



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015, Ambavadi, Ahmedabad-380015



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रजिस्टर डाक ए.डी. द्वारा

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क फाइल संख्या (File No.): V2 (87)55&56/Ahd-II/Appeals-II/2016-17

स्थगन आवेदन संख्या (Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-044-045-17-18

दिनांक (Date): 28-08-2017, जारी करने की तारीख (Date of issue): 2019/17

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

Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. 05/ADC/2016/DSN Dated: 05/17/16 &
05/ADC/2016/DSN Dated: 05/17/16

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

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

M/s Rohan BRC Gas Equipment 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:

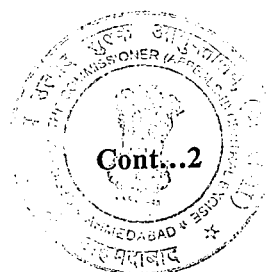
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अंतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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 प्रक्रिया 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.100 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 डोनी 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 :-

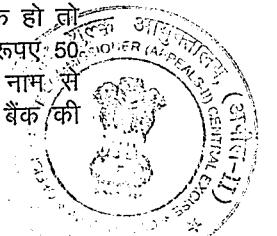
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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।



(ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/- फीस भेजनी होगी। फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है। स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी।

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 ₹ 1,000/-, ₹ 5000/- and ₹ 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of ₹ 500/-.

(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 चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है।

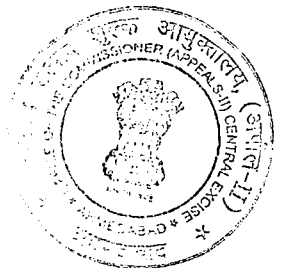
In case of the order covers a number of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising ₹ 1 lacs fee of ₹ 100/- for each.

(4) न्यायालय शुल्क अधिनियम १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of ₹ 6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है।

(6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



ORDER-IN-APPEAL

Two appeals have been filed as mentioned below against OIO No. 5/ADC/2016/DSN dated 17.5.2016, passed by the Additional Commissioner, of Central Excise of the erstwhile Ahmedabad-II Commissionerate[for short - '*adjudicating authority*'].

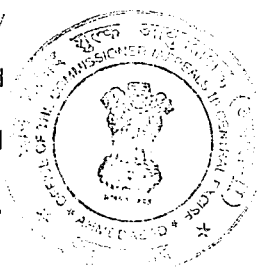
Sr. No.	Name of the appellant(s)	Appeal No.
1	M/s. Rohan BRC Gas Equipment Private Limited, 5, Ashwamegh Industrial Estate, Changodar, Ahmedabad.	55/Ahd-II/2016-17
2	Shri Upendrabhai Chhanalal Shah, Manager (Accounts) of M/s. Rohan BRC Gas Equipment Private Limited, 5, Ashwamegh Industrial Estate, Changodar, Ahmedabad	56/Ahd-II/2016-17

2. Based on a intelligence, a search was conducted at the appellants premises. On completion of investigation a show cause notice dated 23.3.2015 was issued to the appellant mentioned at Sr. No. 1, supra, proposing *inter alia* to hold the activity of assembly of CNG/LPG kit cleared to dealers to amounting to manufacture; demanding central excise duty along with interest and further proposing confiscation of the goods cleared to various dealers without payment of duty. The notice further proposed penalty on the appellant(s) mentioned at Sr. No. 1 and 2 above. This show cause notice was adjudicated impugned OIO dated 17.5.2016, wherein the adjudicating authority, held that the activity of assembly of the CNG/LPG gas conversion kit amounts to manufacture; confirmed the demand along with interest and further imposed penalty on both the appellants mentioned at Sr. No. 1 and 2 in the table above.

