



आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.): **V2(48)2&3/North/Appeals/ 2019-20/13029 T013033**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-106-107-19-20**

दिनांक (Date): **15/11/2019** जारी करने की तारीख (Date of issue): **25/11/2019**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Gopi Nath , 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 **97/ADC/2008/PRC** Dated: **08/09/2008**

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

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

M/s Maharshi Lables Pvt. Ltd

M/s Rajendera B. Gandhi

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:

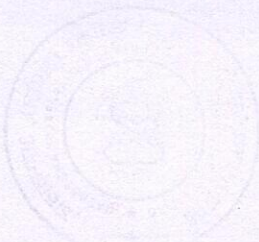
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

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 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 ।



Cont....2

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(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) 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) 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.

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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

Following two appeals are arised out of order no. A/11545-11546/2018 dated 27.07.2018 of the Hon'ble CESTAT, West Zonal Bench, Ahmedabad, wherein the matter has been remanded back to this authority to consider the limited issue of limitation.

Sr. No.	Name of appellant	Appeal No.
1	M/s. Maharshi Labels Pvt. Ltd., 10/B-2, Panchratna Industrial Estate-2, Sarkhej-Bavla Highway, Village-Changodar, Taluka-Sanand, Distt-Ahmedabad-382213 (for short " <i>appellant-1</i> ")	02/North/Appeals/19-20
2	Shri Rajendra B. Gandhi, Director of M/s. Maharshi Labels Pvt. Ltd. (for short " <i>appellant-2</i> ")	03/North/Appeals/19-20

2(i). The facts of the case in brief are that in pursuance of an intelligence to the effect that the appellant-1 [having central excise registration no.AAACM7996GXM002 from March'2006] were indulging in evasion of central excise duty by way of clearing their excisable goods viz. *printed film labels* (for short "said goods") under Chapter Sub Heading (for short "CSH") 49119990 at NIL rate of duty whereas the said goods were nothing but *printed plastic stickers* correctly classifiable under CSH 39199010 attracting central excise duty at the rate prevailing at the relevant time, the officers of Central Excise (Preventive), Ahmedabad-II visited the factory premises of the appellant-1 on 28.11.2006. Statement of Shri Rajendra B. Gandhi, Director of the appellant-1 was recorded on 28.11.2006 and on 22.01.2007. During investigation, it was revealed that the appellant-1 was earlier holding central excise registration no. AAACM7996GXM001 (issued to them on 05.07.2003) and the same was surrendered on 14.03.2005. The plastic stickers were made chargeable to central excise duty w.e.f. 01.03.2005 due to budgetary changes. The conclusion resulted into issuance of Show Cause Notice (for short "SCN") dated 18.07.2007 issued by the Addl. Commissioner of Central Excise, Ahmedabad-II proposing demand of central excise duty by invoking extended period under provisions of Section 11A on clearance of the said goods during the period from March-2005 to 28.11.2006 alongwith interest under Section 11AB of the Central Excise Act, 1944. Imposition of Penalty was also proposed upon the appellant-1 under Section 11AC of the Central Excise Act, 1944 read with Rule 25 and upon appellant-2 under Rule 26 of the Central Excise Rules, 2002. The Addl. Commissioner of Central Excise, Ahmedabad-II (for short "adjudicating authority") vide the Order-in-Original No.97/ADC/2008/PRC dated 08.09.2008 (for short "impugned order") confirmed the demand along with interest and imposed penalty of Rs.17,89,899/- and Rs.1,00,000/- on appellant-1 and appellant-2 respectively.

2(ii). Being aggrieved with the impugned order, both the appellants preferred appeal before this authority which were rejected vide Order-in-Appeal No.93 to 94/2009(Ahd-II)/CE/ID/Commr(A)/Ahd dated 27.02.2009. Thus, both the appellants preferred appeal before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad who vide the Order



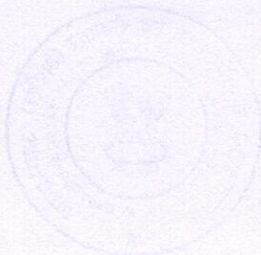
No.A/11545-11546/2018 dated 27.07.2018 remanded the matter back to this authority for the limited issue to reconsider the issue on limitation.

3. Hearing in this case was held on 20.08.2019 wherein Shri Amit Laddha, Advocate represented the appellants and reiterated the submission of the appeal memo, and tendered the copies of 4 judgements of Tribunal and Hon'ble Supreme Court on the issue of limitation for consideration.

4. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum and the various plea putforth in the appeal memorandum and during personal hearing and the records available. In view of the above order of the Hon'ble CESTAT, Ahmedabad, the limited issue to be decided by me is whether the demand is barred by limitation.

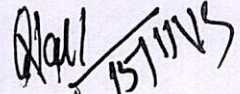
5(i). From the records, I find that on 15.12.2003 the appellant-1 submitted a letter dated 13.12.2003 to the then Dy.Commissioner of Central Excise, Rural Division, Ahmedabad-II stating that they have come accrossed a judgement of Hon'ble Supreme Court reported in 2003(156)ELT 166(SC) in case of M/s. Johnson & Johnson Ltd. v/s. Collector of Central Excise, Mumbai wherein it was held that the cloth printed labels, aluminium foil printed labels, film printed labels and paper printed labels are eligible for exemption as a product of the print industry. On 26.03.2004, the appellant-1 submitted a letter dated 25.03.2004 to the Dy.Commissioner of Central Excise, Rural Division, Ahmedabad-II and requested exemption from 01.04.2004 and also requested to allow them to surrender their licence. On 02.04.2004, the appellant-1 submitted a letter dated 01.04.2004 to the Dy.Commissioner of Central Excise, Rural Division, Ahmedabad-II stating that they are going to clear the said products under Heading No.4901.90 at Nil rate in view of the Hon'ble Supreme Court judgement in case of M/s. Johnson & Johnson Ltd. and on 28.06.2004 the appellant-1 submitted a letter dated 26.06.2004 for exemption and surrender of their licence. On 24.03.2005 the appellant-1 vide their letter dated 24.03.2005 submitted the Indemnity Bond required for surrender of registration certificate (i.e. Regn. No.AAACM7996GXM001) which was surrendered vide their letter dated 14.03.2005.

5(ii). The appellant-1 again took the central excise registration being no. AAACM7996GXM002 issued on 02.03.2006 and submitted a letter dated 06.03.2006 alongwith their registration certificate for modification to the Asstt. Commissioner of Central Excise, Division-IV, Paldi, Ahmedabad on 06.03.2006 stating that by mistake they had mentioned their product printed film labels under heading no. 39199010 however the proper heading for the product was 49119990 as per the Supreme Court judgement reported in 2003(156)ELT 166(SC).

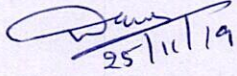


6. I find that the premises of the appellant-1 was visited on 28.11.2006 which concluded into demand of central excise duty alongwith interest and imposition of penalty on appellant-1 and on appellant-2. However, before 28.11.2006, the appellant-1 was in constant communication with the Department about the product in dispute and their belief for classification of the said product under CSH 49 instead of CSH 39 in view of the judgement of Hon'ble Supreme Court reported in 2003(156) ELT 166(SC) in case of M/s. Johnson & Johnson Ltd. v/s. Collector of Central Excise, Mumbai. Therefore the contention of the adjudicating authority regarding suppression of facts cannot be accepted and the demand so raised on the basis such suppression beyond the period of one year from the date of issuance of SCN will hit by limitation in the present case. Thus the demand will be limited to the normal period of one year. Since the demand beyond the normal period is hit by limitation in the present case, the imposition of penalty under Section 11AC read with Rule 25 of the Central Excise Rules, 2002 and under Rule 26 of the Central Excise Rules, 2002 on appellant-1 and appellant-2 respectively does not survive.

7. Both the appeals stand disposed off in above terms accordingly.


 (Gopi Nath)
 Commissioner (Appeals)
 Date: .11.2019

Attested


25/11/19

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.

BY R.P.A.D. / SPEED POST TO :

1. M/s. Maharshi Labels Pvt. Ltd.,
10/B-2, Panchratna Industrial Estate-2,
Sarkhej-Bavla Highway, Village-Changodar,
Taluka-Sanand, Distt-Ahmedabad-382213.
2. Shri Rajendra B. Gandhi (Director)
M/s. Maharshi Labels Pvt. Ltd.,
10/B-2, Panchratna Industrial Estate-2,
Sarkhej-Bavla Highway, Village-Changodar,
Taluka-Sanand, Distt-Ahmedabad-382213.

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Cen. Excise, Ahmedabad North Comm'rate.
3. The Addl./Joint Commissioner, (Systems), CGST & Cen. Excise, Ahmedabad North Comm'rate.
4. The Dy. / Asstt. Commissioner, CGST & Cen. Excise, Division-IV, Ahmedabad North Comm'rate.
5. Guard file.
6. P.A. File.

