



सत्यमेव जयते

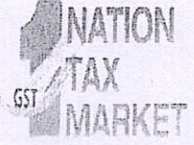
आयुक्त का कार्यालय),अपीलस(  
**Office of the Commissioner,**  
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

**Central GST, Appeal Commissionerate-  
Ahmedabad**

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015

☎ 26305065-079 : टेलीफैक्स 26305136 - 079 :

Email- commrappl1-cexamd@nic.in



**DIN-20210364SW000000E952**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/CEXP/155/2020-Appeal-O/o COMMR-CGST-APPL-AHMEDABAD

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-58/2020-21**  
दिनांक Date : **22.03.2021** जारी करने की तारीख Date of Issue : **31.03.2021**

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **02/DC/D/2020-21/AKJ** dated **24/27.04.2020**, passed by Deputy Commissioner, Central GST & Central Excise, Div.-IV, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** - M/s Parikh Packaging Pvt. Ltd..

**Respondent-** Deputy Commissioner, Central GST & Central Excise, Div.-IV, Ahmedabad-North

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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) 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.





(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

(B) 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।

(c) 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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।

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





### ORDER IN APPEAL

This appeal has been filed by M/s. Parikh Packaging Pvt. Ltd., Opposite Rotomac Pens, Sarkhej-Bavla Highway, Vill. Moraiya, Taluka-Sanand, Dist. Ahmedabad 382213 (henceforth referred as “*appellant*”) against the Order-In-Original No. 02/DC/D/ 2020-21/AKJ dated 24/27.04.2020 (henceforth referred as “*impugned order*”) passed by the Deputy Commissioner, Central GST & CX, Division-IV, Ahmedabad-North (henceforth referred as “*adjudicating authority*”).

2. The fact of the case, in brief, are that the appellant is engaged in manufacturer of goods viz., Printed Laminated Rolls, Pouches etc falling under Chapter 39 of the First Schedule of the Central Excise Tariff Act, 1985 and was having Central Excise Registration No. AABCP7894FXM001. On the basis of CERA objection that the appellant, in addition to the assessable value, was recovering freight separately in the sales invoice from the customers and they have shown buyers premises as the place of removal. Therefore, the freight recovered by the appellant from the buyers is part of additional consideration and it to be included in the assessable value for payment of Central Excise duty. Accordingly, a show cause notice dated 08.04.2019 was issued to the appellant, *interalia*, seeking inclusion of the additional consideration collected towards freight charges to the transaction value for the period from April-2017 to June-2017 demanding duty amounting to Rs. 12,33,972/- along with interest and further proposing penalty under Section 11AC of the Central Excise Act, 1944. This notice was issued in terms of the provisions of Section 11A(7A) of the Central Excise Act, 1944.

3. The adjudicating authority vide impugned order dated 24/27.04.2020 held that the goods were to be delivered at the place of buyers and it is only at that place where the acceptance of supplies was to be effected; that sale of the goods took place at the premises of the buyers only and therefore, “place of removal” for the purpose of valuation under Section 4 of the Act is the buyer’s premises and accordingly, the transaction value would include the freight charges shown separately in the invoices and accordingly directed inclusion of the amount received as additional consideration towards freight charges in the assessable value of the excisable goods and confirmed the duty along with interest on such additional consideration and further imposed penalty under Section 11AC(1)(c) of the Central Excise Act, 1944.

4. Being aggrieved by the impugned order dated 24/27.04.2020, the appellant have filed the instant appeals on the ground that:





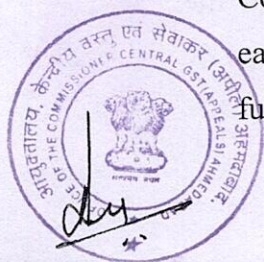
- that the adjudicating authority concluded that the sale took place at the premises of buyers are without any explanation and also without any support of documentary evidence and hence non speaking order;
- that they prepare an excise invoice at the time of removal of goods from the factory and on the excise invoice, specifically mentions that "Removal of Excisable Goods from a factory";
- the factory gate is the place of removal in their case since the goods were being sold from their factory to the customer directly;
- that the summary of freight charges collected in respect of export sales and domestics sales are as under;

Type of Sale	Freight amount collected (Rs.)	Excise duty on freight demanded (Rs.)
Export Sales	32,81,693/-	4,46,122/-
Domestic Sales	62,62,659/-	7,87,850/-
TOTAL	95,44,352/-	12,33,972/-

- that the adjudicating authority relied upon the judgement of Hon'ble Supreme Court in case of M/s Roofit Industries Ltd., reported at 2015 (319)ELT 221(SC) and CCE, Mumbai-III Vs Emco Limited reported at 2015 (322) ELT 394 wherein the facts of both the cases are completely different from the present case;
- that as per the judgement of Hon'ble Supreme Court in case of Commissioner of Customs & Excise, Nagpur Vs Ispat Industries Limited reported at 2015 (324) ELT 670 (SC) wherein Hon'ble Supreme Court held that if the seller does not retain the right to disposal of goods after removal of goods from factory, the property in goods shall deemed to be transferred to the buyer on removal of goods from factory and factory gate shall be considered as place of removal;
- that out of total demand of Rs. 12,33,972/- on freight charges, Rs. 4,46,122/- towards the goods exported by the appellant;
- that the entire demand of excise duty on freight charges with respect of export goods is futile as it would result into revenue neutrality;

5. Personal hearing in the matter was held on 19.02.2021 through virtual mode. Shri Nrupesh Machchhar, C.A, appeared on behalf of the appellant for hearing and re-iterated the submissions made in the appeal memorandum.

