

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

रजिस्टर डाक ए .डी .द्वारा

- क फाइल संख्या (File No.) : **V2 (85)53&54/Ahd-II/Appeals-II/ 2016-17 / 1627 to 1692**
 स्थगन आवेदन संख्या(Stay App. No.):
- ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-99-100-17-18**
 दिनांक (Date): **25.09.2017**, जारी करने की तारीख (Date of issue): **12-10-17**
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)
- ग _____ आयुक्त, केंद्रीय वस्तु एवं सेवा कर, (मंडल-IV), अहमदाबाद उतर, आयुक्तालय
 द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No.(I) **21/AC/D/2015/UKG** Dated: **28.03.2016**
 issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad-II
- घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

- (i) **M/s Patco Plast Pvt. Ltd.**
 (ii) **M/s Kaushal M Patel**

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 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 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।

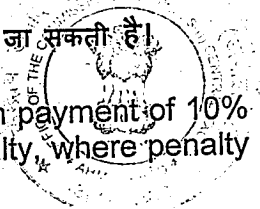
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



ORDER IN APPEAL

The subject appeals are filed by 1. M/S Patco Plast Pvt. Ltd, 43-A, Block No.431, Aswamegh Ind. Estate, Bavla Highway, Changodar,Ahmedabad. And 2. Shri Kaushal M. Patel, Director (hereinafter referred to as '*the appellants*') against order in original No.21/AC/D/2015/UKG [hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, Central Excise,Div-IV, Ahmedabad-II (hereinafter referred to as '*the adjudicating authority*'). They are manufacturer of excisable goods viz. PP battery Container, falling under Chapter 85 of the Schedule of the Central Excise Tariff Act,1985 (*hereinafter also referred to as CETA, 1985*).

2. Brief facts of the case are that, Central Excise [prev.] Ahmedabad-II searched the factory premises of the appellant's on dated 26.3.2013. it was noticed that the quantity of finished goods viz. PP battery Container was found short to be 6961/-kg. and also 5242-kg./- shortage of raw materials. Shri Kaushal M. Patel, Director was asked to produce the documents and records maintained by them for accounting of raw materials received and for production of finished goods, but he informed that they had not maintained any such documents and records. Central Excise invoices for the goods cleared by them not issued. He stated that They have sold said goods to unknown buyers without excise invoices and without payment of duty. He confirmed that raw materials/finish goods have been cleared without preparing any documents and no separate records for raw materials and finish goods have not been maintained, and not been accounted for in the daily stock register and RG23PT-I register. Therefore, Show Cause Notice issued for recovery of total duty amounting Rs.233571/- with interest and penalty under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.same was decided vide the impugned order and confirmed the demand with imposition of penalty.

3. Being aggrieved by the impugned order the appellants filed the present appeals on the following main grounds. That condonation application in filing appeal after 60 days is requested.

That sufficient opportunity for P.H. was not granted.it is violation of natural justice.

a. That, factory premises was searched during 16 pm to 10.15 pm, it is not possible to actual stock taking of goods/raw materials. Statement was recorded under duress and pressure..The appellant rely on the

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caselaw of Nissan Thermoware-reported in 2009(246) ELT 191 wherein hon'ble tribunal has held that 'demand cannot be issued solely on the basis of statements.'

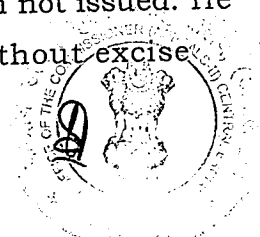
b. The dispute in the present appeal is as regards clearance of finish goods/raw materials, and imposition of penalty. That there is no evidence regarding any clandestine removal by the appellant .the goods itself which were in the factory premises, on the ground that the same were cleared clandestinely was not justified.

c. That, said raw material is manufactured by RIL/HALDIA etc.hence purchase is not possible clandestinely. Further the case of clandestine manufacture and clearance of the goods has not been established against us, there would be no question of imposition of either penalty as the goods were legally manufactured and lying in the factory. Also,calculation of duty on empty container is incorrect as it is a part of battery.

d. Regarding imposition of penalty on Shri Kaushal M. Patel,director of the company, there is no justification of penalty in as much as the director is not involved in day today accounting of finish goods in the factory premises. there is no malafide on the part of director.acordingly the penalty of Rs. 50000/- imposed is not justified and liable to be set aside

4. Personal Hearing was held on 15-09-2017, Shri Nirav Shah advocate, on behalf of the appellant appeared for Hearing. He has requested to consider the written submissions of ground of appeal. I have gone through all records in the form of Show Cause Notice, the impugned order and written submissions as well as submissions made during personal hearing by the appellants. I find that the condonation application in filing appeal after 60 days is requested, and it is condoned.

