



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎: 079-26305065

टेलैफैक्स : 079 - 26305136

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क फाइल संख्या (File No.): V2(24)2 /EA-2/North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-22-18-19**

दिनांक (Date): **25-Jun-18** जारी करने की तारीख (Date of issue): **16/7/2018**

श्री उमा शंकर, आयुक्त (अपील) 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 **20/ADC/2017/RMG Dated: 11/01/2018**

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

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

M/s Urmin Marketing 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 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-11 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 : 380016. 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 रूप 5 लाख या उससे कम है वहां रूप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहां रूप 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से देनी है।



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की 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।

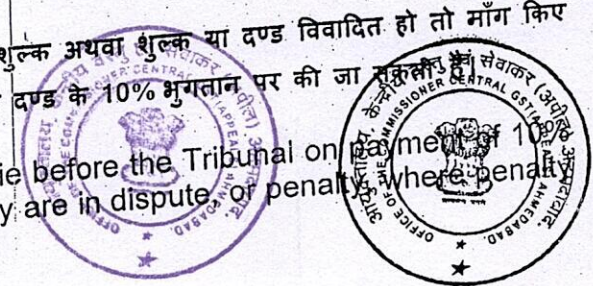
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

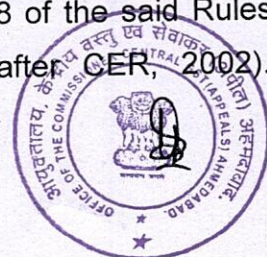
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.



ORDER

This order covers a departmental appeal filed by the Deputy Commissioner Central GST & Central Excise, Division-IV, Ahmedabad North against Order-in-original No. 20/ADC/2017/RMG dated 11/01/2018 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated, the facts of the case are that M/s Urmin Marketing Private Ltd. (now M/s Unicorn Packaging LLT), 61, Mahagujarat Industrial Estate, Sarkhej-Bavla Highway, Changodar, Ahmedabad - 382 213 (hereinafter referred to as 'the respondent') who were engaged in the manufacture of 'Chewing tobacco / Jarda Scented Tobacco' falling under Chapter 24 of the first schedule to the Central Excise Tariff act, 1985 (CETA, 1985) and were clearing the goods under compounded levy Scheme w.e.f. 08/03/2010 in terms of '*Chewing Tobacco and un-manufactured Tobacco Packing Machines (Capacity determination and Collection of Duty) Rules, 2010*' (hereinafter 'the said Rules') notified *vide* Notification no.11/2010-CE (N.T.) dated 27/02/2010, had availed *suo moto* abatement of duty for the period of non-production during 01/11/2015 to 16/11/2015 of the said notified goods. In terms of Rule 10 of the said Rules, in case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provide that the manufacturer files an intimation to this effect with the deputy Commissioner of Central Excise or the assistant commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, in the manner that the packing machines so sealed cannot be operated during such period. It appeared that the respondent was required to deposit the duty for the entire month in advance by the 5th of the same month at appropriate rate specified in the Notification no. 16/2010-CE dated 27/02/2010 (amended *vide* Notification No. 05/2015-CE dated 01/03/2015) as clarified by C.B.E.C. *vide* Circular F.no.267/16/2009-CX-8 dated 12/3/2009. Accordingly, it appeared that the respondent had short paid Central Excise duty to the tune of **Rs.1,11,28,000/-** as the respondent had actually paid only Rs.97,37,000/- instead of the actual payable duty amount of Rs.2,08,65,000/- on three packing machines at the rate of Rs.69.55 Lakhs per month per packing machine. Therefore, a Show Cause Notice F.No.V.24/15-10/OA/2017 dated 12/07/2017 (hereinafter 'the SCN') was issued to the respondent demanding Central Excise duty amount of **Rs.1,11,28,000/-** under the provisions of Rule 19 of the said Rules, read with Section 11A(1) of the Central Excise Act, 1944 (hereinafter CEA, 1944) along with interest under rule 9 of the said Rules read with Section 11AA of CEA, 1944 and proposing to impose penalty on the respondent under Rule 18 of the said Rules read with Rule 25 of the Central Excise Rules, 2002 (hereinafter CER, 2002). The

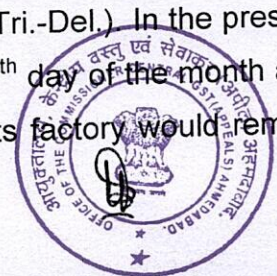


adjudicating authority has relied on the decision of Hon'ble High court of Gujarat in the case of Thakkar Tobacco Products Pct. Ltd. – 2016 (332) ELT 785 (Guj.) and held that in the instant case, since the duty liability for pertaining period had already been discharged by the respondent, it was entitled for the abatement for the period when the packing machines were not operational and dropped the entire proceeding initiated *vide* the SCN.

