

- 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(54)/67/Ahd-I/2016-17
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-070-2016-17
दिनांक 28.02.2017 जारी करने की तारीख Date of Issue 17/03/2017

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

ग Joint Commissioner, Div-IV केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं
31/CX-I/Ahmd/JC/MK/2016 दिनांक: 28/07/2016, से सृजित

Arising out of Order-in-Original No. 31/CX-I/Ahmd/JC/MK/2016 दिनांक: 28/07/2016 issued by
Joint Commissioner, Div-IV Central Excise, Ahmedabad-I

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

M/s. Chiripal Industries(Fiber Division)
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 प्रक्रिया के
दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to
another factory or from one warehouse to another during the course of processing of the goods in a
warehouse or in storage whether in a factory or in a warehouse.

(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 ...

(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.

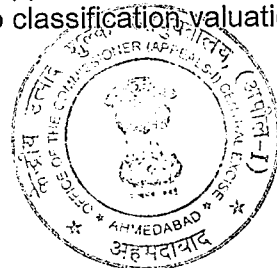
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

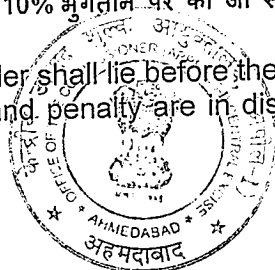
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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



ORDER-IN-APPEAL

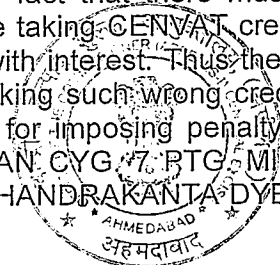
M/s Chiripal Industries Limited (Fiber Division), Plot No. 199/200, Saijpur – Gopalpur Pirana Road, Piplaj, Ahmedabad (hereinafter referred to as 'the appellant'), holding Central Excise Registration No. AAACC8513BXM001 and engaged in the manufacture of Polyester Fully Drawn Filament Yarn falling under Chapter 54 of Central Excise Tariff Act, 1985, have filed the present appeal being aggrieved by **Order-in-original No. 31/CX-I Ahmd/JC/MK/2016 dated 28/07/2016** (hereinafter referred to as 'the impugned order') passed by Joint Commissioner, Central Excise, Ahmedabad-I (hereinafter referred to as 'the adjudicating authority').

2. During the course of Central Excise Audit EA-2000, the appellant having accepted five audit objections had voluntarily reversed CENVAT credit / paid up short paid duty on 30/06/2014. The appellant was reminded vide letter dated 12/03/2015 & 21/04/2015 to pay penalty under Section 11A (6) of the Central Excise Act, 1944 (hereinafter referred to as CEA, 1944) for claiming waiver of show cause notice under Section 11A (7) of the CEA, 1944. However, the appellant refused to pay penalty on the ground that it had not acted in a dishonest or contumacious manner.

3. Therefore, a Show Cause Notice F.No. VI/I(c)/Audit-I/Chiripal-Penalty/SCN/2015-16 dated 21/05/2015 (hereinafter referred to as 'the SCN') was issued that was adjudicated vide the impugned order where the demand of **Rs.5,49,024/-** has been confirmed under Rule 14 of Cenvat Credit Rules, 2004 (CCR, 2004), read with erstwhile proviso to Section 11A (1) and 11A (5) of CEA, 1944 along with interest under Section 11AB / Section 11AA of CEA, 1944 and the payments made by the appellant towards duty and interest have been appropriated. The adjudicating authority has imposed a penalty of Rs.1,55,836/- under Section 11AC (1)(c) of CEA, 1944 and a penalty of Rs.2,37,352/- under Rule 15(1) of CCR, 2004. A penalty of Rs.2,37,352/- has also been imposed under Section 11AC of CEA, 1944 read with Rule 15 (2) of CCR, 2004.

