



सत्यमेव जयते

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

शुल्क::

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



7th Floor, Central Excise-
Building,
Near Polytechnic,
Ambavadi,
Ahmedabad:380015

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(39)98 /Ahd-II/Appeals-II/ 2015-16
V2(39)21/EA-2 /Ahd-II/Appeals-II/ 2015-16

/ 2340 to 2347

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-06-07-17-18

दिनांक (Date): 29.05.2017, जारी करने की तारीख (Date of issue): 05/06/17

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. 27-29/ADC/2015/MKR Dated: 1-12-2015

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

(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।

C. P. S.



- (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 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 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 वहाँ 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 वहाँ 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(Appel) 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 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।

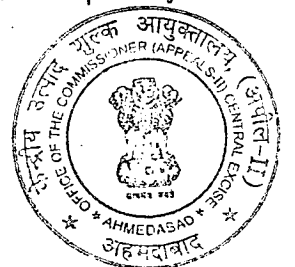
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

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. 27to29/ADC/2015/MKR (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 Laminated Rolls/Pouches, falling under Heading No. 39 of the Central Excise Tariff Act,1985. They are availing benefit of CENVAT Credit under CENVAT Credit Rules, 2004.

An appeal is also filed by the Department under Section 35(2) Of Central Excise Act1944, against said OIO's with regard to less penalty imposed.

2. Brief facts of the case is that, that Appellant had wrongly availed and utilized Cenvat credit Rs. 48,21,994/- of the Service Tax paid by the job-worker, During the period 01-01-2010 to 31-01-2015. Three Show Cause Notices were issued for recovery of CENVAT Credit with interest and penalty. All the Show Cause Notice adjudicated vide said orders and confirmed the demand.

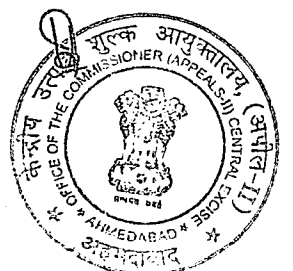
3. Being aggrieved with the said O-I-O's the appellant has preferred this appeal on the followings grounds;

that Appellant have followed Rule 3(1) & Rule 9 of the Cenvat Credit Rules 2004, have received the goods with valid service tax Invoice, proof of receipt of goods in factory ,taken and utilized cenvat credit on basis of invoices/documents issued in their name by the job-worker in accordance with Rule 9 of Cenvat Credit Rules. Hence, credit taken is in order. To deny the credit on minor procedural lapse is against the principles of law and not sustainable.

That the Job-worker has the option either to avail the exemption following its conditions Revenue cannot force job-worker to avail exemption. They relied on decisions as under :- 2015 (40) S.T.R. 499 (Tn. - Del.) - Unitech Machines Ltd. Ins CCE 2. 2015 (39) S.T.R. 30 (Tn. - Del.) - Balkrishna Industries Ltd. 3. 2010 (253) E.L.T. 804 (Tn. - Mumbai) - Multi Organics Pvt. Ltd.

When duty is not demandable, the question of interest does not arise. Appellant has not acted dishonestly, not committed breach of any rules, No malafides on the part of the Appellant. There is no case for imposing penalty.

There is no justification in issuing a show cause notice invoking extended period of limitation. All the facts were well within the knowledge of the Department; They Relied on the decisions; 1. Lovely Food Industries V/s CCE, Cochin - 2006 (195) ELT 90, Jetex Carburetors Pvt. Ltd. V/s CCE, Vadodara - 2007. it would not be a case of suppression of facts as held by the Hon'ble Supreme Court in the cases of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) ELT 195 (SC) and



1989 (40) ELT 276 (SC) respectively.

The depts. Also filed APPEAL submissions in respect of penalty as under:

The adjudicating authority has confirmed the demand of Rs. 30,38,972/- and Rs. 1,07,395/- and has imposed penalty of Rs. 15,19,486/-, and Rs. 53,698/- i.e. fifty percent of the duty so determined .

