• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटेकनिक के पास, आमबाबाडि,
अहमदाबाद – 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/100/Ahd-I/2015-16 2628 to 3632
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-031-2016-17**
दिनाँक Date : **25.11.2016**जारी करने की तारीख Date of Issue 9/12/16

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Joint COMMR., केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं **26/CX-I Ahmd/JC/GPM/2015**
दिनाँक: **07-12-2015,** से सृजित

Arising out of Order-in-Original No. **26/CX-I Ahmd/JC/GPM/2015** दिनाँक **07-12-2015** issued by Joint COMMR., Central Excise, Ahmedabad-I

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

M/s Tapasheel Enterprise

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 a 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 पूवोक्त 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, 4th 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 प्रकिया 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.

(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।

... 2 ...

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) CENTRAL EXCISE OFFICE OF THE COMMISSIONER (APPEALS) AHMEDABAD अहमदाबाद

(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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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."

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS) CENTRAL EXCISE AHMEDABAD अहमदाबाद

ORDER-IN-APPEAL

M/s. Tapsheel Entperise, 430, Phase-II, GIDC, Vatwa, Ahmedabad [for short - *'appellant'*] has filed this appeal against OIO No. 26/Cx-I Ahmd/JC/GPM/2015 dated 7.12.2015, passed by the Joint Commissioner, Central Excise, Ahmedabad-I Commissionerate [*for short - 'adjudicating authority'*].

2. Briefly stated, the appellant had cleared finished goods viz *MEGASID AK 35*, falling under tariff heading No. 32042010 of Central Excise Tariff Act, 1985, to M/s. Raymond Uco Denim Private Limited, Yavatmal, [*for short ' RUDPL'*], without payment of central excise duty, on the basis of annexure 45, countersigned by Assistant Commissioner, Central Excise, Amravati Division, in favour of the appellant. These annexures, were issued in terms of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

2.1 Thereafter, vide letter dated 14.1.2015, the Assistant Commissioner, Central Excise, Amravati Division, informed that the annexure-45, were wrongly issued to RUDPL, as there was no such exemption available for the goods procured by RUDPL under notification No. 12/2012 dated 17.3.2012 [*sic*]. It was further advised to initiate action for safeguarding the duty in respect of goods cleared by the appellant at nil rate. Hence, a show cause notice dated 16.3.2015 was issued to the appellant, which proposed - treating the bonds and annexure 45, as invalid documents; confiscation of goods cleared under the said annexure; demanded central excise duty along with interest in respect of the goods cleared without payment of duty in terms of the revoked annexure. The notice further, proposed penalty under Rule 25 of the Central Excise Rules, 2002.

3. This notice was adjudicated vide the impugned OIO, wherein the adjudicating authority, held as follows:

- held the documents, namely bonds and annexure-45, to be invalid documents as they were revoked by the jurisdictional authority;
- refrained from confiscating the goods as they were not placed under seizure;
- confirmed the demand of duty along with interest;
- imposed penalty under Rule 25 of Central Excise Rules, 2002 read with section 11AC (1)(a) of Central Excise Act, 1944.

4. The appellant, feeling aggrieved, has filed this appeal raising the following averments:

- that the goods were removed without payment of duty on account of annexure 45 provided by RUDPL; the appellant was not obliged to verify whether the competent excise officer had issued the same correctly or not; that the benefit is being claimed by the RUDPL and not the appellant and therefore, holding the appellant as beneficiary does not hold good;
- the appellant had taken care to check the genuineness of the annexures and had intimated to the jurisdictional range about these clearances at nil rate of duty which were effected with the full knowledge of the department;
- the order is passed beyond jurisdiction; that if the annexure is to be held invalid then it is the bond accepting authority who is to initiate the recovery proceeding against the executants of the bond;

