



सत्यमेव जयते

**आयुक्त (अपील) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
**Central GST, Appeal Commissionerate, Ahmedabad**  
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
 07926305065- टेलिफैक्स 07926305136



DIN: 20220964SW00003883B5

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**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/STP/2345/2021 & GAPPL/COM/CEXP/657/2021

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-29 to 30/2022-23**  
दिनांक Date : 02.09.2022 जारी करने की तारीख Date of Issue 05.09.2022

आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **10/AC/DEM/2021-22/NBS** दिनांक: **29-07-2021**, issued by  
Assistant Commissioner, CGST, Division-V, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

**M/s Kotak Polypack Industries**  
**Plot No. 789, Paiki 819,**  
**Kotak Nr. Aegis Auto Gas,**  
**NH No. 8A, Bavla, Ahmedabad - 382220**

2. Respondent

**The Assistant Commissioner,**  
**CGST Division-V, Ahmedabad North**  
**2<sup>nd</sup> Floor, Shajanand Arcade,**  
**Memnagar, Ahmedabad**

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) केंद्रीय 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 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।

(iii) 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 दिनोंक 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.

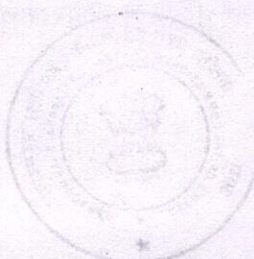
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.

- (22) 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.

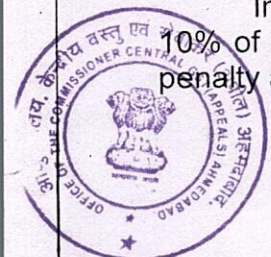
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (xlix) amount determined under Section 11 D;
- (l) amount of erroneous Cenvat Credit taken;
- (li) 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**

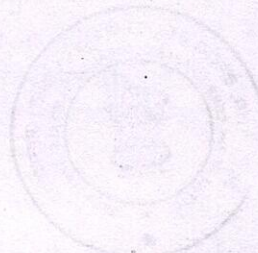
The present appeals have been filed by M/s. Kotak Polypack Industries, Plot No, 789 Paiki 819, Kotak Nr. Aegis Auto Gas, N.H. No. 8A, Bavla, Ahmedabad-382220 (hereinafter referred to as "the appellant") against Order-in-Original No. 10/AC/Dem/2021-2022/NBS dated 29.07.2021 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad North (hereinafter referred to as the "adjudicating authority"). The appellant are engaged in the manufacturing of P.P. Fabrics and P.P Bags and were having Central Excise Registration No.AAJFK2218DXM001 and Service Tax Registration Number AAJFK2218DST001 as recipient of Transport of Goods by Road (GTA) service.

2. The facts of the case, in brief, are that during the course of audit on the records of the appellant conducted by the Central Tax Audit Commissionerate, Ahmedabad, for the F.Y.2016-17 to F.Y.2017-18, following discrepancies were noticed:-

- **Para No. 01:** The appellant had availed Cenvat credit amounting to **Rs.52,034/-** on M.S. Angle, M.S.Channel, & C.C.Trap Sheets considering them as capital goods. It appeared that these goods do not fall within the ambit of capital goods, hence Cenvat credit on such goods is not admissible.
- **Para No. 02:** Reconciliation of the Balance sheet/ledgers/Trial Balance with that of the ER-1 returns showed that the excise sales shown in the balance sheet is more than the excise sales shown in their ER-1 register. It, therefore, appeared that the appellant has short paid the excise duty amounting to **Rs.40,851/-** on such differential value.
- **Para No. 03:** On reconciliation of the Balance sheet/ledgers/Trial Balance with that of the ST-3 returns, considerable difference was noticed on the expenses shown under GTA service during the period 2016-17. Accordingly, short payment of service tax to the tune of **Rs.7,189/-** on GTA service under RCM was noticed.
- **Para No. 04:** The appellant has shown commission income under the head of indirect income in the balance Sheet/ledgers during the F.Y. 2016-17, but they failed to discharge service tax liability of **Rs.1,36,701/-** on such income.
- **Para No. 05:** The appellant collected cylinder charges and showed such charges under the head of indirect income in Balance Sheet during the F.Y. 2016-17 and F.Y. 2017-18 (upto June 2017). It appeared that the amount collected as cylinder charges are additional consideration hence shall form part of transactional value. The excise duty of **Rs.58,455/-** was found less paid on such charges.