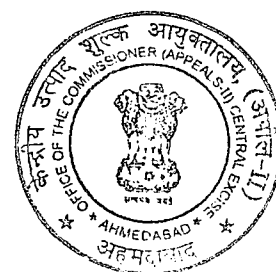
The adjudicating authority has wrongly imposed penalty @ fifty percent of the demand pertaining to the period prior of 8.4.2011. It has been noticed that out of the confirmed demand of Rs. 30,38,972/-, an amount of Rs. 4,86,295/- and the entire demand of Rs. 1,07,395/- pertains to the period prior to 8.4.2011.

Since the ingredients of suppression of facts are available and not disputed in the instant case and demand is pertaining to the period prior to 8.4.2011, As per legal provisions, equal amount of penalty of the duty is required to be imposed if the demand pertains to the period prior to 8.4.2011. The Honble Supreme Court in the case of UOI v/s Dharmendra Textile Processors **2008-TIOL192-SC-CX-LB** and in the case of UOI v/s Rajasthan Spinning 86 Weaving Mills **2009 (238) E.L.T. 3 (S.C.)** has held that 'the penalty imposed under Section 11AC of the Central Excise Act, 1944 is mandatory and the authorities, tribunal or Court do not have any discretion to reduce the penalty.'

4. Personal hearing was held on 20.12.2016 Shri P.P. Jadeja, Consultant appeared on behalf of the appellant and reiterated GOA submitted earlier. 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 in GOA as well as submissions made during the personal hearing. I find that the issue to decide is whether the appellant is eligible for Credit of service tax paid by the job-worker.

5. I find that the appellant send cylinders to Job-worker for re-engraving and job worker after carrying out the process of engraving returns back to the appellant on payment of service tax. The appellant availed Cenvat credit of the Service Tax paid by the job-worker. I find that, the activity of job work is exempted from payment of service tax in case final product of the principal manufacture attracts the central excise duty in terms of Notification No. 08/2005-ST dtd. 1.03.2015. In this case, the job worker is not liable for payment of service tax in terms of Not. No.08/2005 -ST dtd. 01.03.2005, therefore, I find that, Appellant is not eligible for the credit of service tax paid by the job-worker.

6. I find that, in spite of exemption, job worker has paid Service Tax. Hence, so called payment of Service Tax cannot be termed as "duty". I find that as per CBEC Circular No. 940/1/2011/CX dated 14-1-2011 it is Clarified that, *3. The amount so paid by the assessee on exempted goods and collected from byers.....needs to be recovered in terms of the rule 14 of the cenvat credit rules, 2004.* Therefore, the appellant has incorrectly availed cenvat credit of service tax.

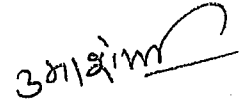


7. I also find that the appellant have suppressed material facts from the department. The appellant submission that all the facts were known to the department is not correct. Therefore extended period of five years is correctly invoked in the present case. I, therefore, hold that the appellant is liable to penalty. The appellant is also liable to pay interest. I also find that, as per legal provisions, equal amount of penalty of the duty is required to be imposed if the demand pertains to the period prior to 8.4.2011. I rely on the decision of the Honble Supreme Court in the case of UOI v/s Dharmendra Textile Processors 2008-TIOL192-SC-CX-LB and in the case of UOI v/s Rajasthan Spinning 86 Weaving Mills 2009 (238) E.L.T. 3 (S.C.) therefore, I hold that, the Appeal filed by the Department, with regard to the penalty is legal and sustainable.

8. In view of the foregoing discussion and findings, I uphold the Order-in originals to that extent and disallow the appeals filed by the party.

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

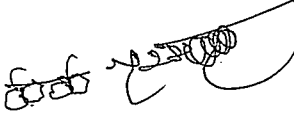
9. The appeal filed by the appellant stand disposed off in above terms.



(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.