5.1. He also submitted further written submission dated 19.02.2021 alogwith copy of Order-In-Original No. 24/ADC/2020-21/MSC dated 28.10.2020 passed by the Additional Commissioner, CGST & C.Ex, Ahmedabad-North in their own case of same issue of earlier period wherein the Additional Commissioenr has dropped the demand. It was further stated that they have discharged service tax liability on freight charges collected





from the customer and not availed CENVAT credit of the same and submitted copies of service tax return and working for the period under dispute i.e April-2017 to June-2017.

6. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum as well as oral and written submissions made at the time of personal hearing. I find that the limited point to be decided in the instant case is whether the place of removal for the purpose of valuation under Section 4 of the Act in this case is the buyer's premises or factory gate and whether the freight charges shown separately in the sales invoices and recovered from the buyer by appellant would form part of Assessable Value, for computing Central Excise duty or otherwise.

7. It is observed from the case records that the SCN dated 08.04.2019 in the present case has been issued under Section 11A (7A) of the Central Excise Act, 1944 for period from 01.04.2017 to 30.06.2017, with reference to earlier Show Cause Notice dated 06.03.2017 issued by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-II, on same grounds relied upon in earlier SCN. The said SCN dated 08.04.2019 has been decided by the adjudication authority vide impugned order for which the appellant, in addition to ground mentioned in appeal memorandum, also at the time of personal hearing and in their additional submission dated 19.02.2021 contended that the demand raised for the earlier period for the F.Y 2012-13 to F.Y. 2015-16 has been decided by the Additional Commissioner, CGST, Ahmedabad North vide OIO No. 24/ADC/2020-21/MSC dated 29.10.2020 in favour of the appellant. There is no change in legal provision as per Show Cause Notice dated 06.03.2017 and in the present SCN.

7.1. It is observed that while deciding the case, the Additional Commissioner, CGST, Ahmedabad North vide order dated 29.10.2020 has considered and agreed with contentions of appellant that on every sale invoice they specifically mention "Removal of Excisable Goods from Factory" and therefore, the freight charges recovered by the appellant separately in the sales invoice cannot form part of assessable value. It was also held that the appellant makes payment of the transport charges to the transport agency and makes payment of Service Tax on such expenses made towards transportation and same has already been shown in the respective ST-3 returns filed by the appellant. The Additional Commissioner has relied on the decision of Hon'ble Supreme Court in case of Commissioner of Customs & Central Excise, Nagpur Vs Ispat Industries Ltd (reported in 2105 (324) ELT 670 (SC) relied upon by the appellant wherein it is held that freight or transportation expenses are not included in calculating excise duty payable and the Additional Commissioner while deciding the case held that the said judgement squarely



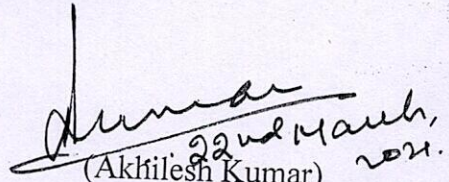


applicable and accordingly, dropped the proceedings. Therefore, the impugned order of the adjudicating authority does not sustainable legally in view of the finding of the Additional Commissioner in respect of principal SCN dated 06.03.2017.

8. Looking into the facts and circumstances of the instant case, I find that the original SCN on the basis of which present case has arisen has been decided by the the decision of Additional Commissioner, CGST, Ahmedabad North wherein he has dropped the proceedings as discussed hereinabove. Thus, I find that the impugned order with respect to confirmation of demand of Central Excise duty amounting to Rs. 12,33,972/- along with interest and penalty imposed on the appellant is legally not sustainable and liable to be set aside on merits.

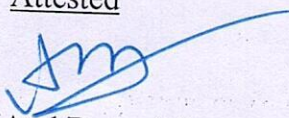
9. In view of the facts as discussed hereinabove, I set aside the impugned order and allow the appeal filed by the appellant.

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

  
(Akhilesh Kumar)  
Commissioner, CGST (Appeals)  
Date: 03.2021



Attested

  
(Atul B. Amin)  
Superintendent (Appeals)  
CGST, Ahmedabad

By R.P.A.D.

To,  
M/s. Parikh Packaging Pvt. Ltd.,  
Opp. Rotomac Pens, Sarkhej-Bavla Highway,  
Vill. Moraiya, Taluka-Sanand,  
Dist. Ahmedabad 382213

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
4. The Deputy Commissioner, CGST Division-IV, Ahmedabad-North.
5. Guard File.
6. P.A. File