- it is the responsibility of RUDPL and the issuing authority to decide the eligibility of the benefit and not of the appellant; that the liability to pay duty is on the person who executed the bond since the appellant has cleared the goods against the bond executed by RUDPL;
- that they rely on the case of Cosmo Ferrites [2014(308) ELT 633], Supreme Industries [2002 (144) ELT 729];
- by issuing annexure the appellant was stopped from collecting revenue and therefore, the appellant cannot be implicated even if the annexure were issued under a misunderstanding as the said promise is already acted upon by the appellant as per the doctrine of *promissory estoppel*;
- the revocation of the annexure retrospectively, is bad in law;
- the impugned order leads to duplication of proceeding since a show cause notice has already been issued to RUDPL on 28.7.2015;
- the appellant has not collected any duty from RUDPL and now has no recourse to collect the same;
- on the question of the annexure 45 being *ab-initio void*, they would like to rely on the case of M/s. Malwa Industries Ltd [2009(235) ELT 214] and Arvind Mill [Writ Petition no. 5239/2012];
- that RUDPL has already filed an appeal before the jurisdictional Commissioner(A) against the order of AC, Amravati Division; that till the main issue is decided, the consequential impugned order cannot be decided and therefore, the demand of duty would be premature at this stage;
- that had RUDPL imported the same goods they would have enjoyed the benefit of exemption of CVD whereas since it is locally procured, duty is demanded;
- that they wish to rely on the case of N S Rathnam and Sons [2015(322) ELT 353];
- the AC has erred in not following the cardinal principals of law that is the rule of harmonious construction;
- if the notion of the department is accepted, then the concerned serial number of the said notification would become redundant; that the duty levied in case of import of similar goods should also be seen while levying the duty of excise when manufactured locally;
- the view of the revenue that if goods manufactured in the same factory are exempted while these goods were cleared from one factory to another, exemption is not available appears to be contrary to the judgement in the case of Malwa Industries, *ibid*;
- that they wish to rely on the case of Thermax Private Limited [1992(61) ELT 352] and Aidek Tourism Services Private Limited [2015 (318) ELT 3];
- penalty imposed under Rule 25, needs to be vacated.

5. Personal hearing in the matter was held on 22.11.2016. Shri Manohar Maheshwari, General Manager (Commercial) of the appellant, appeared and reiterated the arguments made in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments, raised during the course of personal hearing.

7. The issue to be decided is [a] whether the appellant is liable to pay central excise duty, along with interest in respect of clearances based on annexure 45, which the jurisdictional authority, has held to have been wrongly issued; and [b] whether the appellant is liable for penalty.

8. Since the issue revolves around annexure 45, issued in terms of Rule 3 Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, the said rule is reproduced below for ease of reference:

RULE 3.Application by the manufacturer to obtain the benefit. —
(1) A manufacturer who intends to receive subject goods for specified use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-I to the jurisdictional

Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be (hereinafter referred to as the said Assistant Commissioner or Deputy Commissioner).
(2)The manufacturer shall make separate application in respect of each supplier of subject goods.
(3)The manufacturer shall execute a general bond with surety or security :

[Provided that it shall be sufficient to provide a letter of undertaking by a manufacturer against whom no show cause notice has been issued under sub-sections (4) or (5) of section 11A of Central Excise Act, 1944 or where no action is proposed under any notification issued in pursuance of rule 12CCC of Central Excise Rules, 2002 or rule 12AAA of CENVAT Credit Rules, 2004.]

(4)The bond shall be for such amount as considered appropriate by the said Assistant Commissioner or Deputy Commissioner, to cover the recovery of duty liability estimated to be involved at any given point of time.
(5)The application shall be countersigned by the said Assistant Commissioner or Deputy Commissioner who shall certify therein that the said person has executed a bond to his satisfaction in respect of end use of the subject goods and indicate the particulars of such bond.
(6)Of the four copies of the application referred to in sub-rule (5), one copy shall be forwarded to the jurisdictional range Superintendent of the manufacturer of the subject goods, two copies shall be handed over to the manufacturer and one copy shall be retained, by the said Assistant Commissioner or Deputy Commissioner.
(7) One copy of the application referred to in sub-rule (6) received by the manufacturer, shall be forwarded by the said manufacturer to the manufacturer of subject goods.

8.1 The relevant extracts of notification No. 12/2012-CE dated 17.3.2012 [Sl. No. 133], states as follows:

133	*3204 or 3809*	*Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs, printing paste and other products and preparations of any kind used in the same factory for the manufacture of textiles and textile articles*	*Nil*	-

9. As is already known, the genesis of the dispute is a letter dated 14.1.2015 from Assistant Commissioner, Central Excise, Amravati Division, to the Range Superintendent, AR-IV, Division-III, Ahmedabad-I, informing that the annexures issued by his office, in favour RUDPL, authorizing them to procure inputs from the appellant, without payment of duty, were wrongly issued. The letter further requested initiation of necessary action for safeguarding revenue.

10. The appellant, as is already mentioned has averred that the exemption was available to RUDPL; that they had cleared the goods to RUDPL based on annexure-45 countersigned by the proper officer of the department; that they were under a bonafide belief that they can clear the goods without payment of duty based on these annexures; that when imports are allowed without payment of duty, it would be inappropriate to charge duty on domestic clearances; that the adjudicating authority had exceeded his brief by holding the annexures as invalid documents and that if any bond was to be enforced it should have been the bond accepting authority and not the adjudicating authority.

