

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

रजिस्टर डाक ए .डी .द्वारा

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क फाइल संख्या (File No.): V2(39)16 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 349-17-18**

दिनांक (Date): **28-Feb-2018** जारी करने की तारीख (Date of issue): **8/4/2018**

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

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

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

Arising out of Order-In-Original No **11/DC/D/2017/RK** Dated: **01/06/2017**
issued by: Deputy Commissioner Central Excise (Div-IV), Ahmedabad North

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) 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 दिनोंक 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 मैटल 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 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 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।

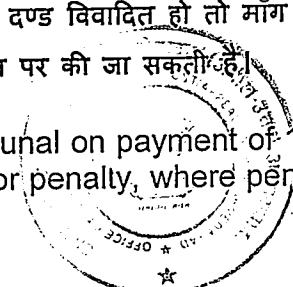
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



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f.no.V2(39)16/north/appeals/17-10

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. 11/DC/2017/RK (hereinafter referred to as '*the impugned order*') passed by the Asstt. Commissioner, Central Excise, DIV-IV, Ahmedabad-II (hereinafter referred to as '*the adjudicating authority*'). The appellant is engaged in the manufacture of "printed Laminated Rolls/Pouches falling under CH. No. 39 of the Central Excise Tariff Act, 1985. They are availing benefit of CENVAT Credit under CENVAT Credit Rules, 2004.

2. Brief facts of the case is that, during the course of the audit, it was observed that the appellant procured Inputs contained in drums and other packing materials and after utilization of the Inputs clears the empty drums and waste packing materials as scrap without payment of duty, during the period from 2013-14 to 2015-16. that in terms of the Explanation III to the Rule 6(3) of the CENVAT Credit Rules, 2004 (hereinafter referred to as "the CCR2004) no CENVAT Credit is to be taken on the cost element of such packing materials or else the appellant should have ^{paid} duty on the value of clearance of the scrap of left over packing materials of inputs. That any material on which credit has been availed must be cleared on payment of duty, and accordingly the appellant is liable to pay duty on the sale of such scrap. The appellant has not disclosed clearance of such scrap to the department. and failed to discharge due payment of duty. Rs. 13,86,747/- to be recovered with interest. Show Cause Notice was issued, and subsequently it was confirmed vide above Order.

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

i. The impugned order is bad in law and not sustainable in as much as passed without assigning cogent reasons for arriving at the conclusions and for not accepting the contentions raised by the appellant.

ii. the adjudicating authority, under para 10 of the impugned order, has stated that the show cause notice clearly alleges that during the manufacture of finished goods, certain MS scrap and plastic waste is generated and is cleared as scrap without payment of duty.. The real fact is that the scrap cleared by the appellant is accumulated packing materials in which the appellant receives Input raw materials. The only allegation is that the packing materials viz. Drums, in which Inputs are received by the appellant are cleared without payment of duty.. Thus the adjudicating authority has passed the order beyond the facts contained in the SCN which is not permissible as held in catena of decisions.

iii. The adjudicating authority has assumed that the scrap cleared by the appellant was generated during the course of manufacture. the appellant is procuring/obtaining the inputs contained in drums or other containers or any other packing materials; after utilization of the inputs, the empty drums/containers and other packing materials are

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cleared by the appellant as scrap. Thus, such waste/scrap of packing materials has neither been manufactured by the appellant nor has been arisen during the course of manufacture of the final products, and not dutiable. That in catena of decisions it has been held so. The appellant rely upon the following decisions; i.ICI India Ltd. 2003 (156) ELT 426 ii.Arihant Cotsyn Ltd. 2004 (67) ELT 240 ,iii. Kirloskar Copeland Ltd. 2009 (246) ELT 466, iv. Gulf Oil India Ltd. 2011 (264) ELT 382.

