



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

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(17)/17&18/Ahd-I/2016-17 / 4857 to 4861
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-053&054-2016-17
दिनांक 25.01.2017 जारी करने की तारीख Date of Issue 05/02/17

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

ग Joint Commissioner, Div-V केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
14&15/CX-I Ahmd/JC/MK/2016 दिनांक: 3/1/2016, से सुजित

Arising out of Order-in-Original No. 14&15/CX-I Ahmd/JC/MK/2016 दिनांक: 3/1/2016 issued by
Joint Commissioner, Div-V Central Excise, Ahmedabad-I

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

M/s Sayaji Sethness
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 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।

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(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 मामलों 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 ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

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

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



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 अनुसूचि-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।

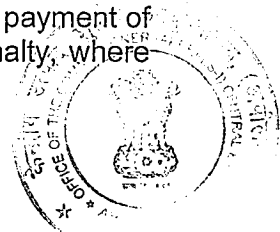
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

Two appeals have been filed by M/s. Sayaji Sethness Limited, Plot No. 17-19, GVMM, Odhav Road, Ahmedabad- 382 415, [for short - the appellant] the details of which are as follows:

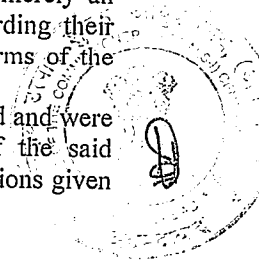
Sr. No.	OIO No.	Date of OIO	Appeal No.
1	14/Cx-IAhmd/JC/MK/2016	1.3.2016	18/Ahd-I/2016-17
2	15/Cx-IAhmd/JC/MK/2016	1.3.2016	17/Ahd-I/2016-17

Both the impugned orders have been passed by the Joint Commissioner, Central Excise, Ahmedabad-I Commissionerate [for short - 'adjudicating authority']. As the issue involved in both the appeals are similar, they are taken up in this OIA.

2. Briefly stated, based on an audit objection [FAR No. 312/2013-14, dated 8.5.2014] two show cause notices, were issued to the appellant, alleging that they had collected 'insurance charges' and 'freight charges', from their buyers but had not included them in the transaction value, and thereby failed to pay central excise duty in respect of the said amount, collected from the buyers. The notice dated 9.4.2015 covers the period from 04/2010 to 09/2014, while the notice dated 11.9.2015 covers the period from 10/2014 to 06/2015. The show cause notices, were adjudicated vide the aforementioned impugned OIOs wherein the adjudicating authority has confirmed the demand, along with interest and has also imposed penalty on the appellant.

3. Feeling aggrieved, the appellant has filed these two appeals raising similar grounds, which are as follows:

- (a) that the factual and legal submission were disregarded and brushed aside by the adjudicating authority without any consideration;
- (b) the conditions of the agreement between them and their customer cited in the notice were misinterpreted without taking into consideration the relevant clauses of the agreement which clearly established that the contract of sale was on ex factory basis;
- (c) reliance placed on clauses 26, 2 and 8 of the agreement/purchase order by M/s. Coca Cola India Private Limited and clause 18 of M/s. Pepsi Food Private Limited, by the adjudicating authority on the aforesaid conditions do not in any manner show that the place of delivery was the buyers premise;
- (d) that the conditions referred to by the adjudicating authority only referred to the factum of transfer of title at the place of delivery but they in no manner described the buyers premises to be the place of delivery;
- (e) the adjudicating authority has overlooked the vital condition in the invoice issued by the appellant which enumerated that their risk and responsibility ceased as soon as the goods left their factory;
- (f) that the payment of insurance charges on behalf of their purchaser was merely an additional facility provided by the appellant to their buyers for safeguarding their interest against transit loss which would have to be borne by them in terms of the arrangement arrived at between the parties;
- (g) that though it is acknowledged that freight charges were separately recovered and were paid by the appellant on behalf of their purchaser the implication of the said arrangement between the parties is rejected on the basis of delivery instructions given by their selling agents;



- (h) in the aforesaid delivery instructions it is concluded by the adjudicating authority that the ownership of the goods was with the appellant till the goods reached the destination of sale at the premise of the buyer;
- (i) that it is clear that sale of goods in the present case was on ex factory basis and the payment of freight charges was made for an on behalf of their purchaser;
- (j) that in the present case the place of removal is required to be held as factory gate and accordingly the proposal for including the value of such charges in the assessable value of the goods is wholly illegal and is without any legal basis;
- (k) that the Hon'ble Supreme Court in the case of Escorts JCB Limited [2002(146) ELT 31(SC)] has concluded that the place of the removal was factory gate and onus and burden of paying transit risk had no relevance to the issue of ownership;
- (l) CBEC vide circular dated 23.8.2007 has clarified that it is based on the sale and transfer of property in goods that the place of removal is to be determined;
- (m) CBEC vide its circular dated 20.10.2014, has further clarified that payment of transport, inclusion of transport charges in value, payment insurance or who bears the risk are not relevant to ascertain place of removal;
- (n) Circulars issued by the Board makes it clear that it is the point of sale which is relevant and merely because appellant has initially paid transport and insurance costs, it could not lead to inclusion that place of removal was shifted to the buyers premise;
- (o) that extended period is not invocable;
- (p) that no penalty is imposable.