3. The departmental appeal has been preferred on the ground that as per Rule 9 of the said Rules, advance payment of the duty was to be made by the respondent by the 5th of the same month and as the respondent was not a new manufacturer, the benefit of proviso 8 was not available to the respondent as this proviso pertains to a new manufacturer. The facts of the case of M/s Thakkar Tobacco Products Pvt. Ltd. were distinguished where the assessee had already paid duty for the month of March, 2011 and thereafter, *suo moto* claimed abatement in the subsequent month whereas in the instant case the respondent had made payment of duty for the month of November, 2015 in the same month on *pro rata* basis on 16/11/2015 instead of 05/11/2015 in contravention of Rule 9 of the said Rules. Therefore, the adjudicating authority had erred by dropping the demand in the SCN.

4. Personal hearing in the instant matter was held on 08/06/2018, when Shri N.K. Tiwari, advocate and Shri Viresh Shah, Chartered Accountant appeared. The learned Advocate explained the case laws in their favour and requested for rejecting the appeal. Two days were granted to the respondent to file written submissions along with case laws.

5. In the written submissions submitted on 11/06/2018, the respondent has contended that Rule 9 of the said Rules does not stipulate that the monthly duty in all cases is payable by the 5th of the same month, even if no pouch packing machine is installed or is operating for the whole month or a part of the month. The fourth proviso to Rule 9 of the said Rules provides that in case of increase of operating packing machines during the month on account of addition or installation, the differential duty amount, if any, is required to be paid by the 5th day of the following month. It is well settled that a specific provision prevails over the general provision. If the number of PPMs is not ascertainable or known, the manufacturer cannot be expected to deposit the duty on any hypothetical basis. In the present case, in all the months, there was no manufacturing operation by the respondent and hence duty could not be determined by 5th day of the month and consequently interest was not payable. The respondent places reliance on Trimurti Fragrance P. Ltd. vs commissioner – 2016 (335) ELT 167 (Tribunal) and Taste Well product vs commissioner – 2016 (335) ELT 55 (Tri.-Del.). In the present case, no pouch packing machines were operational before the 5th day of the month and as such, the respondent was not even aware as to how long its factory would remain

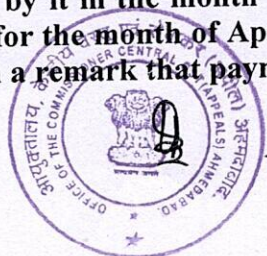
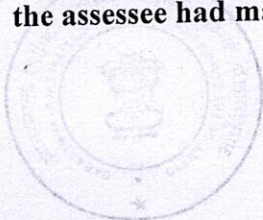


closed. The respondent had deposited duty promptly on resumption of production on proportionate basis and therefore, there was no question of payment of interest. In support of the above contention, the respondent places reliance on the decision of Hon'ble tribunal in the case of Jaiswal Products vs Commissioner – 2016-TIOL-CESTAT-DEL. The respondent submits that a statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the intention of the maker. In the present case, it cannot be the intention to charge duty, when the entire factory is closed and no pouch Packing Machine is installed. Duty of excise is levied on goods manufactured as per the Union List (List 1) and when no goods are manufactured, no tax is payable. While interpreting a fiscal statute, a harmonious reading should be adopted. Any interpretation of the statute which leads to absurdity should be avoided. If the interpretation as canvassed in the impugned order is to be considered, it would mean that in all cases, whether a manufacturer has any Pouch Packing machine installed in his factory or not, the duty for the month is required to be paid by the 5th day of the month. Such an interpretation would make the fourth proviso to Rule 9 of the said Rules redundant and nugatory. Even otherwise, the entire exercise is Revenue neutral as it is undisputed fact that during the month of November, the entire factory remained closed continuously for more than 15 days and that in such case, abatement under rule 10 of the said rules was admissible.

6. On carefully going through the impugned order, the grounds of appeal as well as the cross-objections filed by the respondent it is seen that the entire proceedings initiated in the SCN has been dropped in the impugned order only on the basis of the decision of Hon'ble High court of Gujarat in the case of Thakkar Tobacco Products Pvt. Ltd. – 2016 (332) ELT 785 (Guj.). In the departmental appeal it has been contended that the ratio of this decision is not applicable to the facts of the present case. Therefore, in order to decide the appeal it is pertinent to discuss the decision of Hon'ble High Court of Gujarat in the case of Thakkar Tobacco Products Pvt. Ltd. – 2016 (332) ELT 785 (Guj.), which taken up as follows:

7. The facts leading to the decision by Hon'ble Gujarat High Court are enumerated in paragraph 3 of this case law as follows:

