Shri Murli Tulyani, proprietor of the said unit has rendered him liable for personal penalty under Rule 26(1) of the CER, 2002.

Therefore SCN was issued .Said SCN was decided by dropping the proceeding initiated to confiscate the goods ,that the released goods were cleared on payment of appropriate duty at the time of clearance of the seized goods.

3. Being aggrieved with the said impugned order the appellant preferred the appeal on the following main grounds.

a. The adjudicating authority has erred in dropping the proceeding initiated to confiscate the seized goods under the provisions of Rule 25 of the Central Excise Rules, 2002 and imposing the penalty under the provisions of Section 11 AC of the CEA, 1944 read with Rule 25 of the CER, 2002 relying upon the conclusion of all the



proceedings under Section 11AC(1)(d) of the Central Excise Act, 1944 after payment of central excise duty of Rs. 1,02,141/- alongwith interest and penalty equal to 15 % of the duty on the clearance of goods valued at Rs. 8,17,128/- .

b) The said conclusion proceedings pertaining to illicitly removed excisable goods would not have any bearing on the case under consideration which pertains to the proposal of confiscation of the unaccounted excisable goods. The provisions related to confiscation of goods are governed under Rule 25 of the Central Excise Rules, 2002

c) The provisions of Sec. 11AC (1)(d) of the Central Excise Act, 1944 are not applicable to the matters pertaining to confiscation of excisable goods in as much as the proper governing provision for the same is Rule 25 of the Central Excise Rules, 2002. Therefore, the adjudicating authority has erred in applying the principles of conclusion of proceedings under Sec. 11AC (1)(d) of the Central Excise Act, 1944 to the facts of the case under consideration.

d. As on the date of search it was noticed that the aggregate value of clearance of excisable goods for home clearance had crossed the threshold limit of Rs. 1.5 crores it was obligatory on their part to obtain Central Excise registration and account for the finished goods in their Daily Stock Account in terms of the provisions of Rule 10 of the Central Excise Rules, 2002. However, the assessee has failed to obtain central excise registration as envisaged under Rule 9 of the Central Excise Rules, 2002 and also failed to account for the quantity of finished excisable goods, valued at Rs. 19,79,344/- in their Daily Stock Account. Under such circumstances the seized finished goods valued at Rs. 19,79,344/- are liable to confiscation in terms of the provisions of Rule 25 of the Central Excise Rules, 2002 The adjudicating authority has also erred in vacating the proposal for imposition of penalty under Rule 25 of the Central Excise Rules, 2002.

4. The respondent also filed cross objections on dated 30-9-16. The appeal has been preferred only on the ground arguing that the adjudicating authority has erred in dropping the proceeding initiated to confiscate the seized goods under the provisions of Rule 25 of the Central Excise Rules, 2002 relying upon the conclusion of all the proceedings under section 11AC(1)(d) of the Central Excise Act, 1944 after payment of Central Excise duty along with interest and penalty.

So far para-2(i) is concerned, the adjudicating authority in para 13 of Order In Original has found that, "in view of the letter of the preventive section issued from file No. MP/PII/Ambica Ind/2015-16 dated 13.04.2016, relating to waiver of SCN and conclusion of all proceedings has been approved after the payment of Central Excise duty along with interest and penalty equal to 15% of the duty under Section 11AC(1)(d) of Central Excise Act." In view of the above facts all the proceedings stand concluded by the adjudicating authority, under section 11AC(1)(d) of the Central Excise Act, 1944, so far that matter is concerned.

So far para-2(ii) relating to goods placed under seizure is concerned, the adjudicating authority in para 13 of the Order In Original has found that, "the finished goods found lying in the factory premises of the respondent were duly accounted for in their private records. The respondent has shown copies of their private records, showing



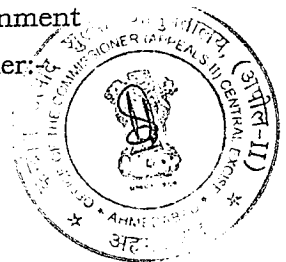
production details of goods lying as stock as on 09.12.2015, the Government has also liberalized the policy to rely on the private records of the assessee. As per para 1.1 of part-I of Chapter 6 of CBEC's Excise Manual of Supplementary Instructions, the statutory records under Central Excise Rules have been dispensed with and now it is the Government policy to rely on the private records of the assessee". The relevant para reads as under:-

"1.1 Records are to be maintained in the course of any business activity. These records arethe Government has continued with the policy of relying on the private records of the assessee."