In light of the aforesaid decisions, the appellant is not liable to pay duty on sale/clearance of the waste/scrap of the containers/packing material in which they received the inputs, and cleared without payment of duty.

iv. These decisions were relied upon while offering the defense reply to the SCN. Without verifying the real facts in the present case the adjudicating authority has confirmed the demand.

v. The adjudicating authority, even after considering the Board's Circulars relied upon by the appellant in their defense reply, has erred in that separate details of scrap generated during manufacturing process and appellant failed. the entire issue was related to clearance of waste packing materials used for packing inputs only and there was no generated scrap. This issue of clearance of left over packing material if inputs is no more res integra in view of Supreme Court's decision in case of West Coast Industrial Gases Ltd. [2003 (155) ELT 11 (SC)]. the appellant like to recite the circulars in their support. F. No. B.22/39/86-TRU, dated 5-9-1986

Subject: Payment of excise duty on wasteunder Modvat - Clarification regarding.

Circular No. 721/37/2003-CX., dated 6-6-2003 F.No. 267/135/96-CX.8

Subject: Central Excise - Payment of duty on waste package/containersavailing Modvat/Cenvat credit - Regarding.

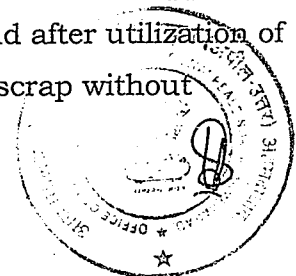
vi. That the appellant has paid duty payable by them correctly. Periodical ER-1 returns filed. Thus, there has never been any contravention of the provisions of the Act/the Rules. When there is no justification in demand of the duty/interest in this case , penalty under Section 11 AC is also not sustainable.

vii. the appellant never suppressed any information from the Department and the true and complete details of all the transactions were recorded correctly in the books of accounts and therefore extended period of limitation is not applicable.

Viii . In view of the foregoing submissions, the impugned order is not sustainable and is required to be set aside.

4. Personal hearing was held on 22.1.2018 Shri J.T.Vyas, Consultant appeared on behalf of the appellant, and reiterated GOA submitted earlier. He stated that under para 10 of the impugned order, authority has accepted that, waste is of packing material. I have carefully gone through all case records, 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 liable to payment of excise duty or otherwise.

5. I find that during the course of the audit, it was observed that the appellant procures Inputs contained in drums and other packing materials and after utilization of the Inputs clears the empty drums and waste packing materials as scrap without



payment of duty, during the period from 2013-14 to 2015-16. that in terms of the Explanation III to the Rule 6(3) of the CENVAT Credit Rules, 2004 (hereinafter referred to as "the CCR2004) no CENVAT Credit is to be taken on the cost element of such packing materials or else the appellant should have paid duty on the value of clearance of the scrap of left over packing materials of inputs. That any material on which credit has been availed must be cleared on payment of duty, and accordingly the appellant is liable to pay duty on the sale of such scrap. short payment of excise duty Rs. 13,86,747/- to be recovered along with interest. Show Cause Notice was issued, and subsequently it was confirmed, vide the impugned Order.

6. I find that, the adjudicating authority, under para 10 of the impugned order, has stated that the show cause notice alleges that during the manufacture of finished goods, certain MS scrap and plastic waste is generated and is cleared as scrap without payment of duty. I find that, the appellant is in the business of manufacture of laminated rolls and pouches and regularly clears plastic waste generated during the course of such manufacturing activity. The only allegation is that the packing materials viz. Drums, in which Inputs are received by the appellant are cleared without payment of duty. The adjudicating authority has passed the order beyond the facts contained in the SCN which is not permissible as held in catena of decisions.

7. I find that, the adjudicating authority has assumed that the scrap cleared by the appellant was generated during the course of manufacture. factually the appellant is procuring the inputs contained in drums or other packing materials; the inputs contained therein are then utilized by the appellant in the manufacture of dutiable excisable goods; after utilization of the inputs, the empty drums/containers and such other packing materials are accumulated and subsequently, such packing materials of inputs are cleared by the appellant as scrap. Thus, such waste/scrap of packing materials has neither been manufactured by the appellant nor has been arisen during the course of manufacture of the final products. The appellant has relied upon the following decisions; i.ICI India Ltd. 2003 (156) ELT 426 ii. Arihant Cotspyn Ltd. 2004 (67) ELT 240 iii. Kirloskar Copeland Ltd. 2009 (246) ELT 466 iv. Gulf Oil India Ltd. 2011 (264) ELT 382 .