5. Personal hearing in the matter was held on 17.01.2017. Shri Paritosh R Gupta, Advocate, appeared on behalf of the appellant, 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 short question to be decided is whether the freight and insurance charges are to be included in the transaction value, for the purpose of computing excise duty.

8. Since the issue revolves around valuation of goods, the extracts of the relevant Section, Rules, Circulars, are reproduced below for ease of reference:

THE CENTRAL EXCISE ACT, 1944

SECTION [4. Valuation of excisable goods for purposes of charging of duty of excise. — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -
(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed

-
- c) "place of removal" means -
 - (i) a factory or any other place or premises of production or manufacture of the excisable goods;
 - (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without [payment of duty;]
 - [(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;]
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CENTRAL EXCISE VALUATION (DETERMINATION OF PRICE OF EXCISABLE GOODS) RULES, 2000

[RULE 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

Explanation 1. - "Cost of transportation" includes -

- (i) the actual cost of transportation; and
- (ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods.]

Circular No. 999/6/2015-CX, dated 28-2-2015

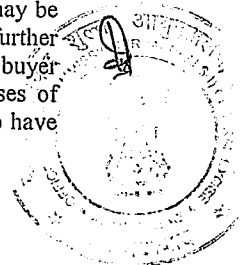
Attention is invited to Circular No. 988/12/2014-CX, dated 20-10-2014 issued from F. No. 267/49/2013-CX.8 [2014 (309) E.L.T. (T3)] on the above subject wherein it was clarified that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

Circular No. 988/12/2014-CX, dated 20-10-2014

(3) The operative part of the instruction in both the circulars give similar direction and are underlined. They commonly state that the *place where sale takes place is the place of removal. The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer.* This can be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon'ble Tribunal in case of *Associated Strips Ltd. v. Commissioner of Central Excise, New Delhi* [2002 (143) E.L.T. 131 (Tri.-Del.)]. This principle was upheld by the Hon'ble Supreme Court in case of *M/s. Escorts JCB Limited v. CCE, New Delhi* [2002 (146) E.L.T. 31 (S.C.)].

(5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act, 1930 which has been referred at paragraph 17 of the *Associated Strips* Case (supra) reproduced below for ease of reference -

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."



(6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. *The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*

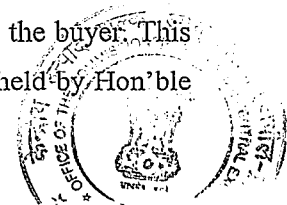
[emphasis supplied]

9. For goods not notified under Section 4A of the Central Excise Act, 1944 [for short the Act], and where there is no tariff value fixed under section 3(2) of the Act, assessment is as per transaction value, determined under Section 4 of the Act. As per the definition under section 4(3)(d) read with subsection 4(1) of the Act, for applicability of transaction value for assessment purpose, [a] the goods are to be sold by an assessee for delivery at the time and place of removal, [b] the assessee and the buyer are not related; and [c] the price is not the sole consideration for the sale. If any of the requirements are not satisfied then the transaction value shall not be the assessable value and the value in such case has to be arrived under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 [for short – 'Valuation Rules'] .

10. The department's contention is that the place of removal, in the present case was not the one which is mentioned in Section 4 wherein the term 'place of removal' is defined. In-fact the adjudicating authority has held that the goods were to be delivered at the place of the buyer where the acceptance of supplies was to be effected; that the terms and conditions clearly stated that title of the goods was transferred to the buyer only when the buyer receives the goods; that the purchase orders did not suggest that the transporters will take delivery on behalf of the buyer; that the ownership of the goods lay with the appellant till the goods reached the destination, as the sale actually takes place at the destination. The department's contention therefore, is that the place of removal in this case was the buyers premises. It is on this basis, that the department has proposed addition of the transport charges and the insurance charges to the transaction value, in terms of Rule 5 of the Valuation Rules, 2000 [the extracts of which is reproduced above].

11. On the other hand the appellant's contention is that the payment of insurance charges/transport charges by them on behalf of their buyers was just an additional facility; that the goods were sold ex-factory; that their risk and responsibility ceased as soon as the goods left the factory; that only on the basis of factum of transfer of title at the place of delivery, it was erroneously concluded by the department that the buyers premises was the place of delivery.