3. Feeling aggrieved, the appellant(s) have filed this appeal raising the following averments:

(i)M/s. Rohan BRC Gas Equipment Private Limited

- (a)that incorrect and ex facie wrong facts have been taken into consideration by the adjudicating authority though the appellant company has clearly explained the true facts about its trading business and documentary evidence in respect of the trading business was also available on records;
- (b) the finding that the goods supplied to OEMs and dealers/traders were the same is not correct; that the adjudicating authority has committed a factual error in proceeding on the basis that the goods sold and supplied to dealers/traders were the same as were sold to OEMs on payment of excise duty;
- (c) that the complete kit sold by the appellant company on payment of duty comprised of 20 different components; while the appellant has been trading in only 12 parts; that all 12 were also not sold together to any dealer/trader; that a few of such 12 parts were sold to a dealer in a particular sale transaction;
- (d) that it is an admitted fact that all the parts/components required to assemble a complete gas conversion kit were never sold in trading activity;
- (e) that the goods sold to OEMs were a complete CNG/LPG gas conversion kit comprising all parts and components required for assembling a complete kit and such complete kit was sold to OEMs in unassembled condition but in one box bearing the appellant's brand name and identification;
- (f)that only a few parts and components were sold to dealers/traders in respect of the appellant's trading activities and such parts were used by the traders/dealers for reselling them for repairing and replacement and the trading of the goods by the appellant has not been under any brand name or such identification;
- (g) appellant's trading activity was absolutely different and distinct in nature;
- (h) the adjudicating authority had no jurisdiction to hold that the trading activity of the appellant company was also in the nature of manufacture of excisable goods;
- (i)the conclusion of the adjudicating authority that a new product differently known in the market resulted when the goods traded by the appellant were assembled is not correct;
- (j)that they would like to rely on the case of HPCL [1999(112) ELT 8(SC)], M/s. XI Telecom Limited [1995(105)ELT 263], Dalmia Industries [1999(112) ELT 305] Bajaj Auto [2000(120) ELT 668] TI Diamond Chain Limited [2000(126) ELT 790], Final order no. A/958-960/2011 of CESTAT Ahmedabad, Sony India [2008(231) ELT 385];



- (k) that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled could be put together by means of simple fixing device or by riveting or welding, but not when the articles presented were not adequate to assemble a complete machine or device;
- (l) that there has been no suppression of facts or any wilful misstatement; that in the letter dated 10.6.2011 and 23.5.2012 no incorrect or misleading facts were stated; the demand made in March 2015 for trading activity conducted during 2010-11 and 2011-12 is barred by limitation;
- (m) that the benefit of cum duty should be given;
- (n) that in the present case where no suggestion or allegation of any mala fide intention to evade payment of duty is even made out against the appellant, there is no justification in the imposition of penalty in law as well as in facts.

(ii) Shri Upendrabhai Chanalal Shah in his appeal has stated that the imposition of penalty is wholly unreasonable and illegal action because he did not have any personal interest in the conduct and business affairs of the appellant mentioned at Sr. No. 1 above; that he would like to rely on the case of Vinod Kumar [2006(119) ELT 705], R K Ispat Udyog [2007(211) ELT 460], and Order No. A/835/2009 dtd 20.4.2009 of CESTAT, Ahmedabad; that personal penalty on the employee was not justified nor called for when the employee was discharging his duties in accordance with the directions of the employer.

4. Personal hearing in both these appeals was held on 19.7.2017, wherein Smt. Shilpa P Dave, Advocate, appeared on behalf of both the appellants and reiterated the grounds of appeal. She further explained the chronological chart of events; that their business was in the knowledge of the department; she further pleaded limitation and requested for cum-duty benefit. She also provided the copies of relied upon judgements.

5. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing.

6. The primary dispute is whether the adjudicating authority was correct in holding that the clearances of CNG/LPG automobile conversion kits made by the appellant to dealers/traders, were liable to central excise duty.