3. The audit observations were contained in FAR No.553/2019-20 dated 21.10.2019, based on which a Show Cause Notice (SCN) No.CTA/04-188/CIR-VII/AP-43/2018-19 dated 04.12.2019 was issued proposing the recovery of above mentioned demands alongwith interest under Section 11A (4) & Section 11AA as well as under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 11AC(1)(c) of the CEA, 1944 and under Section 78(1) of the Finance Act, 1994 was also proposed.

4. The said SCN was adjudicated vide the impugned order, wherein the demand alongwith interest and penalty was confirmed by the adjudicating authority.



5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds which are elaborated below:-

- The impugned order passed was in violation of natural justice as the matter was decided ex-parte and without considering the submissions made in reply to SCN filed on 03.05.2021. The adjudicating authority not only ignored the vital submissions made in the defence reply but also failed to give any findings on them. Hence, the order needs to be set-aside.
- The M.S. Angle, M.S.Channel, & C.C.Trap Sheets were used in the manufacture of lamination machine, which were subsequently used in manufacture of final products. The SCN was issued without any verification of the use of the goods received by the appellant. Since it is not disputed that the goods were used in the manufacture of capital goods, credit cannot be disallowed. They placed reliance on following decisions;
  - Jawahar Mills Ltd-2001(132) ELT-3 (SC).
  - A.P.P. Mills Ltd- 2013(291) ELT 585 (Tri-Bang)
  - Rajasthan Spinning & Weaving Mills Ltd – 2010(255) ELT 481 (SC)
- As per sales ledger, the sales value for April, 2017 to June, 2017 has been shown as Rs.4,57,96,721/- instead of Rs.4,60,64,924/- as mentioned in the SCN. Further, the credit note of Rs.2,68,193/- in respect of sales return was added in the value of sales. However, the amount of credit notes in respect of sales return cannot be considered sales. Since the sale amount reflected in sales ledger and ER-1 return are same, the question of difference does not arise. The submissions made in this regard were not perused hence no findings given. Thus the impugned order needs to be quashed.
- The value of cylinder was amortized and proportionate value of the cylinder was added to the value of printed material, accordingly, the central excise duty was paid on the value arrived at after considering the amortized value of the cylinder. Further it was also pointed out that cylinders in respect of which charges were collected were not used in the manufacture of finished product by the appellants. All these submissions were discarded without giving any reasons.
- For service tax demand in respect of GTA service, it was submitted that service tax was not chargeable when freight charges were below Rs.750/- or Rs.1500/-, however the learned A.C. without discussing or considering the submissions of the appellant, adjudicated the matter merely by relying on the allegations made in the SCN.
- The Notification No.33/2012-ST dated 22.06.2012, specifically exempts taxable services of aggregate value not exceeding Ten Lakhs rupees in any financial year from the whole of service tax leviable thereon. As the aggregate value of the commission income of Rs.9,11,340/- received in the F.Y. 2016-17 remained below the threshold limit and the aggregate value of commission income received in the F.Y. 2015-16 also remained below the threshold limit, the appellant, therefore, are eligible for the exemption provided under the said notification and hence the demand of Rs.1,36,701/- is not sustainable. The order is silent on these submissions hence passed in violation of the principles of natural justice. Moreover the demand was confirmed on the ground of not fulfilling the



condition no.(vii) of Notification No.33/2012-ST, whereas there was no such allegation in the SCN, therefore confirming the demand on such grounds is travelling beyond the scope of SCN. They placed reliance on Swarnagiri Wire Insulations- 2014(301) ELT 46-Kar, R.Ramdas- 2012 (44) GSTL -258 (Mad).

- The appellant also contested the demand on limitation as the SCN for the period April,2017 to June,2017 was issued on 29.07.2021 without establishing the ingredients of Section 11A(4) of CEA. Similarly, the demand for the period April-2016 to March-2017 pertaining to service tax demand issued on 29.07.2021, without establishing ingredients of proviso of Section 73(1) of the Finance Act, 1994. Mere non-payment of duty or service tax cannot construe suppression of facts.
- No specific finding was given warranting levy of penalty. The submissions in this regard were neither recorded nor discussed in the impugned order, hence needs to be set-aside.