3. The respondent-assessee vide letter dated 24th February, 2011 intimated the Assistant Commissioner, Central Excise, Division IV, Ahmedabad-II that they had run machines as indicated therein during the month of March, 2011. **The assessee by a letter dated 7th March, 2011 informed the Assistant Commissioner that they had paid duty to the tune of Rs. 238 lakhs for the month of March.** Subsequently, vide letters dated 1st March, 2011 and 15th March, 2011, the assessee informed the Jurisdictional Assistant Commissioner that the machines were working from 1st March, 2011 to 4th March, 2011 and from 20th March, 2011 to 31st March, 2011, that is, for a total period of sixteen days whereas the machines were sealed for fifteen days in the month of March. **It was noticed that the assessee, as per the machines run by it in the month of April, 2011, was liable to pay duty of Rs. 395 lakhs, however, for the month of April, 2011, the assessee had made payment of Rs. 2,79,83,873/- with a remark that payment was**



made in March, 2011 in Form No. 2 for April, 2011. The Department was accordingly of the view that the assessee had short-paid duty for the month of April, 2011 to the tune of Rs. 1,15,16,127/-. The assessee by a letter dated 6th April, 2011 claimed abatement of Rs. 1,15,16,128/- for the month of March, 2011 in April, 2011. According to the Department, in terms of the instruction of the Board dated 12th March, 2009, an abatement order has to be passed by the Jurisdictional Assistant Commissioner/Jurisdictional Deputy Commissioner, Central Excise, however, the assessee had not produced any abatement order of such Commissioner making them eligible for claiming abatement and in the absence of any such order, the assessee was not eligible for adjustment of the abatement of duty of March, 2011 for the duty liability for the month of April, 2011. Accordingly, show cause notice was issued to the respondent-assessee alleging contravention of the provisions of Rule 7, Rule 9 and Rule 10 of the PMPM Rules on the ground that they had not paid appropriate Central Excise duty by due date and had wrongly taken abatement of duty and adjustment of the same towards payment of duty for the month of April, 2011. The show cause notice culminated into an Order-in-Original dated 26th April, 2013 whereby the demand of Rs. 2,21,56,127/- came to be confirmed under Rule 18 of the PMPM Rules read with Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act"). Penalty of Rs. 11,00,000/- came to be imposed under Rule 17 of the PMPM Rules read with Rule 25 of the Central Excise Rules, 2002 together with interest. The assessee carried the matter in appeal before the Tribunal. By the impugned order dated 6th February, 2015 [2015 (328) E.L.T. 473 (Tribunal)], the Tribunal has allowed the appeal and set aside the orders-in-original.

From the highlighted portion in the above extracts, it is clear that in the case of Thakkar Tobacco Products Pvt. Ltd., the assessee had paid up the entire amount payable for the month of March, 2011 and as the machines remained sealed for a period 15 days in the month of March, 2011, it had adjusted the abatement amount in the total payment required to be made in the month of April, 2011. Thus there is no dispute that M/s Thakkar Tobacco Products Pvt. Ltd. had paid the entire duty amount by the 5th of the month for which it had *suo moto* availed abatement and later on claimed abatement on 06/04/2011. On considering the facts of the instant appeal it is seen that for the month of November, 2015, the respondent had paid duty amount of Rs.97,37,000/- only as against the duty liability of Rs.2,08,65,000/- for the month of November, 2015 on 16/11/2015 on *pro rata* basis. The distinguishing fact in the instant case is that the respondent had not paid the entire duty in order to claim abatement *suo moto* but it had calculated and paid *pro rata* duty for the month of November, 2015 without making an application for abatement. It is also clear from the provisions of Rule 9 of the said Rules that the proviso for calculation of duty on *pro rata* basis pertains only to a new manufacturer commencing production of notified goods in a particular month, where the monthly duty is required to be calculated on *pro rata* basis and to be paid within five days of the commencement. In the present case, the respondent is not a new manufacturer but certain number of machines were sealed and thereafter reopened for production and in such a case, the respondent had to claim abatement under Rule 10 of the said Rules after payment of proper duty, whereas in the instant case it had wrongly calculated and paid duty on *pro rata* basis in contravention of Rule 9 of the said Rules. Thus there is merit in the ground of appeal filed by the department that adjudicating authority had erred by quashing the demand proceedings by relying on the ratio of the



decision of Hon'ble High Court of Gujarat in the case of Thakkar Tobacco Products Pvt. Ltd. – 2016 (332) ELT 785 (Guj.). Therefore, the impugned order is held as liable to be set aside and the appeal filed by the department is allowed.

8. रेवेन्यू द्वारा दर्ज किया गया अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by Revenue is disposed of in the above terms.

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 25 / 06 / 2018

Attested

(Signature)

(K. P. Jacob)
Superintendent
C.G.S.T. (Appeals), Ahmedabad.

By R.P.A.D.

To
M/s Urmin Marketing Private Limited (now M/s Unicorn Packaging),
61, Mahagujarat Industrial estate,
Sarkhej – Bavla Highway, Changodar,
Ahmedabad – 382 213.



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: IV, Ahmedabad (North).
5. Guard File.
6. P.A.