7. I find that the adjudicating authority has arrived at the aforementioned findings based on the following:

- (a) that the appellant has cleared complete CNG/LPG automobile conversion kit; that the quantity has been shown as no. of CNG/LPG kit; that the evidences on record clearly establish that they were sold as complete kit and hence was required to be assessed accordingly;
- (b) that even in cases where auto tank and tank stand are separately packed and supplied, the same would not cease to be gas conversion kit assembly within the meaning of Rule 2(a) of the Interpretative rules of CETA 1985 and note 4 to Section XVI of CETA, 1985; that since the goods are found to be manufactured in terms of Section 2(f) of the CEA, 1944, not affixing a brand name would not make these goods as non manufactured;
- (c) that since there is no evidence of inclusion of excise duty in the price charged from the buyers has been produced, benefit of cum duty is not applicable in this case;
- (d) that in the letter dated 10.6.2011, to the department, it was stated that they would clear/supply/sell parts of CNG/LPG conversion kit without payment of duty as a trading activity; that however, they had cleared complete CNG/LPG automobile conversion kit to dealers/traders; that since the appellant had contravened the provisions of the Central Excise rules and act, with an intent to evade payment of duty, extended period is invocable in this case;
- (e) that where the goods are not seized, the same cannot be confiscated and no redemption fine is impossible;



(f) that the activity of assembly of CNG/LPG gas conversion kit cleared to dealers/traders amounts to manufacture.

8. Before dwelling onto the dispute, I would like to reproduce the following:

(i) Section 2(f) of the Central Excise Act, 1944

[(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.]

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;]

(ii) Rule 2(a) of the General Rules for the Interpretation of Schedule to CETA

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished [or falling to be classified as complete or finished by virtue of this rule], presented unassembled or disassembled."

(iii) Note 4 to Section XVI of CETA, 1985, states as follows:

"where a machine [including a combination of machines] consists of an individual components [whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices] intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or 85, then the whole falls to be classified in the heading appropriate to that function."

(iv) Note 6 to Section XVI of of CETA, 1985 reads as follows :

In respect of goods covered by this Section, conversion by this Section, conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article (including 'blank', that is an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into a finished article or a part), into complete or finished article shall amount to manufacture.

9. The genesis of the dispute is that the appellant was clearing CNG/LPG conversion kits to OEMs on payment of Central Excise duty and while clearing the CNG/LPG conversion kits to dealers and traders, they were not discharging duty. It is on these clearances that the department is demanding duty.

10. The appellants contention is that the goods sold to OEMs on which duty was discharged was a complete CNG/LPG gas conversion kit, comprising all parts and components required for assembling a complete kit; that it was sold to OEMs in unassembled condition but in one box bearing the appellant's brand name and identification; that the complete kit sold by the appellant company on payment of duty comprised of 20 different components while the goods supplied to dealers/traders contained only 12 parts and that all 12 were also not sold together to any dealer/trader; that all the parts/components required to assemble a complete gas conversion kit was never sold in trading activity; that these were used by the traders/dealers for reselling.



repairing, and replacement; that the trading of the goods by the appellant has not been under any brand name or such identification; that the appellant's trading activity was absolutely different and distinct in nature.

11. On going through the facts of the case. I observe that there is no dispute as far as clearance of *LPG/CNG conversion kit* supplied by the appellants to OEMs on payment of excise duty is concerned. Neither the department nor the appellant is disputing the fact. that the goods supplied by the appellants to OEMs are leviable to duty. That the appellant has discharged duty on these goods, effectively shows that these LPG/CNG conversion kits were leviable to central excise duty. In-fact, the appellant has stated in his grounds that goods sold to OEMs were in unassembled condition but in one box bearing the appellant's brand name, while the goods sold to dealers/traders, [also in unassembled condition] did not bear their brand name. Ideally, both the activity of supplying goods to (i) OEMs and (ii) dealers/traders. should be leviable to central excise duty in view of Section 2(f) of the Central Excise Act, 1944. read with Rule 2(a) of the General Rules for the Interpretation, and notes 4 and 6 to Section XVI of CETA, 1985. However, the appellant has claimed that while the goods supplied to OEMs comprised of more than 20 different components, the kits sold to dealers/traders. comprised of only 12 such components/parts. Before Central Excise duty can be imposed on any article, it must satisfy two basic conditions viz.