12. The Board's circular dated 20.10.2014, has categorically clarified that place where sale takes place is the place of removal. The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer. This has to be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon'ble



Tribunal in case of Associated Strips Ltd. v/s Commissioner of Central Excise , New Delhi [2002(143)ELT 131]. This principle was upheld by the Hon'ble Supreme Court in case of M/s. Escorts JCB Limited v. CCE, New Delhi [2002 (146) ELT 31]. Further, it has been held in the case of Associated Strips, *ibid*, that as per Section 19 of the Sale of Goods Act, 1930, where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 of the Sale of Goods Act, 1930, are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. The contract with Coca Cola India Private Limited and PepsiCo India Holdings Private Limited, [copies of which are enclosed with appeal memorandum] states as follows:

Coca Cola India Private Limited

2. Price. All prices are firm, cannot be increased during the effectivity of this order without Buyer's written consent and will be as low or lower than any prevailing net prices quoted or made available by seller to any other customer purchasing in equal or lesser volume for comparable goods or services. Unless otherwise stated in an Order, prices include all costs and charges incurred by seller, including without limitation, for all installation and other services, taxes and duties; wages and fees, transportation, packing and packaging; storage, design, engineering and development; samples and prototypes and tooling, dies, moulds and similar properly used in fulfilling an Order.

8. Packaging and shipping : Risk of Loss. All packing, packaging, deliveries and shipments must comply..... Delivery will be complete only when Buyer or the person to whom the goods were delivered has actually received and accepted the goods. Seller will bear the risk of loss of the goods until delivery is completed. In the event of damage or loss of materials under this Order, the Seller and its assurers agree to waive any Salvage Rights.

17. Insurance. If and as requested, seller will obtain and maintain in force adequate insurance satisfactory to buyer (i) to cover the hold harmless provision of section 7 and (ii) the replacement value of property and paid stock under section 15. Seller, upon request, will furnish certification evidencing such insurance in a form acceptable to buyer.

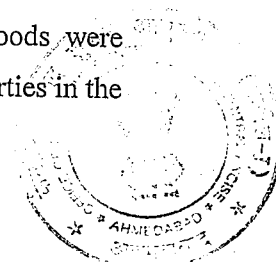
26. Transfer of Title. Title of goods ordered will pass to the buyer upon the earlier of (i) receipt and acceptance by buyer or buyers designee, or (ii) payment. This is without prejudice to any right of rejection or other right which buyer may have in this order.

PepsiCo India Holdings Private Limited

18. Title and Risk

Title to the goods shall pass to the buyers upon delivery to the designated delivery point without prejudice to any right of rejection, which may accrue to the buyer under these terms and conditions. Deliver of the goods to the designated delivery point extinguishes the seller's proprietary rights in them and the seller retains no title. The seller shall : (a) be responsible for an bear the risk of loss of or damage to the goods until they are delivered to the designated delivery point and accepted by the buyer, and (b) bear all risks and expenses related to the return of rejected goods requiring correction, including without limitation, freight, duties, insurance, packaging, materials and labour costs.

On going through the above, it is easy to conclude that, the title in the goods were transferred only at the premises of the buyer. This is what was intended by the parties in the



contract. Hence, the averment that Title plays no role for deciding the place of removal or that the adjudicating erred in holding that the place of removal in respect of the goods were the buyers premises, is not a tenable argument. The adjudicating authority was aware of the fact that the Board vide its circular has clarified numerous times that that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. It is therefore that the adjudicating authority has determined place of removal, based on the passing of title in the goods. Even otherwise, the averment that price was ex factory is not true. These averments contradict the clauses 2 & 8 supra of the contract. I therefore, concur with the findings of the adjudicating authority that the place of removal in this case is the buyers premises and therefore the insurance charges and freight charges, collected from the buyers are to be included in the transaction value for computation of Central Excise duty, etc..

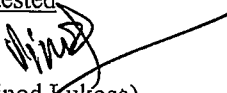
13. The appellant has also challenged the invocation of extended period. As is evident the show cause notice was a result of an audit objection. Surely, if the audit had not pointed it out their was no chance that the department would have been aware of the duty evasion. Disputes with regards to valuation are almost settled. The collection of such charges and the arrangement of the appellant with his buyer was never brought to the notice of the department. I therefore, find that this is a fit case for invocation of extended period since there is suppression of facts and contravention of the provisions of the Act and the Rules, with an intent to evade payment of Central excise duty. Since this case has ingredients making it a fit case for invocation of extended period, I find that the imposition of penalty is also proper. I do not find any need to interfere with the impugned orders, both dated 1.3.2016 in this regard.

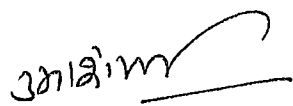
14. In view of the foregoing, the appeal is rejected and the impugned orders, both dated 1.3.2016, are upheld.

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

Date: 25/01/2017.

Attested


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


(उमा शंकर)
आयुक्त (अपील्स - I)



V2(17)17/Ahd-I/2016-17
V2(17)18/Ahd-I/2016-17

By RPAD.

To,

M/s. Sayaji Sethness Limited,
Plot No. 17-19,
GVMM, Odhav Road,
Ahmedabad- 382 415

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/Assistant Commissioner, Central Excise, Division V, Ahmedabad-I.
- ✓ 5. Guard file.
6. P.A

