केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन, सातवीं मंज़िल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

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

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रजिस्टर डाक ए .डी .द्वारा

432 to 486

क फाइल संख्या (File No.) : V2(84)28 to 30/Ahd-II/Appeals-II/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 243 to 245 -17-18**

दिनांक (Date): **29/12/2017** जारी करने की तारीख (Date of issue): 23/1/2018

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

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No . **01/ADC/2017/RMG Dated: 20/04/2017**

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 SKF India Limited
M/s Vijendra Patwari
M/s Chandramowli Srinivasan

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 पूवोक्त 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 |

Cont...2

(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 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।

(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 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 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 हास्पिटल कम्पाउण्ड, मेघाणी 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 न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर 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. 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 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 in 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 अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व ज़मा 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

S.No	Appeal No	Name of appellant	Amount involved (Rs)
(1)	(2)	(3)	(4)
1	28/Ahd-II/Appeal-II/17-18	M/s SKF India Ltd, Ahmedabad	95,56,582/- Duty 58,70,691/- Penalty
2	29/Ahd-II/Appeal-II/17-18	Shri Vrijendra Patwari, G M (Taxation), M/s SKF India Ltd	3,00,000/- Penalty
3	30/Ahd-II/Appeal-II/17-18	Shri Chandramowli Srinisasan, Director (Finance), SKF India Ltd	3,00,000/- Penalty

Above mentioned 03 appeals have been filed against Order-in-Original No.01/ADC/2017/RMG dated 20.04.2017 [*for short-impugned order*] passed by the Additional Commissioner of Central Excise, Ahmedabad-II [*for short- the adjudicating authority*].

2. The relevant facts of the case, in brief, are that M/s SKF India Ltd, Mumbai (SKF) are holding Central Excise Registration as dealer/importer and have their manufacturing units at Pune, Bangalore & Haridwar for manufacturing of 'Bearings' falling under chapter 8482 of Central Excise Tariff Act, 1985; that they are also engaged in importation of 'bearings' at its Direct Customer Delivery (DCD) Hubs located at various places including Ahmedabad. After import, the products i.e 'Bearings" are labeled with stickers containing MRP and other details at the premises of DCD Ahmedabad situated at Sarkhej Bavla Road, Sanand, Changodhar, Ahmedabad) [*for short- the appellant-1*] who is also registered as dealer /importer with the department. Information received by the Directorate General of Central Excise Intelligence unit, Mumbai (DGCEI) that the DCD Hubs located at various places including the appellant are clearing the imported goods viz 'Bearings' without proper payment of duty. Accordingly, investigation was initiated against M/s SKF and its DCD Hubs. Investigation against the appellant-1 revealed that after import, the 'Bearings" were labeled with stickers containing MRP and other details, they cleared the goods without following proper procedure under Central Excise Act, 1944 (CEA)/Central Excise Rules, 2002 (CER) though the activities are amounting to manufacture as per Section 2(f) (iii) of CEA. As it appeared that the appellant-1 [i] did not taken Central Excise registration under CER though the activities carried out by them are amount to manufacture and did not pay Central Excise duty on clearance of such manufactured goods, a show cause notice dated 06.09.2016 for the period of January 2013 to September 2015 was issued to them for recovery of duty amounting to Rs.95,56,582/- with interest and imposition of penalty under Section 11 AC of CEA and under Rule 25 of CER. The show cause notice also proposes for imposition of penalty to Shri Vrijendra Patwari, G M (Taxation) of appellant-1 [*hereinafter referred to as "the appellant-2"*] and Shri Chandramowli Srinivasan, Director (Finance) of the appellant-1 [*hereinafter referred to as "the appellant-3*] under Rule 26 of CER.

2.1 Vide the impugned order, the adjudicating authority has confirmed the duty amount of Rs.95,56,582/-with interest and imposed applicable penalty for the

disputed period amounting to Rs.58,70,691/- under Section 11 AC and dropped the penalty under Rule 25 of CER, against appellant-1. The adjudicating authority has also imposed penalty of Rs.3,00,000/- each on appellant-2 and appellant-3.

