केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

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

7th Floor, Central Excise Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

☎: 079-26305065

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(40)/96to98/Ahd-I/2016-17 4794/4798
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-034 to 036-2017-18**
दिनाँक **27.07.2017** जारी करने की तारीख Date of Issue 10-8-17

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

ग **Joint. Commissioner** , केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं **56/CX-I Ahmd/JC/MK/2016** दिनाँक: **30/09/2016,** से सृजित

Arising out of Order-in-Original No. **56/CX-I Ahmd/JC/MK/2016** दिनाँक: **30/09/2016** issued by **Joint. Commissioner** , Central Tax, Ahmedabad-I

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

Sonu Rubber Enterprise
Shri Rajeshbhai M. Patel
Shri Manilal Patel
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 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 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, न्ई 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 कारखने 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 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 मे 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) 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,. मेघाणी 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 cuadruplicate 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."

AHMEDABAD
अहमदाबाद

ORDER-IN-APPEAL

The below mentioned three appeals have been filed against OIO No. 56-Cx-I Ahmd/JC/MK/2016 dated 30.9.2016, issued by the Joint Commissioner, Central Excise, Ahmedabad-I Commissionerate [*for short – 'adjudicating authority'*]:

Sr. No.	Name of the appellant(s)	Appeal No.
1	Sonu Rubber Enterprise	98/Ahd-I/2016-17
2	Rajeshbhai M Patel	96/Ahd-I/2016-17
3	Manilal Patel	97/Ahd-I/2016-17

2. Briefly, the facts are that consequent to a preventive search and investigation, a show cause notice dated 21.7.2015 was issued to the aforementioned appellants, *inter alia*, alleging that they had manufactured and cleared '*conveyor belts- endless*', by wrongly availing the benefit of notification No. 8/2003-CE dated 1.3.2003, by bifurcating the clearances between M/s. Sonu Rubber Enterprise, M/s. Shivam Rubber Enterprise [a proprietorship - owned by Shri Rajeshbhai Patel] and M/s. Sellwin Rubber Enterprise [a proprietorship - owned by Shri Manilal Patel], to remain within the threshold limit of Rs. 1.5 crores. Therefore, the notice, proposed to club the clearances of appellant mentioned at Sr. No. 1 with the clearance of M/s. Shivam Rubber Enterprises and M/s. Sellwin Rubber Industries; proposed confiscation of the goods cleared without payment of duty; demanded duty for the years 2010-2011 and 2011-2012 along with interest and further proposed penalty on all the three aforementioned appellants.

3. Vide the impugned OIO dated 30.9.2016, the adjudicating authority ordered clubbing of the clearances; ordered confiscation of the goods; confirmed the demand along with penalty and further proposed penalty on all the three appellants. It is against the aforementioned impugned OIO that the three appeals are filed.

4. M/s. Sonu Rubber Enterprise, has raised the following contention, in their appeal:

[a]that the impugned order is not legal and proper;
[b]that joining ends of belt and vulcanizing of conveyor belt does not amount to manufacture: that as per HSN, third schedule to CETA and various decisions, joining of two ends of belts cannot be construed as manufacture and manufacturing excisable goods within the registered premises is mandatory only when a unit is registered with the central excise department and not otherwise; that the reliance on Boards circular dated 9.3.1987 does not hold ground;
[c]that in reply to the show cause notice, the appellants had contended that that process of vulcanizing is manual for which no machine is needed; that renting of premises from 1.5.2012 by M/s. Shivam Rubber Enterprises does not prove that during the material period premises was not used for vulcanizing by M/s. Shivam Rubber; that all units had their own work force: that separate accounts were maintained by all units;
[d] that conveyor belts of vulcanized rubber whether already cut to length and whether or not joined end are one and same goods;
[e] that relying on the case of M/s. Servo Med Industries Private Limited [2015(319) ELT 578 (SC)], it is clear that rubber belting before cutting to length and after joining the ends remain the same and joining of two ends does not amount to manufacture;
[f]that since Shri Ashwinbhai has taken the plot from Shri Manilal Patel, Proprietor of M/s. Sellwin Rubber since 1.7.2012 and the period involved in the show cause notice is 2010-2011, 2011-2012, it does not serve any purpose;

[g]that the money was transferred by one unit to other unit when required and thereafter transaction was settled at later date; that these transactions were routine business transactions and cannot be construed otherwise;
[h]that the adjudicating authority has reproduced paras of show cause notice verbatim in the findings in the impugned OIO; that the adjudicating authority has neither discussed the vital submissions nor given any findings on them and merely reiterated the grounds by prefixing the phrase "I find";
[i] that the redemption fine has been wrongly imposed:
[j]that penalty under section 11AC is not imposable.