**6.** Personal hearing in the matter was held on 17.08.2022 in virtual mode. Mr. P.G.Mehta, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in both the appeal memorandum and emphasized that the impugned order was passed in violation of the principles of natural justice.

**7.** I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, the submissions made at the time of personal hearing as well as the submissions made before the adjudicating authority on 03.05.2021.

**8.** The issue to be decided under the present appeals are whether the impugned order passed by the adjudicating authority in the facts and circumstances of the case confirming the proposals made in the SCN dated 04.12.2019 is legal and proper or otherwise. The demand pertains to the F.Y. 2016-17 and F.Y. 2017-18 (upto June 2017).

**8.1** Before going into the merits of the case, I will first consider whether the impugned order passed was in violation of the principles of natural justice. The appellant have contended that the impugned order was passed ex-parte and the vital submissions made by them in the defence reply filed on 03.05.2021 were not considered while deciding the issue on merits. I have gone through the written submission made by the appellant on 03.05.2021 as well as the impugned order. I find that the appellant were granted three dates for personal hearing i.e. on 04.03.2021, 31.03.2021 and 22.07.2021 though none of these opportunities were availed by the appellant. Further, in the impugned order, the submissions made by the appellant on 03.05.2021 though were recorded by the adjudicating authority at Para 30 of the order, but I find that the adjudicating authority has not recorded any findings countering the submissions of the appellant.

**8.2** On the first issue, the appellant contended before the adjudicating authority that MS Angle, MS Channel and CC Trap sheets were used as inputs in the manufacture of capital goods (lamination machine) and these capital goods were subsequently used for manufacture of their final products viz. P.P. Fabrics, Lamination Fabric and P.P. bags.



M.S. Angle, M.S. Channel, & C.C. Trap sheets were used as components, spares and accessories of capital goods defined under Rule 2(k) of the CCR, 2004. Admissibility of credit cannot be disputed merely because they are not covered under capital goods defined under Rule 2(a) of the CCR, 2004. They claim that these input goods are also not covered under Notification no.28/2012 CE.(NT) dated 20.06.2012. However, the adjudicating authority, without considering the above submission simply held that the Cenvat credit of **Rs.52,034/-** is not admissible as the M.S. Angle, M.S. Channel, & C.C. Trap Sheets, cannot be considered as capital goods defined under Rule 2(a) of the CCR, 2004. Thus, I find merit in the contentions that no findings were recorded countering appellant's submissions.

**8.3** On the demand of **Rs.40,851/-** covering Para No-02, the appellant in their written submission have contested the demand on the grounds that duty has been demanded without disclosing the details of clearance or the invoices. They produced evidence in the form of sales ledgers to the adjudicating authority claiming that as per sales ledger, the sales value for April, 2017 to June, 2017 has been shown as Rs.4,57,96,721/- and not Rs.4,60,64,924/- as claimed in the SCN. They also claimed that the credit note of Rs.2,68,193/- issued in respect of sales return was added in the value of sales though principally such credit notes cannot be considered as sales. Therefore, they contended that there was no difference in the sales figures reflected in the Sales Ledger and in the ER-1 return. I find that the demand was confirmed merely on the ground that the appellant has not given any explanation about the differential sales value shown in the Balance Sheet/Ledgers/Trial Balance as compared to their ER-1 returns for the F.Y. 2016-17 upto June 2017. All the above submissions made by the appellant were simply brushed aside and the impugned order was passed by the adjudicating authority without giving any findings on merits as no arguments countering appellant's arguments were recorded.

**8.4** Similarly, on Para No-03, short payment of service tax to the tune of **Rs.7,189/-** required to be paid on GTA service under RCM was confirmed on the grounds that the appellant have neither disclosed the actual value of GTA services received to the department nor submitted details of any records /returns before audit. The appellant, however, in their defence submission have contested that audit party while reconciling the figures from ledger with ST-3 returns have not considered the exemption provided under Serial No. 21 of the Notification No. 25/2012-ST, which exempts service tax on freight charges below Rs.750/- or Rs.1500/-. I find merit in the above argument, however, these submissions were simply ignored and the demand was confirmed by the adjudicating authority by relying on Notification No.30/2012-ST dated 20.06.2012.