In light of the aforesaid decisions, I find that, the appellant is not liable to pay duty on clearance of the waste/scrap of the containers/packing material. The impugned order is required to be quashed and set aside .

8. I find that, the adjudicating authority, even after considering the Board's Circulars relied upon by the appellant in their defense reply, has erred in stating that the appellant had not come up with the exact details of clearance of waste packing materials used for packing inputs and separate details of scrap generated during manufacturing process.. There was no need to segregate the details since the entire issue was related to clearance of waste packing materials used for packing inputs only and there was no generated scrap. I find that, The issue of clearance of left over packing material if inputs is no more res integra in view of hon'ble Supreme Court's decision in West Coast Industrial Gases Ltd.'s case [2003 (155) ELT 11 (SC)].

9. I find that the Board has also issued instruction/circular in this regard,

F. No. B.22/39/86-TRU, dated 5-9-1986

Subject: Payment of excise duty on waste generated out of inputs under Modvat - Clarification regarding.

2. The matter has been examined; containers cannot be treated as inputs. Credit taken under Modvat is with reference to the duty on inputs and not on the containers, notwithstanding the fact that the value of the inputs may include the value of containers and the duty on the inputs may be on *ad valorem* basis. It is, therefore, clarified that no duty would be payable when such empty containers are cleared from the factory.

Circular No. 721/37/2003-CX., dated 6-6-2003 F.No. 267/135/96-CX.8

Subject: Central Excise - Payment of duty on waste package/containers used for packing modvatable inputs when cleared from the factory of the manufacturer availing Modvat/Cenvat credit - Regarding.

3. Accordingly, it is clarified that no duty shall be payable and no reversal of credit is also warranted on waste package/containers used for packing inputs, on which credit has been taken, when cleared from the factory of the manufacturer availing Modvat/Cenvat credit. Consequently, Circular No. 470/36/99-CX, dated 19-7-99 may be treated as withdrawn. Pending cases, if any, may be decided accordingly.

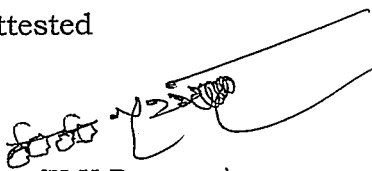
10. I find that, the appellant has filed periodical ER-1 returns, not suppressed any information from the Department, and all the transactions were recorded correctly in the books of accounts. Therefore, extended period of limitation is not applicable. When there is no justification in demand of the duty and interest in this case, penalty under Section 11 AC is also not sustainable. Thus, the impugned order is not sustainable and is required to be set aside.

11. In view of the foregoing discussion and findings, I allow the appeal filed by the appellant.

12. 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.

Attested



[K.K.Parmar)

Superintendent (Appeals)
Central tax, Ahmedabad.

By Regd. Post A. D

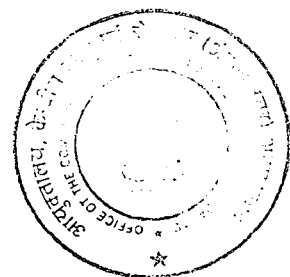
M/s. Parikh Packaging Pvt. Ltd.,
Survey No. 423/P, Opp. Rotomac Pens,
Sarkhej-Bavla Highway,
VILL- Moraiya, Tal-. Sanand,
Dist. Ahmedabad.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

date- /2/18



Copy to:-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North.
3. The Asstt.Commissioner, CGST C.Ex. Div-IV,,Ahmedabad- North.
4. The Asstt.Commissioner (Systems), CGST C.Ex. Ahmedabad-North.
5. Guard file.
6. PA File.