3. Being aggrieved, the appellant-1 has filec the appeal mentioned at Sr.No.1 of above table on the following grounds:

- The demand is highly exaggerated by the authority; that the value of goods mentioned in the impugned notice (para 11.1 to 114) includes value of goods imported from Singapore and sold in India; that since the label was affixed only 1% approximately of the 'Bearings' imported and the said value includes all goods imported both from Singapore and Europe, having MRP pre-printed at the time of importation, the demand is require to be set aside.
- The demand is raised on sale 'bearings' amounting to Rs.49.96 crore in respect of bearings sold to off highway vehicles like forklifts etc and as per impugned notice the amount of bearings sold from various DCB hubs which is not correct as per their records.
- It is alleged in the impugned notice that the goods imported falls under Sr.No.100 (parts, component and assemblies of automobiles, including chasis fitted with engines falling under chapter 87 excluding vehicles falling under heading 8712, 8713, 8715 and 8716) and 100A (Parts, components and assemblies of goods falling under tariff item 82264100, heading 8727, 8429 and sub heading 843010) of Third Schedule to the Central Excise Act; that the description of entries have been amended from time to time and prior to 27.02.2010, the entry No.100 did not cover such parts and components. Thus, for the bearings to fall under the Sr.No.100 or 100A, it must be a part, component, or assemblies of either the vehicle falling under chapter 87 or goods under chapter 8426, 8427, 8429 or 8430.
- The products which are generic in nature are not parts of vehicle. They relied on various decisions in support of their argument.
- No packing activity is carried out at depot as alleged in the impugned show cause notice; that affixing of MRP label does not amount to manufacture as contended by the department; that affixation of label renders the product marketable. Thus, the activity of labeling or relabeling covers under in clause (b) of clause (iii) of 2(f).
- The imported beings are primarily used for Industrial application, hence the valuation for the same is done on the basis of transaction value and CVD paid under Section 4 of CEA; that they submitted various letters of industrial distributors, specifying that bearings were cleared for industrial purpose.
- They were under a bonafide belief that the process of activity of affixing MRP stickers on bearings imported would not amount to manufacture under Section 2(f)(iii) of CEA, hence extended period and penalty not imposable as it is an established law vide various court decisions. Further, penalty also not imposable as the issue relates interpretation of the statute. They relied on various case laws.

The appellant-2 and Appellant-3 filed the appeal mentioned at Sr.No.2 and 3 above table on the grounds that:

- They have acted only in their capacity as GM and Director of the company and they will not get any benefit from any wrong done by company which benefits the company. They relied on decision in case of M/s Shilpa Printing Press-2013 (297) ELT 417-Tri.Mum.

- No penalty is imposable under Rule 26 of CER and they had reason to believe that goods are liable to confiscation; that the issue relates to interpretation of Section 2(f) and therefore no reason to believe that there was reason to know that goods are liable for confiscation. They relied on case laws in support of the argument.

4. Personal hearings in all the three appeals were held on 30.11.2017. Shri Archit Agarwal, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He further explained that Sr.No.100 of schedule 3 of CEA is specific to motor vehicles while their products are generic in nature. He also pleaded for waiver of penalty on appellant-1, appellant-2 and appellant-3.

5. I have carefully gone through the facts of the case, submissions made in the appeal memorandum as well as submissions made during the course of personal hearing. The issue to be decided in the matter is whether the activity of printing and affixing of MRP label on the individual packets of imported 'Bearings" amount to manufacture under Section 2(f)(iii) of CEA; duty demanded thereof with interest and penalty imposed is correct or otherwise.

6. Section 2(f)(iii) of CEA stipulates that:

> *(f) "manufacture" includes any process, -*
> *(i) incidental or ancillary to the completion of a manufactured product;*
> *(ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or*
> *(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.*

From the above definition, it is clear that the activity of labeling, declaration or alteration of retail price on the products or adoption of any other treatment to make the product marketable to the consumer amounts to manufacture.