4.1 Shri Rajeshbhai M Patel, Proprietor of M/s. Shivam Enterprise has in his appeal raised the following contentions:

[a]the impugned order has been passed withot discussing the statements of the appellant and case laws referred to by the appellant;
[b]that when allegation was made that goods were manufactured and dealt with by the proprietor of M/s. Sonu Rubber and only invoices were issued in the name of the appellant firm, question of appelant's concerning or dealing with the goods does not arise;
[c] that since the aggregate value of clearance in both the financial years was less than Rs. 1.5 crores, the appellant's firm was entitled for exemption;
[d]that since the goods were manufactured and dealt with by the Proprietor of M/s. Sonu Rubber and only the invoices were issued in the name of the appellant's firm, the question of appellants any way concerned in transporting, removing, selling etc or in any other manner dealing with the goods does not arise.

4.2 Shri Manilal Patel, Proprietor of M/s. Sellwin Rubber Enterprises, in his appeal has argued that the adjudicating authority has passed the order without discussing the statement of the appellant and case laws referred to by the appellant; that that since the goods were manufactured and dealt with by the Proprietor of M/s. Sonu Rubber and only the invoices were issued in the name of the appellant's firm, the question of appellants being concerned in transporting, removing, selling etc or in any other manner dealing with the goods does not arise.

5. Personal hearing in respect of all the three appeals held on 20.7.2017, wherein Shri P.G.Mehta, Advocate appeared on behalf of the appellants. He reiterated the submissions advanced in the grounds of appeal.

6. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing. The question to be decided in the present appeal is whether the M/s. Sonu Rubber Enterprise is liable for payment of Central Excise Duty along with interest and penalty and whether penalty can be imposed on the other two appellants.

7. First I would like to discuss whether M/s. Sonu Rubber Enterprise, is liable for duty, interest and penalty as confirmed in the impugned OIO. There are a series of allegation - which I would like to deal one by one.

8. The first allegation, is that the process undertaken by M/s. Sonu Rubber Enterprise, engaged in the manufacture of *conveyor belts – endless*, falling under chapter 40101990, is a process amounting to manufacture. The appellant's contention is that the process of vulcanizing

conveyor belt, is not a process amounting to manufacture. As per the department, the process undertaken is that the appellant receives rubber solution, conveyor rubber belting in various sizes and forms of rolls and sheet; that these rolls are then cut into required length and then with the help of vulcanizing solution and heating press machine they create clets; that the loose ends of the rubber belts are vulcanized; that they are used as conveyor belt by the end user; that sometimes they sell these rubber belts without vulcanizing their end. The departmental allegation that this process amounts to manufacture is based on a circular dated 9.3.1987, which is reproduced below:

Rubber Profile shapes Classification of

F. No. 99/6/87-CX.3, dated 9-3-1987
Government of India
Ministry of Finance (Department of Revenue)
New Delhi

Subject: Central Excise - Classification of rubber profile shapes - Clarification regarding.

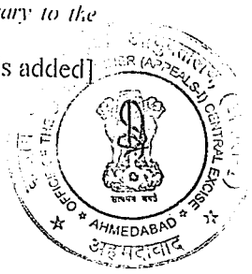
A reference is invited to Board's Circular No. 1-Rubber'86, dated 13-8-1986 issued from F.No. 57/35/86-CX.2 on the above subject. A doubt has been raised as to whether jointing of conveyor belts for making them endless would amount to 'manufacture', not under the excise law or not.

The matter has been examined in the Board's office and it is clarified that, in-as-much as endless belts are covered under Central Excise Tariff heading No. 40.10 the process of jointing the ends to obtain endless belts, would constitute 'manufacture' and it cannot be treated as more repairing servicing activity, unless such jointing is carried out on old belts.

The argument of the appellant that the aforementioned circular does not hold ground, is without any justification and hence, not a tenable argument. Nothing has been produced before me to the effect that the aforementioned circular is not in force or has been set aside. Further, the appellant is only harping on vulcanizing, when as already reproduced above, his activity includes other things i.e. cutting the rolls into required length and there after vulcanizing etc.. Therefore, the argument that there is no change in the product consequent to cutting and vulcanizing is not a correct argument. In-fact even the Chartered Accountant of M/s. Sonu Rubber Enterprises, in Form No. 3CD has at column no. 8(a) (Part-B) which seeks to know the nature of the business or profession, states that the appellant is engaged in manufacturing of conveyor belt and jobwork. Even otherwise, I find that the Hon'ble Supreme Court in case of *M/s. Ratan Melting & Wire Industries* [2008 (231) E.L.T. 22 (S.C.)/2008-TIOL-104-SC-CX-CB] in para 6, has held as follows:

"6. Circular and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not to a view expressed in a decision of this court or the High Court. So far as the clarification/circulars issued by the central Government and of the state Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the Executive. Looked at from other angle, a circular which is contrary to the statutory provisions has really no existence in law...

