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

रजिस्टर डाक ए.डी. द्वारा

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2385

क फाइल संख्या (File No.): V2(39)105 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-372-17-18

दिनांक (Date): 23-Mar-2018 जारी करने की तारीख (Date of issue): 9/4/2018

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

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

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 10/AC/D/2017-18 Dated: 22/12/2017

issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad North

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

M/s Wadhwa Polyfilms 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 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:

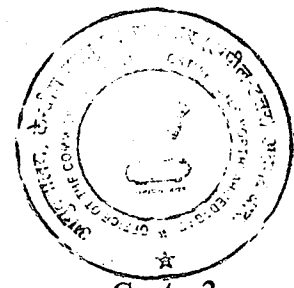
(1) (क) (i) केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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।



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 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 इ.ए-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 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 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 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।

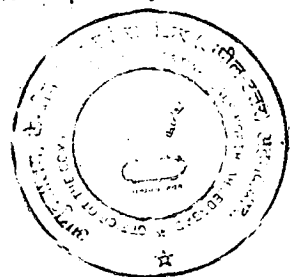
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

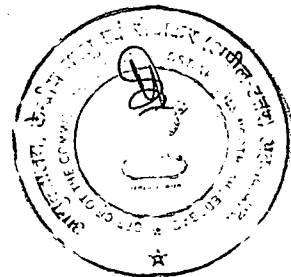
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute "



ORDER-IN-APPEAL

The instant appeal has been filed by **M/s Wadhwa Polyfilms Pvt. Ltd.**, Plot no. C-1-B/1204, Phase-IV, GIDC, Naroda, Ahmedabad-382 330 (hereinafter referred to as 'the appellant') against **O.I.O. No. 10/AC/DEMAND/17-18 dated 22/12/2017** (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner, C.G.S.T., Division-I, and Ahmedabad North (hereinafter referred to as 'the adjudicating authority'). Briefly stated, the facts of the case are that the appellant was engaged in the manufacture and clearance of **Plastic Bags** falling under Chapter sub-heading 39232100 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985) and was availing CENVAT credit of duty paid on inputs and capital goods. During the course of audit of the records of M/s Castle Polymers Pvt. Ltd., Rakhial, Ahmedabad (hereinafter referred to as 'the supplier') it was observed that the appellant had received 2000kgs of reprocessed plastic granules (RPG) valued at rs.1,82,000/- from the supplier and from the Central Excise records and documents of the supplier it was found that the said RPG was manufactured out of 100% Plastic Scrap by the supplier that was exempted *vide* Notification No. 04/2005 dated 01/03/2006 (Sl.No.78), subsequently notification no.12/2012-CE dated 17/03/2012 (Sl.No.147). However, the supplier had erroneously paid duty @ 10% / 12% + Education Cesses on the said exempted products that could not be termed as "duty of excise" and allowed as 'CENVAT credit' to the downstream units under Rule 3 of Cenvat Credit Rules, 2004 (CCR, 2004) as per C.B.E.C. Circular No. 940/01/2011-CX dated 14/01/2011. The Assistant commissioner (Audit), Central Excise, Ahmedabad-I *vide* letter F.No.V.39/3-2/DA-Castle/14-15 dated 18/05/2015 had informed the then Commissioner, Central Excise, Ahmedabad-II that the supplier had supplied RPG made out of 100% Plastic Waste Scrap valued at Rs.1,82,000/- to the appellant under the cover of invoice No. 201/13-14 dated 19/12/2013 showing payment of Central Excise duty of Rs.22,495/-. A Show Cause Notice F.No.V/16-18/Dem/Wadhwa/15-16 dated 10/09/2015 (hereinafter 'the SCN') was issued to the appellant proposing to recover CENVAT credit of **Rs.22,495/-** under Rule 14 of CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944 (CEA, 1944) along with interest under Rule 14 of CCR, 2004 read with Section 11AA of CEA, 1944 and proposing to impose penalty on the appellant under Rule 15(2) of CCR, 2004 read with Section 11AC of CEA, 1944. In the impugned order, the recovery of CENVAT credit and interest has been confirmed as proposed in the SCN and a penalty of Rs.11,243/- has been imposed on the appellant as proposed in the SCN.

