

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX	केंद्रीय उत्पाद शुल्क भवन,	7 <sup>th</sup> Floor, Central Excise Building,
सत्यमेव जयते	सातवीं मंजिल, पॉलिटेक्निक के पास,	Near Polytechnic,
	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
 079-26305065		टेलिफैक्स : 079-26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : V2(39)39 /North/Appeals/ 2017-18 160070  
1604  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 329-17-18  
 दिनांक (Date): 26-Feb-2018 जारी करने की तारीख (Date of issue): 17/3/2018  
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित  
 Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी  
 मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No 04/AC/D/BJM/2017 Dated: 11/08/2017  
 issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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

**M/s Shri Ghantakarna Enterprise**

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) 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 हास्पिटल 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(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 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।

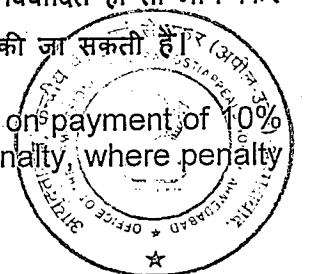
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

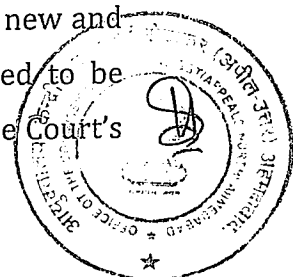
M/s Shri Ghantakarna Enterprise, Plot No.12 & 13, Sanand Land & Development Estate, Ularia, Sanand, Ahmedabad (henceforth, "*appellant*") has filed the present appeal against the Order-in-original No.04/AC/D/BJM/2017 dated 11.08.2017 (henceforth, "*impugned order*") passed by the Assistant Commissioner, Central Tax Division-III, Ahmedabad - North (henceforth, "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant, a central excise registrant, was availing exemption for Printed Jute Bags and Printed Non-woven PP Bags (henceforth, "*said goods*") as provided under Notification No.30/2004-CE, as amended. During a preventive raid on 10.11.2014, it was found that the appellant was affixing brand names of their customers on the said goods and hence, benefit of Notification No.30/2004-CE, as amended vide Notification No.12/2011-CE and further amended vide Notification No.30/2011-CE was not available to the appellant. Further, it appeared that the value based exemption Notification No.8/2003-CE was also not applicable to the branded goods unless manufactured in a factory located in rural area. Thus, appellant appeared ineligible to avail the benefits available in terms of said notifications and appeared liable to pay the central excise duty of Rs.40,08,722/- for the years 2011-12 and 2012-13. A show cause notice was therefore issued to the appellant on 30.03.2016 for recovery of duty not paid, and in adjudication thereof, adjudicating authority confirmed the duty demand alongwith interest and imposed a penalty of Rs.20,04,361/- under section 11AC(1)(c) and also a personal penalty of Rs.6,00,000/- on Shri Ashokbhai Trivedi, Chief Finance Manager. The appellant, feeling aggrieved with the impugned order, has preferred this appeal.

3. The grounds of appeal, in very brief, are as follows-

3.1 Appellant states that though the goods were marked with the brand name/logo of the customers, such branded goods were supplied to customers and not traded in open market; that therefore, the use of brand name was not in the course of trade and hence benefit of notification cannot be denied. Appellant relies on Larger Bench's decision in the case of **Prakash Industries v. CCE, Bhubneshwar** [2000(119) ELT 30(Tribunal.-LB)]

3.2 Appellant submits that they purchased the bags from open market from various suppliers and did the work of printing only; that only printing details of customers on the packing material does not amount to manufacture as no new and distinct product comes into existence; that therefore, it was not required to be declared in the ER-3 returns also. Appellant has placed reliance on Supreme Court's



decision in the case of CCE, Chennai-II v. **Tarpaulin International** [2010(256) ELT 0481 (SC)].

3.3 With regard to purchase of engraving cylinders said to be used in printing, appellant states that cylinders were used for printing of PP woven Bags which they cleared on payment of duty; that technically, Non-woven Bags or Jute Bags can be printed by Flexo or Offset printing methods only.

3.4 Appellants states that if the bags contain details of customers and bear marks/ brand name but it is in the nature of packing material then it will not attract brand name clause and would be entitled for exemption in terms of paragraph 4(e) of Notification No.8/2003-CE; that revenue has never disputed the nature of goods as packing material.

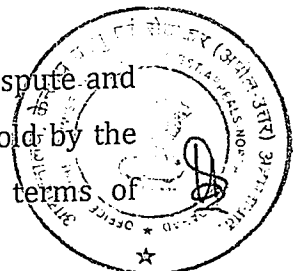
4. In the personal hearing held on 08.02.2018, Shri Kaushikkumar Bharadia represented the appellant and reiterated the grounds of appeal.

5. After going through appeal carefully I find that the central excise duty liability on the Jute bags and non-woven PP Bags printed with buyer's brand name is the issue to be decided. Considering that the said goods, falling under chapter head 6305 of the Central Excise Tariff Act, 1985, are bearing brand names of the buyers, the dispute is on applicability of benefit available under Notification No.30/2004-CE and also under Notification No.8/2003-CE. The adjudicating authority has denied the exemption provided in terms of Sl.No.16 of the Notification No.30/2004-CE, as amended, and also the value based exemption available under Notification No.8/2003-CE on the ground that said goods are sold under brand name. Appellant disagrees with the interpretation of adjudicating authority on different grounds. The dispute covers the period of two years, i.e., 2011-12 and 2012-13.