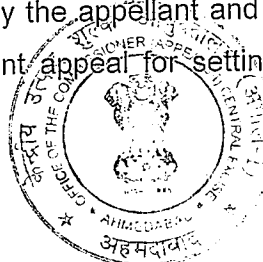
4. Being aggrieved by the impugned order, the appellant has filed the present appeal on the following grounds:

- 1) The appellant had deposited Rs.5,49,024/- towards principal amount involved in the objections raised by Audit and an amount of Rs.2,21,712/- towards interest and these amounts having been appropriated towards liabilities of CENVAT credit and interest thereon, the proposals in para 5(i) & (ii) of the SCN should have been treated as settled and there was no jurisdiction nor any authority in law for proposing penalty on them under Rule 15(1) &(2) of CCR, 2004.
- 2) The adjudicating authority had not appreciated the fact that there must have been some inadvertent mistakes by junior staff while taking CENVAT credit and on being pointed out the same has been reversed with interest. Thus, there was no *mala fide* intention on part of the appellant in taking such wrong credit with intent to evade duty and there was no justification for imposing penalty. Such views have been held in (i) C.C.E. vs JAI HANUMAN CYG & RTG MILLS P. LTD. – 2011 (273) E.L.T. 236 (Guj.); (ii) C.C.E. vs CHANDRAKANTA DYEING &



PRINTING MILLS – 2011 (263) E.L.T. 331 (Guj.); (iii) CREST STEEL & POWER PVT. LTD. vs C.C.E., RAIPUR – 2014 (310) E.L.T. 552 (Tri. –Del.); (iv) KUMAR ORGANICS PRODUCTS LTD. vs C.C.E. – 2014 (307) E.L.T. 774 (Tri. – Bang.) and (v) C.C.E, VAPI vs GUARNIFLON INDIA PVT. LTD. – 2013 (293) E.L.T. 703 (Tri. – Ahmd.) as well as Hon'ble Allahabad High Court decision in the case of (vi) C.C.E. vs SUDARSHAN CABLES INDUSTRIES – 2012 (276) E.L.T. 300 (All.).

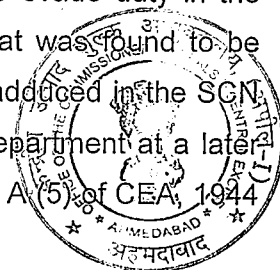
- 3) The basis on which the SCN has been issued for imposing penalty is that the appellant was obliged to pay penalty as laid down under Section 11A (6) of CEA, 1944 and since this penalty was not paid, penalty under Rule 15(1) & 15(2) of CCR, 2004 was proposed. It is clear from Section 11A of CEA, 1944 in general and sub-sections (5) and (6) thereof in particular that these provisions apply in case of recovery of duty and not CENVAT credit. CENVAT credit is not "duty of excise" or "duty or CENVAT" levied and collected under Section 3 of CEA, 1944 but CENVAT credit is the credit referred in Rule 3(1) of CCR, 2004. Sections 11A (5) & (6) refers to duty and not to CENVAT credit.
- 4) Hon'ble Supreme Court in the case of U.O.I. vs RAJASTHAN SPINNING & WEAVING MILLS – 2009 (238) EII 3 (SC) have held that penalty was punishment for an act of deliberate deception by the assessee with the intent to evade duty. The principle of penal liability stands settled for several decades by virtue of judgments of the Apex Court in cases like HINDUSTAN STEEL LTD. – 1978 (2) ELT – (J159) where it has been held that even a token penalty was not justified when the default or irregularity was *bona fide* and the assessee was not guilty of dishonest or contumacious conduct.
- 5) The SCN was wholly time-barred and therefore also, it did not deserve any consideration. The extended period of limitation could never be invoked only on the basis of observations of audit party for penalty. The transactions by the appellant were shown in its Books of Accounts and Balance Sheets and thus there was no suppression of facts. Even audit parties had scrutinized the books of accounts as well as balance sheets at the time of audit. Penalty even otherwise was not justified considering the following decisions: C.C.E. vs BHILAI JAYPEE CEMENT PLANT – 2015 (320) E.L.T. 730 (M.P.); C.C.E. vs SAURASHTRA CEMENT LTD. – 2016 (42) S.T.R. 632 (Guj.); C.C.E. vs SAI SAHMITA STORAGES (P) LTD. – 2011 (23) S.T.R. 341 (A.P.); C.C.E. vs GUJARAT NARMADA FERTILIZERS CO. LTD. – 2009 (240) E.L.T. 661 (S.C.) and MARUTI SUZUKI LTD. vs C.C.E. – 2009 (240) E.L.T. 641 (S.C.).
5. Personal hearing in the matter was held on 16/02/2017. Shri P.P. Jadeja, Authorized Representative appeared on behalf of appellant. The learned Consultant reiterated the grounds of appeal and submitted that there was no suppression because the unit was audited every year and duty was paid along with interest on being pointed out by Audit.
6. I have gone through the impugned order and the grounds of appeal filed by the appellant. There is no dispute regarding the non-admissibility of CENVAT credit as pointed out by Audit and the appellant had reversed / paid up the said ineligible CENVAT credit amount of Rs.5,49,024/- availed by them along with interest. No protest has been registered towards such payments by the appellant and no refund claim has been filed. The appellant has filed the instant appeal for setting aside of penalties imposed in the impugned order.