11. I will deal with each issue one after the other.

Exemption under notification 12/2012-CE dated 17.3.2012 [Sl. No. 133], is available

12. The appellant has vehemently argued that the exemption is available to RUDPL; that in case of imports, no CVD is charged and therefore, it would not be

appropriate to charge excise duty on domestically manufactured goods. The impugned OIO, has on page 20 and 21, discussed the merits of whether the exemption was available in the first place. The adjudicating authority has held that since the appellant has cleared the goods to RUDPL, a different unit, they were not eligible for the benefit of the notification as per Sl. No. 133 – which though unconditional, clearly states that "finishing agents, dye carriers ..... of any kind used in the **same factory** for the manufacture of textiles and textile articles". The appellant, has further relied upon the case laws of M/s. Malwa industries Ltd [2009(235) ELT 214] and Arvind Mill [Writ Petition no. 5239/2012]. I find this argument/averment, a bit out of place. Let it be very clear that the exemption was being availed by RUDPL and not the appellant. Whether RUDPL was eligible for the benefit of the notification, *ibid*, is for the jurisdictional officer to decide – in this case the Assistant Commissioner, Central Excise, Amravati Division. What needs to be stressed is that the appellant was clearing the goods under nil rate of duty, under an annexure countersigned by the proper Central Excise officer, under Rule 3 Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The adjudicating authority, it is therefore, felt should not have commented on the aspect of eligibility of benefit of Notification No. 12/2012-CE dated 17.3.2012 [Sl. No. 133]. In-fact, the appellant himself states that it is RUDPL and the annexure issuing authority, need to decide the eligiblity factor. Even otherwise, as is mentioned in the grounds and on page 19 of the impugned OIO, the proceedings were initiated on the recovation of Annexure-45, by the proper officer of Amravati Division, where the primary issue would be eligibility of the benfit of the notification. The original authority in the said proceeding has revoked the annexures which means RUDPL was not eligible for the benefit. As per the appellant, RUDPL, is before the Commissioner(A) against this order of revocation. Since the eligibility of notification, is not within this jurisdiction, I do not wish to comment on whether RUDPL was eligible for the benefit or otherwise.

Whether adjudicating authority has exceeded his brief in holding the annexure-45 as invalid documents

13. The corollary to para 12 above, is whether the adjudicating authority was correct in holding that the bonds and annexure 45 issued/countersigned under Rule 3, supra, are invalid. The adjudicating authority on page 23 of the impugned OIO, held the bonds and the annexures to be invalid because they were revoked by the jurisdictional authority. I do not find any merit in the argument that the adjudicating authority exceeded his brief, because his sole reliance for holding them invalid was the revocation order dated 28.7.2015 of the jurisdictional officer. If these documents were not held to be invalid, it would not have been possible for demanding duty in respect of the goods cleared under annexure 45. At best, it can be said that the exemption under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been denied to the appellant by the adjudicating authority since the documents based on which

the benefit was availed, have been revoked by the issuing authority. I do not find any reason to go into the merits of the revocation, since it is already pending before the jurisdictional Commissioner(Appeals). I will restrict myself to the question as to whether the action of the adjudicating authority in demanding duty was correct or otherwise. Since the primary document on which the exempted clearances were effected stand revoked and thereby invalid, the adjudicating authority was well within his right to demand duty along with interest.

If any bond was to be enforced it should have been the bond accepting authority and not the adjudicating authority

14. The third averment is that it should have been the bond accepting authority who should have enforced it and further recovered duty and not the adjudicating authority. Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, deals with recovery of duty in certain cases, which states as follows:

> ***RULE 6. Recovery of duty in certain cases.*** *— [The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used] by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest and the provisions of section 11A and [section 11AA] of the Central Excise Act, 1944 (1 of 1944) shall apply mutatis mutandis for effecting such recoveries :*
>
> *[**Provided** that if the subject goods on receipt are found to be defective or damaged or unsuitable or surplus to the needs of the manufacturer, he may return the subject goods to the original manufacturer of the goods from whom he had obtained these and every such returned goods shall be added to the non-duty paid stock of the manufacturer of the subject goods and dealt with accordingly.]*
>
> ***Explanation.*** *- For the removal of doubts, it is hereby clarified that subject goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents [during transport from the place of procurement to the manufacturer's premises or from the manufacturer's premises to the place of procurement] or during handling or storage in the manufacturer's premises.*

As per the aforementioned rule, jurisdictional officer can initiate recovery of duty by enforcing the bond, etc., only where the subject goods procured by way of annexures, have not been used, by the manufacturer, for the intended purpose. In the present proceedings before me, the validity of the annexure, itself is under question. The annexures stand revoked and therefore, under the Rules, ibid, the question of the jurisdictional officer initiating the proceedings of recovery does not arise. It is probably because of this reason, that the jurisdictional officer only revoked the annexures and requested the adjudicating authority to initiate steps to protect the revenue. This argument therefore, being without merit, stands rejected.

