



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

शुल्क::

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



7<sup>th</sup> Floor, Central Excise  
Building,  
Near Polytechnic,  
Ambavadi,  
Ahmedabad:380015

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(39)57 /Ahd-II/Appeals-II/ 2015-16 / 4872 to 4876  
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 082-16-17

दिनांक (Date): 30.01.2017, जारी करने की तारीख (Date of issue): 02/02/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No . 04/ADC/2016/DSN Dated: 28/04/2016

issued by: Additional Commissioner Central Excise (Div-), Ahmedabad-II

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

**M/s Parikh Packaging Pvt. Ltd.**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है ।

Any person 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 अतत 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 ।

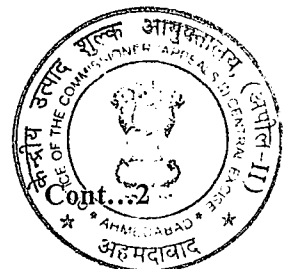
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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

(D) 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 ।

*A. P. I.*



- (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 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।

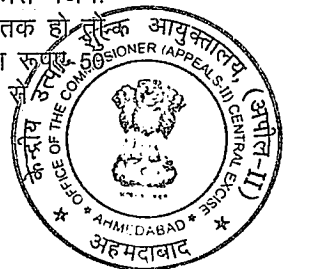
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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-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 मैन्टल 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 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 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 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 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।

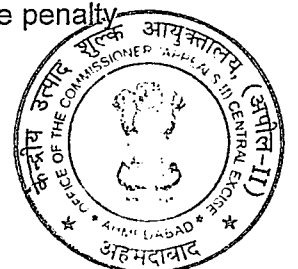
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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, or penalty, where penalty alone is in dispute."

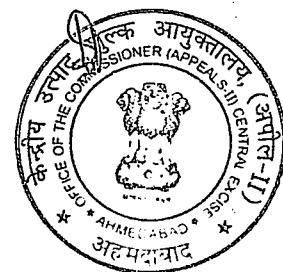


## ORDER IN APPEAL

The subject appeal is filed by M/s. Parikh Packaging Pvt. Ltd., Survey No. 423/P, Opp. Rotomac Pens, Sarkhej-Bavla Highway, VILL- Moraiya, Tal-. Sanand, Dist. Ahmedabad (Hereinafter Referred To As 'The Appellant') Against the Order in Original No.04/ADC/2016/DSN (hereinafter referred to as 'the impugned order') passed by the Addl. Commissioner, Central Excise,, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of "printed/unprinted Laminated Rolls/Pouches, Paper Aluminum Foils" falling under Tariff Heading No. 39 of the Central Excise Tariff Act 1985. They are availing benefit of CENVAT Credit as per the provisions of CENVAT Credit Rules, 2004.

2. Brief facts of the case is that the appellant uses printing cylinders for the manufacture of Printed Laminated Rolls and Printed Laminated Pouches. In some cases, the buyers of the final product do supply the printing cylinders free of cost for printing the final products required by them. The cost of such cylinders being newly engraved cylinders or being received after re-engraving of old and used cylinders & received free of cost from the buyers were not considered as a factor by the appellant while determining the price of his final products. Whereas, Section 4(1) of the Central Excise Act, 1944 defines the value of excisable goods for the purpose of charging of duty of excise.in terms of Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000, the cost of said cylinders was additional consideration towards the value of the goods and therefore, required to be a part of assessable value. that since the cost of cylinders received from the customers free of cost was not being considered by the appellant to the value of the goods, while working out for payment of duty, to arrive at the amortized value of the products during the audit period, the entire apportioned value of the cylinders comes to Rs.16,58362/-. the appellant had accepted the method adopted for costing. The appellant had short paid duty Rs.5,90,796/-for the period from January 2011 to April 2014, to be recovered under the provisions of Section 11A(5) of Central excise Act,1944 with interest. They had willfully not included the value of the cylinders supplied free of cost by the buyers in the assessable value with an intention to evade payment of duty, and not disclosed this facts to the department ,thereby suppressed the facts willfully. Therefore, short paid duty was recoverable by applying the extended period under Central Excise Act 1944 and penalty under Rule 25 of the CER 2002. Show Cause Notice was issued decided vide above OIO and confirmed the demand.