5.1 With regard to Notification No.8/2003-CE, I find that where the goods specified in the Notification are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand they bear, the exemption is available in terms of Paragraph 4(e) of the Notification as can be seen from the text of said paragraph extracted here-in-below-

(e) where the specified goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear.

5.1.1 Since aforesaid clause (e) was in force during the period under dispute and considering that department has not disputed the fact that said goods sold by the appellant are in the nature of packing material, benefit granted in terms of

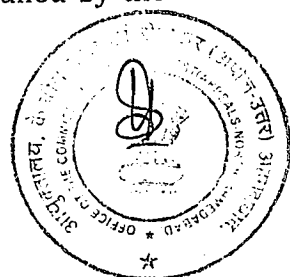


paragraph 4(e) of Notification No.8/2003-CE is not deniable to the appellant. Therefore, denial of exemption provided in Notification No.8/2003-ST on the ground that goods were sold under brand name is not justified.

5.2 With regard to Notification No.30/2004-CE, I find that exemption granted to the goods of chapter 61, 62 and 63 under Sl. No. 16 has been adequately discussed in the show cause notice as well as in impugned order and accordingly, the true position that emerges for the period from 01.03.2011 to 01.03.2013 is like this -

- The goods of chapter **6305** were out of exemption for the period 24.03.2011 to 20.04.2011, **whether branded or not.**
- All goods of chapter 63, **except Laminated Jute Bags of chapter 6305**, were under exemption for the period from 01.03.2013 onwards.
- For the period in between (and so the period of demand), only those goods of **chapter 6305** were under exemption **which did not bear any brand name.**

5.2.1 Further, I find that if the goods sold were sold under some brand name, the benefit of exemption provided under Notification No.30/2004-CE was not available for the period between 20.04.2011 and 01.03.2013, regardless of the fact whether brand name belonged to buyers, because no such differentiation has been carved out in the Notification. In fact, the legal position that exemption was not available to the branded goods during the period involved in the present matter has not been disputed even by the appellant. Appellant's only defence is that when goods bearing brand names are not being traded in open market but sold to the persons whose brand names are used, the condition stipulated in Notification No.30/2004-CE would not apply. However, considering that no such differentiation has been carved out or no explanation has been inserted to exclude the branded goods of particular nature, such a thing cannot be read in between the lines. I find that such an interpretation is supported by the CESTAT decision in the case of **Hoogly Infrastructure Pvt Ltd v. Commissioner of C.Ex., Kolkata-III [2015(329) ELT 142 (Trib.-Kolkata)]** as relied upon by the adjudicating authority, where Hon'ble Tribunal has held that benefit of said Exemption Notifications cannot be allowed to branded goods whatever the reason/cause for affixing brand name, whether voluntarily or under compulsion of law Therefore, an ineligible exemption has been availed by the appellant.



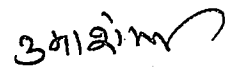
5.3 Appellant has also contested the duty liability on the ground that they have only 'printed' the bags purchased from open market and since no new product came into being by printing only, there is no 'manufacture' and no question of demanding duty of excise. With regard to cylinders used in printing, appellant has raised the question that technically, the cylinders alleged to be purchased for printing purposes cannot be used for printing of Jute Bags and Non-woven PP Bags. This part of the defence has not been discussed by the adjudicating authority anywhere and since this has to be decided in the facts of a particular case, the adjudicating authority has to give his findings on this aspect. **Since 'manufacture' is the basic aspect to levy the duty of excise, the matter needs to be remitted back to the adjudicating authority for his decision with regard to 'manufacture' of said goods.**

5.4 With regard to imposition of penalty under section 11AC, the appellant has no ground to present except that there was no intent to evade payment of duty. Since suppression of facts with intent to evade payment of duty has been adequately discussed in the impugned order and I find no reason to differ, no interference is required. The demand of interest also holds good when duty demand sustains.

6. In view of above, I set aside the impugned order, except to the extent of personal penalty imposed under rule 26 of the Central Excise Rules, 2002, and remand the matter back to the adjudicating authority with a direction to decide the matter afresh. Accordingly, appeal is allowed by way of remand.

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

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

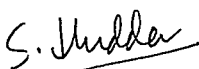


(उमा शंकर)

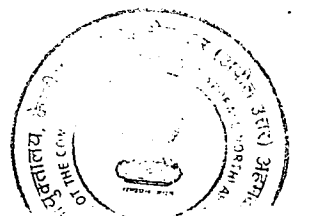
केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested



(Sanwamal Hudda)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,

M/s Shri Ghantakarna Enterprise,  
Plot No.12 & 13, Sanand Land & Development Estate,  
Ularia, Sanand, Ahmedabad

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt./Deputy Commissioner, Central Tax Division-III, Ahmedabad - North.
5. Guard File.
6. P.A.