5. I find that, main issue to be decided in this case pertains to 1. Whether unaccounted finish goods are liable for duty and 2. whether the penalty imposed is legal. I find that, appellant's unit is registered unit. During search and verification, the officers noticed that the quantity of finished goods viz. accumulator case appeared short. It was noticed that the quantity of finished goods found short to be 6961/-kg. and 5242-kg./- shortage of raw materials. Shri Kaushal M. Patel, Director was asked to produce the documents and records maintained by them for accounting of raw materials received and for production of finished goods, but he informed that they had not maintained any such documents and records. Central Excise invoices for the goods cleared by them not issued. He stated that they have sold said goods to unknown buyers without excise



invoices and without payment of duty. He confirmed that raw materials/finish goods have been cleared without preparing any documents and no separate records for receipt of raw materials and finish goods have been maintained. The same had not been accounted for in the daily stock register as well as RG23PT-I register. Therefore, Show Cause Notice was issued for recovery of total duty amounting Rs.233571/- with interest and penalty.

6. Further, I find that, Shri Kaushal M. Patel, Director has deposed that The quantity of such raw materials/finish goods were sold to Byers without preparing any invoice and without payment of duty. they did not maintained any separate records for manufacture and clearance of finish goods valued at Rs.1357728/-and raw material valued Rs.532012/-. Central Excise invoices for the goods cleared have not been issued nor is duty paid. That the appellant has failed to maintain proper stock of excisable goods. The same had not been accounted for in their daily stock register as well as RG23PT-I register. I find that the appellant has failed to properly account for their finished goods which were cleared un-accounted in their statutory records. Therefore, the stock of said goods found short, as the same have been cleared without invoices and without payment of Excise duty. I find from the above facts, that the appellant's failed to maintain proper accounts of their finished goods as well as raw materials in violation of Rule 10 of Central Excise Rules, 2002 and failed to give proper reason for the shortage of Finished goods valued at Rs. 1357728/-. Therefore, penalty under Rule 25 of the CER 2002 was imposed upon them .It is fact that un-accounted finish goods/raw materials were found cleared and the same had not been contested by the appellant. The shortage of stock has been found and no proper justification was given by them. Further, it is accepted by the appellant in his statement that the said raw materials and finish goods had been cleared without proper invoices/documents and without payment of duty.

7. I find that, Rule 10 of CER2002 prescribes that every assessee shall maintain proper records on a daily basis in a legible manner indicating the particulars regarding description of goods produced or manufactured, opening balance, quantity produced or manufactured inventory of goods, quantity removed assessable value, the amount of duty payable and particulars regarding amount of duty actually paid. As per provision of Clause (b) of sub-rule (1) of Rule 25 of Central Excise Rules 2002, non-accountable of excisable goods produced or manufactured attracts confiscation and penalty. I do not find the decisions relevant to this case as mentioned by the appellant. I rely on the case law of the Hon'ble Tribunal in the case of CCE, Lucknow Vs Kumar Industries reported in 2010 (261) E.L.T. 546 (Tr-Del) by relying on judgment of Bombay High Court in



the case of Kirloskar Brothers Vs UOI, reported in 1988 (34) E.L.T. 30 (Bombay) has held that 'mere non recording of production in RG-1 Register, would attract confiscation and penalty, and in this regard mens rea is not required to be proved.' Thus, I agree with adjudicating authorities order. I hold that penalty imposed on the appellant unit is correct and legal.

8. Regarding the issue of penalty imposed on Shri Kaushal M. Patel, director of the said unit, I find that he was the person concerned in transporting, removing, depositing, selling or purchasing etc. with the excisable finish goods. I find that he has not given proper explanation for shortage of stock. It is accepted by the appellant that saidraw materials/finish goods had been cleared without proper documents, and without payment of duty. Thus, malafide intention on behalf of director is proved. Accordingly, I hold that penalty imposed on Shri Kaushal M. Patel is correct and legal.

9. In view of foregoing discussion and findings, I uphold the impugned order and disallow both the appeals. 1

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

10. The appeals filed by the appellants stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested

[Handwritten Signature]

[K.K.Parmar)
Superintendent (Appeals)
Central tax, Ahmedabad

By Regd. Post A. D

1. M/s. Patco Plast Pvt. Ltd,
Patco Plast Pvt. Ltd,
Aswamegh Ind. Estate,
Bavla Highway, Changodar,,
Ahmedabad.

2. Shri Kaushal M. Patel, Director
Patco Plast P. Ltd.

Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Div-IV, AhmedabadII
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA FILE.

