



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(11)/39/Ahd-I/2017-18 / 238-42
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-229-2017-18
दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue 17/01/18

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

ग Joint Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं 21/CX-I Ahmd/JC/KP/2017
दिनांक: 18/4/2017, से सृजित

Arising out of Order-in-Original No. 21/CX-I Ahmd/JC/KP/2017 दिनांक: 18/4/2017 issued by Joint
Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Amba Gums & Feeds Products
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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक
के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली
: 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 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 ...



(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.

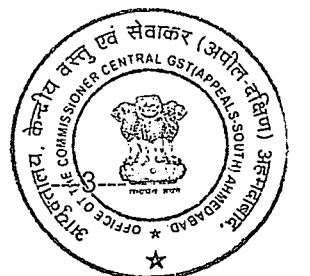
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 not withstanding 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।

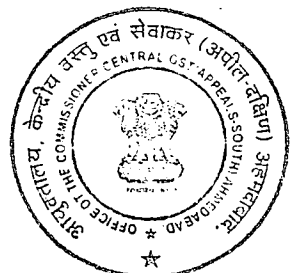
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Amba Gums and Feeds Products, 88/3, GIDC Estate, Phase-I, Vatva, Ahmedabad- 382445 (for short - 'appellant') has filed this appeal against OIO No. 21/Cx-I/Ahmd/JC/KP/2017 dated 18.4.2017, passed by the Joint Commissioner, Central Excise, Ahmedabad-I Commissionerate (for short - 'adjudicating authority').

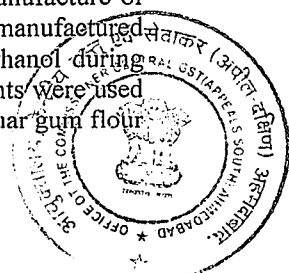
2. Briefly stated, the facts are that an offence case was booked against the appellant having two separate units. Investigations revealed that the appellant had mis-classified their product *guar gum powder* /guar dal (refined) flour falling under chapter heading no. 13023230 by classifying it under 1106, attracting nil rate of duty; that they had wrongly availed the SSI benefit under notification No. 8/2003-CE, dated 1.3.2003. The appellant, accepted and paid the duty liability of Rs. 12,90,322/- vide TR 6 challan dated 30.3.2006. After completion of investigation a show cause notice dated 13.2.2007 was issued *inter alia*, demanding duty of Rs. 12,90,322/- along with interest and further proposing penalty under section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. Personal penalty was also proposed on the partner of the appellant under Rule 26, *ibid*.

3. This notice was adjudicated vide the impugned OIO dated 18.4.2017, wherein the adjudicating authority confirmed the demand along with interest and also imposed penalty equivalent to duty, on the appellant.

4. Feeling aggrieved, the appellant has filed this appeal, mainly on the following grounds:

- that the impugned original order is not legal and proper;
- that the impugned order was passed without giving any findings on the sample of goods produced and case law relied upon by the appellant;
- that the partner of the appellant was coerced to give a confessional statement with respect to duty liability;
- that the classification of guar dal flour/powder decided by the Larger Bench of the Hon'ble Tribunal under chapter 13 on the basis of process which included mixing of methanol and glycol and process of chemical treatment. However in case of the appellant, such process was not undertaken and therefore, the decision of the Hon'ble Tribunal relied upon by the adjudicating authority stands distinguished;
- that the department has disputed the classification of guar dal flour/powder without any justification or without carrying out test on the samples of goods produced by the appellant; that the appellant did not obtain registration & did not pay duty on clearance as it was classifiable under chapter 11 of CETA '85;
- guar dal flour is obtained by process of splitting of guar dal; water is added to split guar dal so as to soften it; then the guar dal soften by splitting and adding water is pulverized for fine mesh; then dal powder is obtained by drying; that no additives is used in the manufacture nor any chemical treatment is carried out in the process of obtaining guar dal flour; that it is meant for animal feed and hence it is classifiable under chapter 11 of CETA '85; that based on the process undertaken by the appellant, the case law relied upon by the adjudicating authority stands distinguished;
- that there cannot be any dispute that the appellant used certain additives in the manufacture of guar gum; that they had maintained from the very beginning that they have not manufactured guar gum but guar dal powder/flour; that the appellant did not use glycol or methanol during process not TKP was mixed with Guar Dal flour; that just because certain equipments were used would not lead to a conclusion that the goods are classified under chapter 13; that Guar gum flour