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

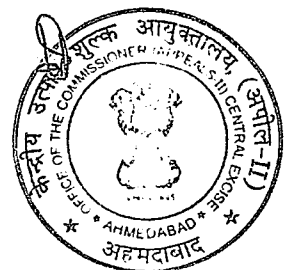


That they have discharged the duty liability of Rs. 5,90,796/- by making a debit entry in their Cenvat Credit account, Entry No. 4118 dated 25.01.2016 and submitted copy of Cenvat Credit account .that no duty is required to be paid on the job work activity. They relied on the decision of M/s.International Auto Ltd. reported in 2016 TIOL 1364 CESTAT -MUM.

That recovery of interest and imposition of penalty is not justified, as there was no malafide intention on their part. that penalty imposed is not sustainable, as there is no loss to the revenue. That suppression of facts are not proved, hence extended period is not invocable. That penalty is imposable under Rule 27 of CER 2002 and not under Rule 25 of CER2002 .

4. Personal hearing was fixed on 20-12-16, which was attended by Shri P.P.Jadeja, and V.B.Karnik on behalf of the appellants. He reiterated the grounds of appeal and requested to allow the appeal. I have carefully gone through all case records placed before me in the form of Show Cause Notice, the impugned order and written submissions made by appellant. The issue to decide is whether the cost of cylinders (being newly engraved cylinders or being received after re-engraving of old and used cylinders & received free of cost) is to be considered as a factor while determining the price of the final product or otherwise . I find that in the Show Cause Notice it has been proposed to recover duty of Excise amounting to Rs. 5,90,796/- from the appellant under Section 11A(5) of the Central Excise Act,1944. The appellant have submitted that they have discharged the duty liability by making a debit entry in their Cenvat Credit account, and submitted copy of Cenvat Credit account. I have gone through the copy of Cenvat Credit account, and find that an entry has been made and shown towards "Being duty debited for the cost of Cylinders Reed free of cost from Buyers not included in value of goods (period Jan-2011 to April-2014 against Ref: SCN No. V.39/15-65/0A/2014 dated 17.03.2015." As such, I find that since the amount of duty proposed in the Show Cause Notice has been paid the same needs to be appropriated towards demand of the same amount of duty.

5. I find that, the issue of dispute is recovery of interest and imposition of penalty under the Central Excise Act,1944 and under relevant rules of CER2002.The section11AA deals with interest on delayed payment of duty and envisages that the person, who is liable to pay duty, shall, in addition to the duty be liable to pay interest at the rate Specified in sub-section (2), whether such payment is made voluntarily or after determination of the duty. There is no doubt about delayed payment of duty and the same was paid only after issuance of Show Cause Notice where the amount of duty was determined and quantified. The appellant has at no point of time contested the amount of duty payable as determined in Show Cause Notice and has paid the



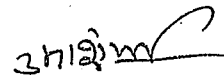
duty. As such the appellant is in agreement with the proposal made in the Show Cause Notice about the recovery of duty short paid. Therefore, I hold that the appellant is liable to pay interest on the duty amount under Section 11AA of Central Excise Act, 1944.

6. As regards imposition of penalty, I find that the appellant has submitted that in this case penalty is imposable under Rule 27 of Central Excise Rules, 2002 and not under Rule 25 of Central Excise Rules, 2002. I find that for the purpose and according to the facts and circumstances of the present case, penalty under the provisions of Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 is very much applicable as there is no doubt the there is contravention of the provisions of Section 4 of the Central Excise Act, 1944 and Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Also the said appellant has contravened the provision of Rule 6 of Central Excise Rules, 2002, and such contravention was nothing else but for an intent to evade duty liable to be paid by them as they were under obligation to assess correct duty payable by them. I rely on the decision of The Hon'ble high Court of Allahabad has made following observations in the case of *VEE EXCEL DRUGS & PHARMACEUTICALS PVT. LTD. Versus Union of India* reported in 2014(01)LCX0144. I find that, the appellant was to himself assess the correct duty payable and he failed in doing so. Therefore, I hold that the penalty imposed is correct and legal.

7. In view of the foregoing discussion and findings, I uphold the Order-in original and disallow the appeal filed by the appellant.

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

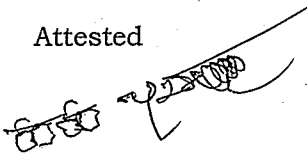
9. The appeal filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K.Parmar )

Superintendent (Appeals-II)

Central excise, Ahmedabad.

By Regd. Post A. D

M/s. Parikh Packaging Pvt. Ltd.,

Survey No. 423/P, Opp. Rotomac Pens,

Sarkhej-Bavla Highway,

VILL- Moraiya, Tal-. Sanand,

Dist. Ahmedabad.



Copy to:

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