7. The demand has been confirmed in the impugned order, under Rule 14 of CCR, read with erstwhile proviso to Section 11 A(1) of CEA, 1944 and Section 11A(5) of CEA, 1944. The primary requirement for invoking proviso to Section 11 A(1) / Section 11A(5) of CEA, 1944 is that the ingredients of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules made thereunder with intent to evade duty are established against an assessee. In the instant case, the appellant has contended that there was no suppression as all the details were available in its records that were audited every year and it was on the basis of an observation during one such audit that the appellant had paid up duty and interest. On this ground the appellant has pleaded that no penalty could be imposed in the present case. I find merit in this contention made by the appellant in view of the decision of Hon'ble Supreme Court in the case of **COMMISSIONER OF CENTRAL EXCISE, BANGALORE vs PRAGATHI CONCRETE PRODUCTS (P) LTD. – 2015 (322) E.L.T. 819 (S.C.)**, where the appeal filed by Revenue was dismissed in the following terms:

“3. It is also found as a matter of fact, that the unit of the respondent was audited during this period several times and there were physical inspections by the Department as well. Therefore, there could not be any case of suppression. We are in agreement with the aforesaid view taken by the CESTAT. As a result, this appeal is dismissed.”

In the instant case also, all the details, based on which the SCN has been issued, were available in the records of the appellant and these records were scrutinized by Audit every year. There is no charge against the appellant that it had withheld anything for scrutiny by the department in a fraudulent manner or with a *mala fide* intent to evade duty. Hence no case is made out for imposition of penalty under Section 11AC (1)(b) or under Rule 15(2) of CCR, 2004 read with provisions of Section 11AC of CEA, 1944. Further, it has clearly been brought out in paragraph 2.2 of the SCN as well as in the impugned order that the department had reminded the appellant in writing to pay up the penalty under Section 11A (6) of the CEA, 1944 to facilitate waiver of SCN under Section 11A (7) of the CEA, 1944. It is pertinent to note that the ingredients of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules made thereunder with intent to evade duty are not relevant or applicable to the provisions of Section 11 A (6) of CEA, 1944. Had the appellant paid up penalty under Section 11A (6) of CEA, 1944 as persuaded by the department, then no SCN would have been issued in the instant case. Therefore, going by the SCN and the impugned order, it is evident that initially the department was of the view that there was no element of the said ingredients of intent to evade duty in the manner in which the appellant had availed the CENVAT credit that was found to be inadmissible by Audit. No additional evidence or ground has been added in the SCN or the impugned order to justify the change in standpoint by the department at a later point in time whereby the provisions of Section 11 A (1) / Section 11 A (5) of CEA, 1944



have been invoked and confirmed against the appellant. There is no suggestion that any goods were rendered liable for confiscation in the manner in which the inadmissible CENVAT credit was taken by the appellant. Such being the case, penalties imposed under Section 11AC (1) (b) and under Rule 15(1) & Rule 15(2) of CCR, 2004 read with provisions of Section 11AC of CEA, 1944 are not sustainable and the same are required to be set aside.

8. The appeal of the appellant for setting aside of penalties imposed in the impugned order is allowed.

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/02/2017

Attested

(K. P. Jacob)

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
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Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I.
3. The Deputy /Additional Commissioner, Central Excise (System), Ahmedabad-I.
4. The Assistant / Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-I.
- ✓ 5. Guard File.
6. P.A.