7. The adjudicating authority has held that after importation of goods, the appellant-1 is engaged in process of printing and affixing MRP labels on the imported goods viz. "Bearings"; that the "Bearings" were intended to be used as parts, components and assemblies of vehicles falling under chapter 87 of CET and the parts, components and assemblies of goods falling under tariff items 84264100, heading 8427, 8429 and sub heading 843010 cleared to Industrial Distributors. Thus affixing MRP labels on the individual packets amounts to manufacture as per the third schedule to CEA vide entry No.100 and 100A which attract central excise duty under Section 4A of CEA. On other hand, the appellant argued that affixing of MRP label does not amount to manufacture as contended by the department but affixation of label renders the product marketable. Thus, the activity of labeling or relabeling covers under in clause (b) of clause (iii) of 2(f). They further contended

that even if the department's contention is correct, the demand is exaggerated as in their case only in very few cases (1% of the products), they affixed MRP label and accordingly demand containing entire imports from Singapore is required to be reduced.

8. At the outset, I observe that as regards the process of printing and affixing MRP labels on the imported goods viz. "Bearings" is amounts to manufacture or otherwise, the appellant has no case as the definition under Section 2(f)(iii) of CEA clearly stipulates the "manufacture" includes the process *in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.* Further their argument has also no merit in view of Hon'ble Tribunal in the case of Larsen and Toubro Ltd. v. CCE reported in 2015-TIOL-2561-CESTAT-MUM; in case of M/s Komatsu India Pvt Ltd [2017 (345) ELT 256-Tri. Mum]; and in case of M/s Honda Motors Pvt Ltd [2015 (318) ELT163-Tri Chennai].

9. In Larsen and Toubro case supra, the Hon' Tribunal has stated that *"M/s Larsen and Toubro are dealing in parts, components and assemblies of certain earth moving vehicles, namely, scania trucks, dumpers, motor graders, wheel loaders, dozers and hydraulic excavators; that these parts, components and assemblies are either imported by them or procured from a local associate of a foreign company, namely, Komatsu; and procured locally from the manufacturing facilities in Pune/Bangalore. Parts, components and assemblies of automobiles are covered in the Third Schedule to the Central Excise Act which is required to be read with Section 2(f)(iii) of the same Act. Further, parts, components and assemblies are also specified by notification for purpose of valuation under Section 4A and these items are liable for central excise duty as per Section 2(f)(iii) of the Central Excise Act, 1944 after considering the entire gamut of the arguments made by the learned counsel before them."*

9.1 By relying the said decision, the Hon. Tribunal, Mumbai in case of *M/s Komatsu India Pvt Ltd* supra held that *"Parts of dumpers and other machineries imported, packed/repacked in unit containers and affixed with MRP - Dumpers being 'automobiles', packing/repacking and affixing of MRP amounts to 'deemed manufacture' in terms of Section 2(f)(iii) of Central Excise Act, 1944".*

9.2 In case of *M/s Honda Motors Pvt Ltd supra*, the Hon'ble Tribunal-Chennai has held that " *On perusal of the impugned adjudication order, we find that after receiving the imported goods in the warehouse, the applicant undertook the activity of inspection, quality check and repacked it. While repacking, the applicant affixed sticker "Marketed by" and also affixed the tape having the markings of HONDA. Similarly, when the goods were imported in any of the warehouse situated at Mumbai, Kolkata, Greater Noida and Bhiwadi, and in that case "Imported and Packed by" sticker was affixed by respective warehouse and the goods were transferred on stock transfer basis to Chennai from where it was marketed by affixing sticker/labelling. On plain reading of clause (iii) of Section 2(f) of the said Act, it is clear that*

"manufacture" would include packing/repacking of such goods in unit container or labelling/re-labelling of containers including the declaration or alteration of retail sale price on it for rendering the product marketable to the consumer. With effect from 1-3-2003, the definition of 'manufacture' under Section 2(f) has wide amplification. Note 5 of Chapter 30 insofar as prior to amendment on 1-3-2003, it would be "repacking from bulk packs to retail packs". But after the amendment, it includes "packing or repacking of such goods in a unit container". In other words, it includes any repacking in unit container."