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- of food grade is classifiable under chapter 11 whereas of industrial grade is classifiable under chapter 13; that it is on record that the appellant is manufacturer of guar dal flour;
- that the adjudicating authority has not given any finding on the usage of guar dal flour manufactured by the appellant;
 - that while computing the benefit of exemption under notification No. 8/2003, aggregate value of clearance does not include clearance value of goods not attracting duty of excise;
 - that extended period is not invocable in this case.

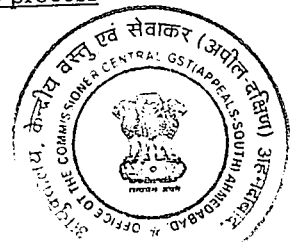
5. Personal hearing in the matter was held on 30.11.2017. Shri P.G.Mehta, Advocate, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He also submitted copy of citation in the case of Krap Chem P Limited [2015(325) ELT 339] and Kolety Gum Industries [2016(335) ELT 581(SC)]. He further stated that larger period is not invocable in view of the order of the Hon'ble Supreme Court of India in the case of Kolety Gum Industries, *ibid*.

6. The summary of the findings of the adjudicating authority while confirming the demand, is as under:

- that the appellant was classifying the guar gum under CETH 1106 at nil rate of duty and was clearing their goods in domestic as well as overseas market;
- that as per the statement of the partner of the appellant that the goods when exported was mentioned as Guar Gum powder and when cleared for home consumption was mentioned as guar dal (Refined) flour; that there is no difference between both the product; that both the products are manufactured with the same guar split and all the additives are common, no extra or different additives is added to goods exported or cleared for home consumption;
- that Guar gum powder has both domestic as well as industrial use in food grade, industrial grade and technical grade; that it is a natural thickner, emulsifier, stabilizer, boding agent, hydrocolloid, gelling agent, natural fiber and fracturing agent;
- that the appellant's contention that their product is processed without any additives and it is merely in powder form and no characteristics of the product is changed after processing and hence it is classifiable under chapter 11 & not 13 is not acceptable;
- that extended period is applicable in the said case.

7. The appellant's contention, as far as classification is concerned, is that the classification of guar dal flour/powder was disputed without any justification or without carrying out test on the samples produced by the appellant. I find the argument to be not a tenable argument. There is an official procedure for drawing of samples which needs to be followed. Samples produced by the appellant even if sent for test, their results cannot be legally binding, on account of the fact that the samples were not properly drawn. Further, the dispute pertaining to the period 2003-04 to 17.3.2006, being very old, any fresh attempt in this regard, I find would not yield any result. Therefore, I find that the appellants contention in this regard, is not tenable.

8. I find that the appellant after mentioning the manufacturing process/process undertaken has contended that though certain additives were used they did not use glycol or methanol during process nor was TKP mixed with guar dal flour and therefore, the reliance placed by the adjudicating authority on the decision of the Larger Bench of the Tribunal in the case of Krap Chem P Limited [2015(325) ELT 339] is not correct. On going through the judgement I find that the primary question before the Hon'ble Tribunal was whether the process



undertaken would amount to manufacture. After concluding that the process amounted to manufacture, the Hon'ble Tribunal examined the classification portion and concluded that "Chapter 13 of HSN included the goods, modified by chemical treatment in order to improve their properties (viscosity, solubility, etc.). A chemical treatment is a process in which substances interact causing chemical or physical changes and such processed material would cover under Chapter 13 of HSN. It is already stated above that in present case, the Guar Dal Flour/Powder was modified by chemical reaction in order to improve their properties as per end-use of the product in various industries. So, it is rightly covered under Chapter 13 of the CETA." However, in the grounds of appeal wherein at one place the appellant states that they do not add any additives in the very next contention it is stated that they do add certain additives. The appellant in his **web-site** <http://www.ambagums.com/products/guar-gum-powder/> states as follows:

Amba Gums & Feeds Products is a professionally managed global player in a business of acquiring processing and marketing Guar Gum for the last 33 years.