[emphasis added]



As already stated since nothing is produced before me to show that the circular dated 9.3.1987, is running contrary to any judgement of Hon'ble Supreme Court or the High Court, the adjudicating authority was left with no option, but to strictly adhere to the Circular. Hence, the argument that the process undertaken by the appellant does not amount to manufacture, is not a tenable argument. In view of the foregoing, I concur with the findings of the adjudicating authority that the process undertaken by the appellant, amounts to manufacture.

9. With respect to the other allegations that the machineries were installed at the premises of M/s. Sonu Rubber in respect of all the three units; that the raw materials were received jointly for all the three units, the storage of raw materials were common for all the three units without any identification as to which one belongs to which unit; that no separate register were being maintained by the three units; that the accounts of all the three units were maintained at one place; that proprietor of M/s. Sonu Rubber Enterprise, was looking after the work of marketing, sale and day to day work of all the three units; that the management of three units were common; that there were many inter-unit transactions which shows the mutuality of interest and financial flow back amongst the three units; that the employees were common; that there were no evidences showing payment for utilizing the facilities; that the electricity bill of the two units other than M/s. Sonu Rubber show nominal amounts, which proves that the manufacturing was happening at one place, **the appellant's contention** is that all units had their own work force; that separate accounts were maintained by all three units; that since Shri Ashwinbhai has taken the plot from Shri Manilal Patel, Proprietor of M/s. Sellwin Rubber after 1.7.2012 and the period involved in the show cause notice is 2010-2011 and 2011-2012, it is of no consequence; that the money was transferred by one unit to another unit when required and thereafter transaction was settled at a later date; that these transactions were routine business transactions and cannot be construed otherwise; that with respect to electricity consumption, in cold vulcanizing only solution is used, while in hot vulcanizing heating press machine which is used does not use significant electricity; that the electricity bill of M/s. Sonu Rubber Enterprises is higher since two air conditioners, installed were used.

10. On going through the averments raised against the allegation it comes out that none of the arguments raised are convincing. No proof is provided that separate records were maintained, except Form 3CD of M/s. Sonu Rubber Enterprises, which certified that the appellant has maintained cash book, bank book, purchase register, sales register, journal register and Ledger. The allegation is not that M/s. Sonu Rubber Enterprises had not maintained any records, the allegation is that separate records were not maintained. No such Form 3CD of the other two units viz. M/s. Shivam Rubber Enterprises and M/s. Sellwin Rubber Industries, has been provided to counter the allegation. The photocopy of the wages register produced by the appellant for some months , does not counter the allegation of the department that the employees were common, because had it been so, the appellant would have produced the monthly statement

of payment in respect of all the three units, which I find is not the case. Even the averment against the charge of financial flow back, given with example in the show cause notice, appears to be answered in a very casual way by stating that the money was transferred by one unit to another unit when required and thereafter transaction was settled at a later date. Further, I find that the appeal papers do not contain the certificate of the chartered accountants, certifying that there was no profit sharing and no financial flow back of money between the firms.

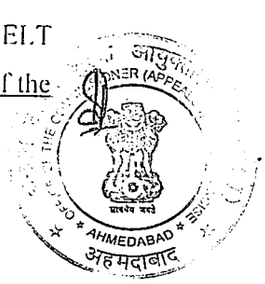
11. The primary allegations in the notice, which stand confirmed were that M/s. Sonu Enterprises, formed two dummy units M/s. Shivam Rubber Enterprises and M/s. Sellwin Rubber Industries, on paper to split their clearances to remain within the threshold limit for availing the benefit of the exemption notification. These facts have been accepted by Shri Manilal Patel and Shri Rajeshbhai Patel in their statements dated 8.10.2012, which states about common purchases and division of work amongst the three units keeping in mind that the clearance value did not cross exemption limit. After going through the counter of the appellant, against the allegations raised by the department, I am in agreement with the confirmation of the charges against the appellant by the adjudicating authority. In view of the foregoing, the appeal filed by M/s. Sonu Rubber Enterprises, is rejected.