**8.5** Further, on the issue covered under Para No-04, the appellant, before the adjudicating authority, have contested the demand stating that the benefit of exemption provided under Notification No.33/2012-ST dated 22.06.2012 was not considered while computing the demand. The said notification exempts taxable services of aggregate value not exceeding Ten Lakhs rupees in any financial year, from the whole of service tax leviable thereon. Appellant claim that the aggregate value of the commission income of Rs.9,11,340/- received in the F.Y. 2016-17 and the commission income received in the F.Y. 2015-16 remained within the threshold limits, hence, they are



eligible for the exemption provided under the said notification. However, the adjudicating authority denied the threshold limit exemption on the grounds of non-fulfilment of the condition no.(vii) of Notification No.33/2012-ST. I find that the condition no. (vii) of Notification No.33/2012-ST, cannot be made applicable so far as it is not disputed that the appellant at the relevant time was providing more than one service. Hence, the denial of exemption was on the ground which is not relevant and without any concrete evidence.

**8.6** On the issue covered under Para No-05, the excise duty demand of **Rs.58,455/-** was confirmed by the adjudicating authority on the grounds that amount collected as cylinder charges are additional consideration hence shall form part of transactional value. The appellant, however, have contended that they manufacture PP fabrics, Laminated fabrics and PP bags on which different printing is done through cylinders as per the customized requirement of the customer. The life of cylinder depends on the number of impressions, duration of the job, width & quality of the cylinder, which generally is five years and on the basis of the life, the cost of the cylinder was apportioned to the manufacturing cost of packing material and the value was amortized and proportionate value of the cylinder was added to the value of printed material. They claim that central excise duty was paid on the value after considering the amortized value of the cylinder. I find that the adjudicating authority without examining the amortization claim simply brushed aside appellant's above contention by treating them as non-substantial and vague as no evidence was produced.

**8.7** Thus, I find that the duty and tax demand proposed in the SCN were confirmed by the adjudicating authority solely by relying on the allegations made in the SCN. Considering the contentions put forth by the appellant and on perusal of the impugned order, I find that though the adjudicating authority in the impugned order has reproduced most of the grounds that the appellant has raised in their submission, however, the adjudicating authority has literally considered only the factual aspects of the case and has not dealt with the specific objections and grounds that the appellant has raised in their written submissions dated 03.05.2021.

**8.8** It is a well settled position of law that the adjudicating authority, while deciding the SCN is duty bound to consider the grounds of challenge and is also required to pass a reasoned and speaking order considering and dealing with those grounds. The issues covered in the SCN have been decided without considering the submissions of the appellant and, therefore, the same deserves to be remitted back to the adjudicating authority for passing of a reasoned and speaking order dealing with the contentions raised in the written submission.

**8.9** Hon'ble Supreme Court has consistently held that giving reasons in support of the conclusions arrived at is an ingredient of the principles of natural justice. Ignoring the submissions of the appellant, as raised in the written statement which are taken on record as evident from the order and proceed to decide the issue as if no submissions and/or case law in support of the appellant's case was made before it makes the impugned order a non-speaking order inasmuch as it does not consider the contentions



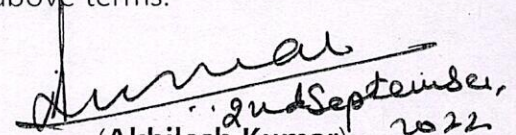


of the appellant as supported by case law. The impugned order is, therefore, a non-speaking order, which is totally bereft of any reasons whatsoever.

9. In view of above discussion, I set-aside the impugned order and remand back the case to the adjudicating authority for deciding the case afresh by following the principle of natural justice and for passing the speaking order considering the submission made by the appellant. The appellant is also directed to submit all relevant documents before the adjudicating authority substantiating their claim made in the written submission.

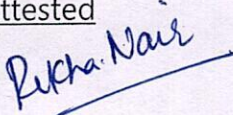
10. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

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

  
(Akhilesh Kumar) 2nd September, 2022  
Commissioner (Appeals)

Date: 09.2022

Attested



(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad

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M/s. Kotak Polypack Industries,  
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Ahmedabad-382220

The Assistant Commissioner,  
CGST, Division-V,  
Ahmedabad North

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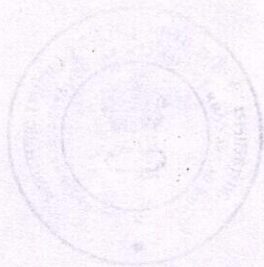
1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)

4. Guard File.



**Appellant**

**Respondent**



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