Business

Amba Gums and Feeds Products is engaged in the business of exporting Guar Gum Products. Amba Gums and Feeds Products supplies its produce in the domestic market to leading multinational companies, pharmaceutical companies, food industries, health care industries, textile, paper industry, explosive, mining, paint industries & directly exports to the more than 15 countries. The Company has established its leadership by offering quality products made within an infrastructure that conforms to international standards, and by offering the most competitive prices and unmatched customer services.

Guar Gum Powder-40.60 to 300 Mesh Guar Gum Powder

Guar gum powder is odourless, having dissolving capacity in cold and hot water and making high viscosity paste. Guar gum powder viscosity is based on various factors like concentration, temperature and time. It is generally white to yellow white in nature.

- Amba guar gum is almost insoluble with all organic solvents & soluble in hot & cold water.
- A broad range of PH & non-ionic is maintained with stability in high viscosity.
- With the increase of water the stickiness of guar gum solution also increases
- There is a great influencing factor of salt, temperature & pH levels upon viscosity of guar gum form.
- When Guar gum is hydrated in cold water it has high sticky colloidal dispersions.
- There are usually various factors to ensure absolute hydration in water like which grade of powder is used, temperature & equipments to achieve maximum gumminess.
- Amba Guar gum is very compatible with wide variety of organic & inorganic substance with also few dyes & various constituents of food.
- Guar gum is an excellent thickening, stabilizing, film forming & emulsifying properties
- It is observed that in low concentration, guar gum carries excellent settling properties & it also acts as filter aid.
- Guar gum powder carries sturdy hydrogen bonding properties.
- Guar Gum is reasonably cost effective as compared to any other thickening agent or effective binder, plasticizer.
- Guar gum is also popularly known as gomme guar, goma guar, galactomannan, guarkernmehl, and guaran.

Properties of Guar Gum

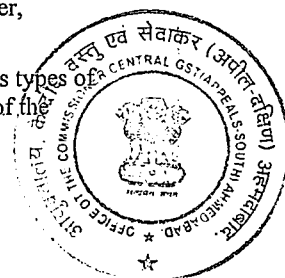
- Guar gum acts as a gelling agent in water.
- Surprisingly guar gum plant is draught resistant.
- Basically Guar gum has rationally more thickening property than corn starch.
- Guar gum prevents growth of ice crystal

Superior Quality Guar Gum Powder

Quality is utmost important for us at Amba Gum, we have a strict adherence towards our quality policy. Our quality assurance department ensures run through, in depth & detailed tests on raw materials, semi-finished & finished goods. Our facilities are well-equipped, maintained, modernised & with all latest technology with high quality standards.

The factors which majorly effect the physical & chemical levels in guar gum to name a few are like odour, fat contents, color, moisture level, protein, PH level, granulation, gum content ratio, ability to filter, dissolvable, ash content, viscosity and more.

Amba Gum has a special microbiological department that analysis and tests. They perform various types of processes to control bacterial influence & control the test of food grade as per demands and few of the



factors which make large difference are like counts reading of mold, yeast, standard plate, coli & E-coli, Pseudomonas, Staphylococcus & Salmonella.

As has been held by the Larger Bench, that for the *Guar Dal Flour/Powder* to fall under Chapter 13 of HSN the goods, it should have been modified by chemical treatment in order to improve their properties (viscosity, solubility, etc.). Now the website of the appellant itself claims that Guar gum powder [Guar Dal flour], is odourless, having dissolving capacity in cold and hot water and making high viscosity paste and that it is a broad range of PH & non-ionic is maintained with stability in high viscosity. Hence, it is obvious that there must have been a chemical treatment done in order to improve the viscosity. Now to raise a contention that because there was no chemical treatment, the Larger Bench judgement would not apply is not tenable argument and further it belies what is stated/promised by the appellant in their web-site. Therefore, I do not agree with the contention and find that the adjudicating authority has correctly classified the goods of the appellant under heading no. 1302.