11.1 Further, I find that the Hon'ble Tribunal in the case of Unique Resin Industries [1993(68) ELT 230] , on the question of common infrastructure , financed and managed by the same family, etc., has held as follows:

> *8. Apart from common infrastructural facilities, like water, the units are adjacent to each other, located in the same compound, are financed and run by the same family and are being managed by same persons (namely, Shri Tushar Desai, Shri G.N. Rao and Shri C.G. Patel) under the directions of the head of the family Shri H.C. Parikh. Shri C.G. Patel and Dr. Tushar Desai were drawing their salaries from M/s. Unisets Industries, Valsad and Shri G.N. Rao was drawing his salary etc. from M/s. Usha Thermosets Pvt. Ltd. But they were looking after all the four units. The products are having common code numbers and all the four units have common sales network, and pricing which cannot be a mere coincidence or an accident and which would not be the case if the four units were genuinely independent as claimed. Thus the separateness of the four units is only a facade as held by the Collector.*

> *9. Looking to the totality of the circumstances, there could be no doubt that there is common financial involvement and common control and supervision in respect of all the four units as envisaged in the Tribunal's decision relied upon by the appellants in the case of Meteor Satellite Ltd. and Telestar Electronics v. CCE Baroda - reported in 1985 (22) E.L.T. 271 (T) which is confirmed by the Apex Court - reported in 1989 (41) E.L.T. A105. Hence, even if it is accepted that the test of mutuality is relevant only for the purpose of valuation, the clearances of the above four units have been rightly clubbed vide the Order-in-Original under reference as the test for "clubbing" as envisaged in the above case, is satisfied in the instant case.*

12. The appellant has further argued that the adjudicating authority erred in imposing redemption fine of Rs. 8.00 lacs. I agree with the contention. The adjudicating authority should have confined to holding the goods liable for confiscation. Redemption fine could not have been imposed on account of the law as spelt out in the case of Weston Components [2000 (115) ELT 278 (SC)]and Shiv Kripa Ispat Private Limited [2009 (235) ELT 523 (Tri. – LB]). In view of the foregoing, the redemption fine of Rs. 8.00 lacs imposed vide the impugned OIO is set aside.



13. Now coming to the appeal filed by Shri Manilal Patel, Proprietor of M/s. Sellwin Rubber Enterprises, and Shri Rajeshbhai Patel, Proprietor of M/s. Shivam Rubber Enterprises, it is their averment that they are not liable for penalty under Rule 26 of the Central Excise Rules, 2002. Rule 26 of the Central Excise Rules, 2002, as was in vogue, states as follows :

> *RULE 26. Penalty for certain offences. —*
> *[(1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or [two thousand rupees], whichever is greater.*
>
> *[(2) Any person, who issues -*
> *(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or*
> *(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.]*

The argument of the appellants, that that since the goods were manufactured and dealt with by the Proprietor of M/s. Sonu Rubber and only the invoices were issued in the name of M/s. Shivam Rubber Enterprises, and M/s. Sellwin Rubber Enterprises, the question of Shri Manilal Patel and Shri Rajeshbhai Patel being concerned in transporting, removing, selling etc or in any other manner dealing with the goods does not arise. This does not appear to be a logical argument. The allegation is that they were instrumental in setting up these firms with the sole intention to stay below the threshold limit of Rs. 1.5 crores, has not been effectively countered. In-fact, Shri Rajesh Patel, Proprietor, in his statement dated 8.10.2012 had stated that hydraulic press installed at Shivam, belongs to both the units without any demarcation as both the units were handled by his brother who is the proprietor of M/s. Sonu Rubber; that his brother was looking after the work relating to purchase of raw materials, sale of finished goods, maintenance of records, planning of allotment of raw materials, dispatch of finished goods. Therefore, the averment, that they were not liable to penalty under Rule 26 of the Central Excise Rules, 2002, is not a tenable argument. Since M/s. Sonu Rubber was instrumental and the prime conspirator in forming the other two units, to split the clearance. I uphold the imposition of penalty on the said appellant under Section 11AC of the Central Excise Act, 1944 since all the elements for imposition of penalty are present.

14. In view of the foregoing, the appeals filed by the appellants as mentioned in para (1) is rejected except for the setting aside of redemption fine imposed by the adjudicating authority. The impugned OIO is upheld, except for imposition of redemption fine.

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

15. The appeal filed by the appellants stands disposed of in above terms.

उमा शंकर

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)

Date :27.07.2017

Attested

(Vinod Lukose)
Superintendent ,
Central Tax(Appeals),
Ahmedabad.

By RPAD.

To,

M/s. Sonu Rubber Entperises, 91/78, Madhav Industrial Estate, S.P.Ring Road, Odhav, Ahmedabad.	Shri Rajeshbhai M Patel, Prop. of M/s. Shivam Rubber Entperises, 77, Madhav Industrial Estate, S.P.Ring Road, Odhav, Ahmedabad.	Shri Manilal Patel, Prop. of M/s. Sellwin Rubber Entperises, 74, Madhav Industrial Estate, S.P.Ring Road, Odhav, Ahmedabad.

Copy to:-

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