केन्द्रीय उत्पाद शुल्क आयुक्तालय (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE AHMEDABAD अहमदाबाद

The goods were cleared to RUDPL based on annexure-45 issued by the department under a bonafide belief that RUDPL was eligible for the exemption.

15. The appellant has argued that they had taken proper steps to verify the genuineness of the annexures; that they had intimated the jurisdictional range about the exempted clearances; that annexures were issued by the department and hence demanding duty at this stage was not correct since in the first place they were stopped from collecting revenue. The averment to an extent is correct in the sense that the annexures were issued/countersigned with the knowledge of the department and the department was aware of the clearances effected without payment of duty. However, this does not help the appellant since the document on the basis of which exemption is availed, stands revoked. It is a different matter that they are still in appeal against the order of revocation. The argument that they were stopped from collecting taxes is a baseless argument because an annexure received from a buyer by no stretch of imagination would compel a supplier to supply. A contract to buy and sell is always governed by commercial considerations.

The impugned order leads to duplication of proceeding since a show cause notice has already been issued to RUDPL on 28.7.2015

16. The appellant has himself stated that the show cause notice dated 28.7.2015 was issued for revocation of the annexures and not for demanding duty foregone. Hence, the averment that the impugned order leads to duplication of proceeding does not arise. Since, the basic document on which the appellant cleared the goods without payment of duty stands revoked, the order of the adjudicating authority, directing the appellant to pay duty along with interest, is upheld. But after having said so, the appellant does have a case as far as imposition of penalty is concerned, because it is no where held that the annexures in question were fraudulently obtained.

Imposition of penalty on the appellant.

17. As has already been mentioned, penalty has been imposed on the appellant under Rule 25 of the Central Excise Rules, 2002, read with section 11AC(I)(a) of the Central Excise Act, 1944. The adjudicating authority has held that since the appellant has cleared finished goods without paying Central Excise duty, they are liable for penalty. Further, the adjudicating authority in page 21 has held that the appellant acted in a very callous manner without even thinking that the responsibility is cast upon him to assess the duty of the goods before their being cleared from the factory.

18. It is however, not mentioned in the original order, as to whether penalty has been imposed under Rule 25(a) or (b) or (c) or (d). On going through rule 25, *ibid*, it is clear than penalty cannot be imposed under (b), (c), since the act of the appellant is not similar, to the one mentioned under (b) and (c), *ibid*. As far as (d) goes, penalty can only be imposed, if there is *mens rea*. Since no mens rea has been brought on record, penalty

cannot be imposed under (d). Thus it is assumed that penalty must have been imposed under Rule 25(a) of the Central Excise Rules, 2002. I am aware of the fact that the Larger Bench of the Tribunal while deciding the case of M/s. Modison Limited [2006(203) ELT (521)] has held that no mens rea is need for imposing penalty under rule 173(Q)(1) (a),(b) and (c). This rule is pari materia with the present Rule 25 (1)(a), (b),(c) of the Central Excise Rules, 2002. However, going by the facts of this peculiar case, I would like to point out certain facts, which though already recorded above, is repeated, as it has a bearing on my decision:

- the annexures were issued by the proper Central Excise Officer;
- all the clearances were intimated to the jurisdictional range;
- there is nothing on record to prove that the annexures were fraudulently obtained and the appellant had any role in the same.

On the facts, I find that the appellant acted in a bonafide manner, meaning that the duty was not discharged, since he was of the view that the goods were to be cleared at nil rate based on the annexures. In-fact, this was the view held by the department when it issued the annexures, which at a later date got changed, after which it was pointed out that the annexures were **wrongly** issued. There is no allegation that he has contravened Rule 4 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. I feel that it would not be fair to punish the appellant with a penalty, more so when the act was a bonafide act. I have already held that the appellant is liable to pay the duty along with interest. The Hon'ble Supreme Court in the case of M/s. Bata India Limited [2015(321) ELT 194(SC)], held that if exemption is claimed under a bonafide belief, penalty is not imposable. Holding the act of the appellant to be a bonafide act, the penalty imposed in the original order, is set aside.

17. In view of the foregoing discussion, the OIO is upheld as far as confirmation of duty along with interest against the appellant is concerned. The appeal is allowed partly in so far as the penalty against the appellant is set aside.

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

18. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)

Date: 15 /11/2016
Attested

(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

केन्द्रीय उत्पाद शुल्क आयुक्तालय, (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS) CENTRAL EXCISE AHMEDABAD अहमदाबाद

BY R.P.A.D.
To,

M/s. Tapsheel Entperise,
430, Phase-II, GIDC,
Vatwa, Ahmedabad

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I.
3. The Additional Commissioner (System), Central Excise, Ahmedabad-I.
4. The Deputy Commissioner, Central Excise, Division-III, Ahmedabad-I.
5. Guard file.
6. P.A