9. The next contention that the statement of the partner of the appellant was obtained through coercion and that the adjudicating authority has not given any finding on the usage of guar dal flour is not correct since both the points stand addressed by the adjudicating authority. Further, on the question of calculating the aggregate value of the clearances, for computing the benefit of exemption under notification No. 8/2003, I find that vide notification No. 30/2003-CE dated 1.4.2003, the following insertion was done in the said notification

3A. For the purposes of determining the aggregate value of clearances of all excisable goods for home consumption, mentioned in clause (vii) of paragraph 2 of this notification, the following clearances shall not be taken into account, namely :-

(a) clearances of excisable goods without payment of duty

(i) to a unit in a free trade zone; or

(ii) to a unit in a special economic zone; or

(iii) to a hundred percent. export-oriented undertaking; or

(iv) to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

or

(v) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, vide number GSR. 602(E), dated the 28th August, 1995.

(b) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4;

(c) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;

(d) clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.”;

On going through the same, I do not find that the contention of the appellant that while computing aggregate value of clearance of Rs. 300 lacs, value of clearances of Guar Dal Kurma, Guar Dal Chunni was wrongly taken into consideration. I find that the aggregate value was correctly computed and hence, I do not find any merit in the contention of the appellant.

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10. Now coming to the last contention, that extended period is not invocable in this case. The appellant has relied upon the case of Kotley Gum Industries [2016(335) ELT 581(SC)], wherein the Hon'ble Supreme Court of India held as follows: [operative part]

2. Learned senior counsel appearing for the Department has drawn our attention to the judgment of the Larger Bench of the Tribunal in the case of Krap Chem Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, Daman, Rajkot reported in 2015 (325) E.L.T. 339 (Tri.-LB), wherein Larger Bench has taken the view which is in favour of the Revenue and the aforesaid goods are classified under Chapter sub-heading 1301.10. He also points out that the aforesaid judgment of the Larger Bench was not challenged by filing appeal by the assessee in the said case. We need not go into the aforesaid issue inasmuch as the assessee would succeed on the ground of limitation itself because of the reason that the judgment of the Tribunal on the issue of limitation is perfectly justified inasmuch as at the relevant time there was conflicting judgment of the Tribunal and thus the action of the respondent in classifying the goods was clearly bona fide and larger period of limitation would not be available to the Department.

Since the matter stands decided by the Hon'ble Supreme Court of India, the question of invoking extended period does not arise. Hence, the contention of the appellant that extended period is not invocable, is allowed. However, as the annexure depicting the year wise duty demand is not available with the appeal papers, I am not left with no option but to remand back the matter to the adjudicating authority to re-quantify the demand, interest and penalty.

11. In view of the foregoing, it is ordered/held as follows:

[a] the adjudicating authority has correctly classified the goods of the appellant under the heading no. 1302 of the Central Excise Tariff Act, 1935;

[b] extended period is not invocable on account of the judgement of the Hon'ble Supreme Court of India, ibid, and hence the matter is remanded back to the adjudicating authority to re-quantify the duty, interest and penalty.

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

उमा शंकर
(उमा शंकर)
आयुक्त (अपील्स - I)

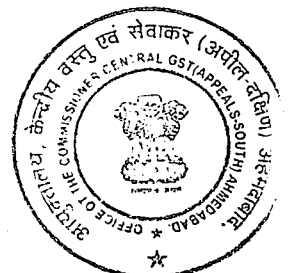
Attested

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

BY R.P.A.D.

To,

M/s. Amba Gums and Feeds Products,
88/3, GIDC Estate, Phase-I, Vatva,
Ahmedabad-382 445



Copy To:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Tax, Division-II, Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad South.
5. Guard File.
6. P.A..

3A. For the purposes of determining the aggregate value of clearances of all excisable goods for home consumption, mentioned in clause (vii) of paragraph 2 of this notification, the following clearances shall not be taken into account, namely :-

(a) clearances of excisable