10. The other argument of the appellant-1 is that the demand in dispute is exaggerated by the adjudicating authority in their case only in very few cases (1% of the products), they affixed MRP label and accordingly demand containing entire imports from Singapore is required to be reduced. The adjudicating authority has contended that the appellant has not submitted any documentary evidences to support their argument. The appellant-1 has also not furnished any such evidences before the appellate authority. In the circumstances, I do not find merit in the arguments of the appellant-1 and considered facts derived by the adjudicating authority.

11. In view of above, I observe that the adjudicating authority has correctly hold the process of printing & affixing of MRP labels as manufacturing activity under Section 2(f) (iii) of CEA and also correctly confirmed the quantum of duty amounting to Rs.95,65,582/- for the disputed period in respect of Central Excise duty not paid in connection the activities carried out by the appellant-1 on imported goods at its premises. Therefore, I uphold the demand with interest.

12. As regards invocation of extended period and imposition of penalty against appellant-1, they argued that since it is under their bonafide belief that the process of activity of affixing MRP stickers on bearings imported would not amount to manufacture under Section 2(f)(iii) of CEA. This argument is also not acceptable in view of facts of the case and decision held by the Hon.Tribunal in case of Komatsu India Ltd supra which states that *"After considering all the arguments, the Tribunal in Paragraphs 27 and 28 did not agree with the contentions raised, and confirmed the demands along with interest. The Tribunal also did not agree with the appellant's arguments that extended period cannot be invoked. The same arguments were put forth in this case also. We find that the appellant being in the organized sector, should have known the law and should have considered the implications of that before hand. In view of this, we hold that the invocation of extended period is correct."* In the instant case, I observe that the adjudicating authority has extensively discussed the grounds for invoking extended period in the impugned order vide para 31. Looking into the apt of the case and applying the ratio of above decision, I observe that the adjudicating authority has rightly invoked the extended period and penalty imposed under the provisions of Section 11 AC of CEA do not require any interference.

13. Now, I take issue regarding penalty imposed on appellant-2 and appellant-3. I observe that the adjudicating authority has imposed penalty of Rs.3,00,000/- each on them. Both the appellants have argued that they acted only in their capacity as General Manager and Director of the company respectively and they will not get any benefit from any wrong done by company which benefits the company. The adjudicating authority has contended that both the appellant should have knowledge of the legal position and guide the company, but failed to do so reveals that they aided and abetted the appellant-1 in contravened the provisions of CEA/CER. I observe that the appellant-2 and appellant-3 had played prominent role in the activities viz. process of printing & affixing of MRP labels of imported goods. In the circumstances, they were fully cognizant of and aware of the fact that such activity would amount to manufacture under Section 2(f) (iii) of the Act. From the facts of the case and records, I find that they were concerned with all activities relating to the process of printing & affixing of MRP labels of imported goods in the premises of appellant-1 to render the product marketable and its financial activities. Therefore, as far as the penalty on appellant-2 and appellant-3 is concerned, they cannot absolve themself from the penalty and I find that that the quantum of penalty imposed on them by the adjudicating authority is correct and no interference required.

14. In view of above discussion, I reject the all the three appeals filed by the appellant-1, appellant-2 and appellant-3 mentioned in the table at para 1 above. All the three appeals are disposed of accordingly.

(उमा शंकर)
आयुक्त (अपील्स - I)
Date: /12/2017

Attested

(Mohanan V.V)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

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Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, CGST, North.
3. The Deputy/Assistant Commissioner, CGST, Div. IV, North
4. The Assistant Commissioner, System-CGST North
5. Guard File.
6. P.A. File.

केन्द्रीय उत्पाद एवं सेवाकर (अपील-उत्तर) आयुक्तालय
OFFICE OF THE COMMISSIONER CENTRAL GST(APPEALS) NORTH AHMEDABAD