3. Being aggrieved by the impugned order, the appellant has filed the instant appeal, mainly on the following grounds:



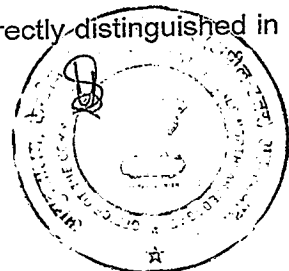
i. M/s castle Polymers Pvt. Ltd. had charged duty separately in its invoice and further paid to the department and if that was wrongly done then the supplier is at fault and in such case why was the supplier given Central Excise registration; why did the range accept payment of Central Excise duty and Central excise returns and why was such error allowed to continue. The audit of the appellant's excise records was carried out for the period of April-2010 to March-2015 but no demand was made on the said issue. The appellant relies on Neuland Laboratories Ltd. – 2015 (317) ELT 705 where it has been held that Board's circular dated 14/01/2011 also relied upon in the instant case is clearly erroneous and contrary to the scheme and implication of CENVAT credit. In its case there has been no loss to Government Exchequer. If the whole process of reversing is possible, then let government pay back to the supplier and the supplier pay back to the appellant. If such reversal is not possible and when there is no loss to Exchequer then the case should be closed and demand raised should be nullified.

4. Personal hearing in the case of the appellant was held on 23/03/2018 attended by Shri Sukhbir Wadhwa, Director. Shri Wadhwa reiterated the grounds of appeal.

5. I have carefully gone through the impugned order and the grounds of appeal filed by the appellant. The only issue to be decided is whether the appellant was eligible to avail CENVAT credit of amount paid by the supplier on RPG made out of 100% Plastic Scrap that was exempted from payment of duty by virtue of Notification No. 04/2005 dated 01/03/2006 (SI.No.78), subsequently notification no.12/2012-CE dated 17/03/2012 (SI.No.147). When duty is paid on exempted product then the same cannot be treated as duty under section 3 of CEA, 1944 but it is mere deposit with the Government of India and the burden is cast upon the manufacturer availing to ensure that CENVAT credit being availed is admissible in the first place. The relevant provision under Rule 9(5) of CCR, 2004 is reproduced as follows:

"(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and **the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.**"

The appellant had reason to know on the basis of the quality, value and the market parlance that it was procuring inputs viz. Reprocessed Plastic Granules that was made out of 100% Plastic Scrap and before availing CENVAT credit, the appellant clearly failed to ensure that such credit was admissible. The reliance placed by the appellant on Neuland Laboratories Ltd. – 2015 (317) ELT 705 has been correctly distinguished in

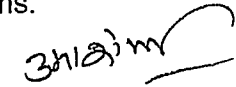


paragraph 25 of the impugned order on the ground that in the instant case the matter had been adjudicated at the end of the supplier holding that there was no case for payment of Central Excise duty. As regards the question of revenue neutrality, the same is applicable only in cases of duty paid but not in cases where mere deposits are made into the Government account. Further, I find that the department is bound by the C.B.E.C. Circular No.940/1/2011-CX dated 14/01/2011 where, based on the opinion of Law Ministry, it has been clarified as follows:

“3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as “duty of excise” will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944 . **Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004.”**

Therefore, I find no infirmity in the impugned order and accordingly, the appeal is rejected.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.




(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 23 / 03 /2018

Attested


(K. P. Jacob)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

- 1) To
M/s Wadhwa Polyfilms Pvt. Ltd.,
140 -115, Opposite: Harihar Mahadev Temple, Santej –Vadsar Road,
Santej – 382 721.
(above address requested in column (5) of form E.A.-1.)

[The appellant's factory situated at C1B -1204, GIDC, Phase-IV, Naroda.]

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division-I (Naroda), Ahmedabad (North).
5. Guard File.
6. P.A.