[i] the article should be goods and

[ii] it should have come into existence as a result of manufacture.

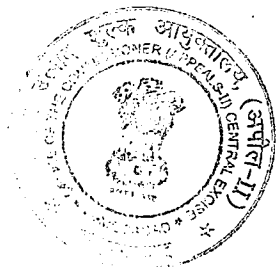
In the present dispute, nobody disputes that the items are goods. However, for the process to amount to manufacture, the incomplete or unfinished article, [CNG/LPG conversion kit supplied to the trader/dealer] should have the essential character of the complete or finished article. Hence, two things needs to be established

[a] whether, the appellant is correct when he states that only 12 parts were supplied to dealers/traders and not the whole kit. as supplied to OEMs;

[b] If yes, whether with these 12 parts, the purchaser/dealer/trader would be able to assemble the said parts into a *LPG/CNG conversion kit* i.e. whether it had the essential character of the complete or finished article.

It is a fact, that in the data/figures supplied to the department. [refer para 31.3 of the OIO], the appellant has given information as "*LPG/CNG conversion kits*" sold in the years 2010 and 2011. However, it is felt that the dispute cannot be settled without a finding on the two questions. *supra* more so when the appellant is vehemently stating that what was sold is not the entire kit.

12. All the other issues. raised by the appellant regarding benefit of cum duty. of the notice being hit by limitation, imposition of penalty on both the appellants. though dealt in detail by the adjudicating authority, can only be examined. once the aforementioned two questions are answered.

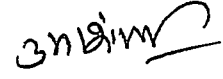


13. In view of the foregoing, I find that this matter needs to be remanded back to the original adjudicating authority to pass a fresh order since it is imperative that a finding be given by the adjudicating authority on the aforementioned questions, raised in para 10 *supra*. The adjudicating authority is further directed to examine the claim of the appellant on the benefit of cum duty, limitation, penalty, etc. while passing the order. Needless to state that the appellant will cooperate with the adjudicating authority and produce all documentary evidences as required by the adjudicating authority.

14. Hence, the OIO is set aside and both the appeals are partly allowed by way of remand.

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

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



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : .08.2017

Attested



(Vinod Lukose)
Superintendent,
Central Tax(Appeals),
Ahmedabad.

By RPAD.

To,

M/s. Rohan BRC Gas Equipment Private Limited, 5, Ashwamegh Industrial Estate, Changodar, Ahmedabad. (New Address)	Shri Upendrabhai Chhanalal Shah, Manager (Accounts) of M/s. Rohan BRC Gas Equipment Private Limited. 5, Ashwamegh Industrial Estate, Changodar, Ahmedabad (New Address)
M/s. Rohan BRC Gas Equipment Private Limited, Plot No. 291/304, Panchratna Industrial Estate, Besides IOC Petrol Pump, Sarkhej Bavla Road, Changodar, Ahmedabad 382 213.	Shri Upendrabhai Chhanalal Shah, Manager (Accounts) of M/s. Rohan BRC Gas Equipment Private Limited. Plot No. 291/304, Panchratna Industrial Estate, Besides IOC Petrol Pump, Sarkhej Bavla Road, Changodar, Ahmedabad 382 213.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone . ~~South~~ ^{North}
2. The Principal Commissioner, Central Tax, Ahmedabad ~~South~~ ^{North} Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division IV ~~Ahmedabad South~~ ^{North}
4. The Additional Commissioner, System, Central Tax, Ahmedabad ~~South~~ ^{North} Commissionerate.
5. Guard File.
6. P.A.