In view of the above, the goods in question were not confiscated and any other penalty was not imposed by the adjudicating authority as the same was accounted for in private records and shall attract duty at the time of clearance, as per the relevant provision that prevail at the material time.

5. Personal hearing was held on 21-10-16. Shri J.T. VYAS Consultant, attended Personal hearing on behalf of the respondent. He has filed written submissions dated 30-9-16. I have gone through all records placed before me in the form of the impugned order and written submissions of department as well as submissions made by the respondent.

I find that the issue to be decided is impugned order is correct or not. I find that the assessee is a small unit under proprietorship. The goods manufactured by assessee is eligible for SSI exemption under notification no. 8/2003-CE dated 01.03.2003, for the first clearances up to 150 lacs. The assessee applied for registration on 21.12.2015. As per the letter of waiver of SCN issued by the Preventive Section, the duty evasion is found to be of Rs. 1,02,141/- against the allegation of nonpayment of duty after crossing the exemption limit of Rs. 150 lacs, during the financial year 2015-16, as on 09.12.2015. The assessee appears to have crossed the exemption limit by an amount of Rs. 8,17,128/-. It appears that the respondent crossed the threshold limit during the period of last 1 or 2 weeks, for which duty is to be paid by sth of the following month, i.e. by 05.01.2016, as provided under Rule 8 of Central Excise Rules, 2002. Therefore, as on 09.12.2015, it cannot be termed as duty evasion by the respondent, still had a time of about 25 days to pay the duty payable for the quarter ending December, 2015. No detection is reported to be made by the preventive section regarding any duty evasion during previous years. It appears that the respondent is not a habitual offender, however procedural lapse, not applying for excise registration, I hold that such contravention on part of the respondent cannot be termed as with intent to evade payment of duty as on 09.12.2015, specifically when the assessee had liberty to pay duty by 05.01.2016. Further, I find that, the Government has also liberalized the policy to rely on the private records of the assessee. As per para 1.1 of Part —I of Chapter 6 of CBEC's Excise Manual of Supplementary Instructions, the statutory records under Central excise Rules have been 'dispensed with and now it is the Government policy to rely on the private records of the assessee. The relevant para reads as under:-




"1.1 Records are to be maintained in the course of any business activity. These records are also used to determine the tax liability of the assessee. Earlier, for this purpose the Government has prescribed the records to be maintained, popularly referred to as Statutory Records'. The statutory records under Central excise Rules, 1944 were dispensed with in the year 2000 and it was decided to rely on private records of the assessee. This was done as a measure of simplification. While framing the Central Excise Rules, 2002(hereinafter referred to as the said Rules), Cenvat Credit Rules, 2004 and other Aides issued under Central Excise Act, 1944, the Government has continued the policy of relying on the private records of the assessee."

6. Also, The Preventive Section letter, issued from file no. MP/PI-I/Ambica Ind/2015- dated 13.04.2016, informing them, in pursuance of CBEC circular from F. no. 137/46/2015-ST dated 18.08.2015, that waiver of SCN and conclusion of all proceedings under Section 11 AC(1)(d) of Central Excise Act, 1944, against them, has been approved after the payment of central excise duty amounting to Rs. 1,02,141/-, on 11.03.2016, along with interest and penalty equal to 15% of the duty.

7. I find that, In this case of alleged unaccounted goods placed under seizure, the adjudicating authority after having verified the private records wherein such goods were duly accounted for, has accepted that the goods were accounted for and thus has rightly dropped the proposal of confiscation and consequent imposition of the penalty. I find that, the impugned order regarding waiver of SCN and conclusion of all proceedings has been approved after the payment of central excise duty along with interest and penalty, is legal.

8. In view of the foregoing discussion and findings, I reject the appeal filed by the department and uphold the impugned order.

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



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



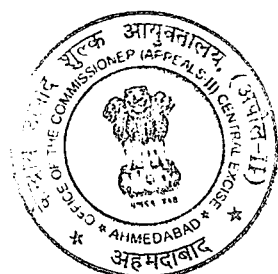
[K.K.Parmar)

Superintendent (Appeals-II)
Central excise, Ahmedabad

By Regd. Post A. D

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Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Division II, Ahmedabad-II
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.

