

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)08/EA-2/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0126-2018-19
दिनांक Date : 20-12-2018 जारी करने की तारीख Date of Issue 10/1/2019

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

ग Arising out of Order-in-Original No. MP/06/Dem/18-19 दिनांक: 30.05.2018 issued by Assistant
Commissioner, Div-V, Central Tax, Ahmedabad-South

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

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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।

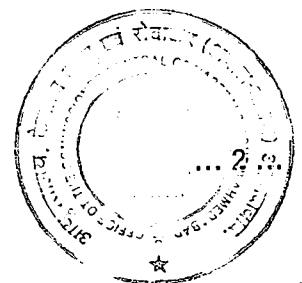
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

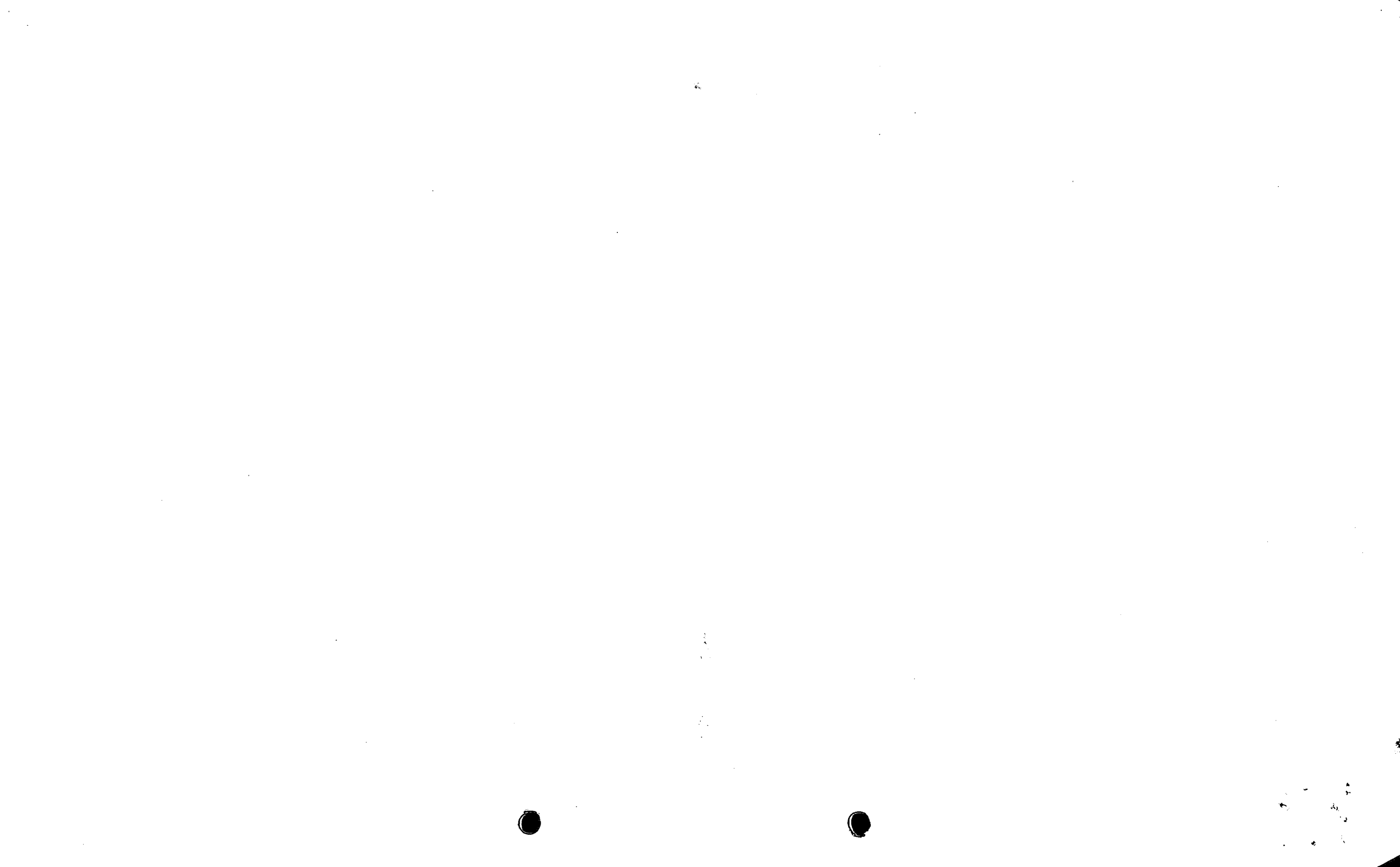
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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।





(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.

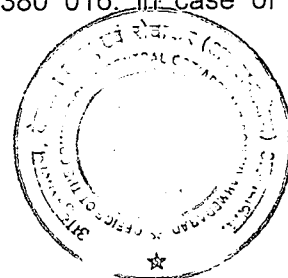
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

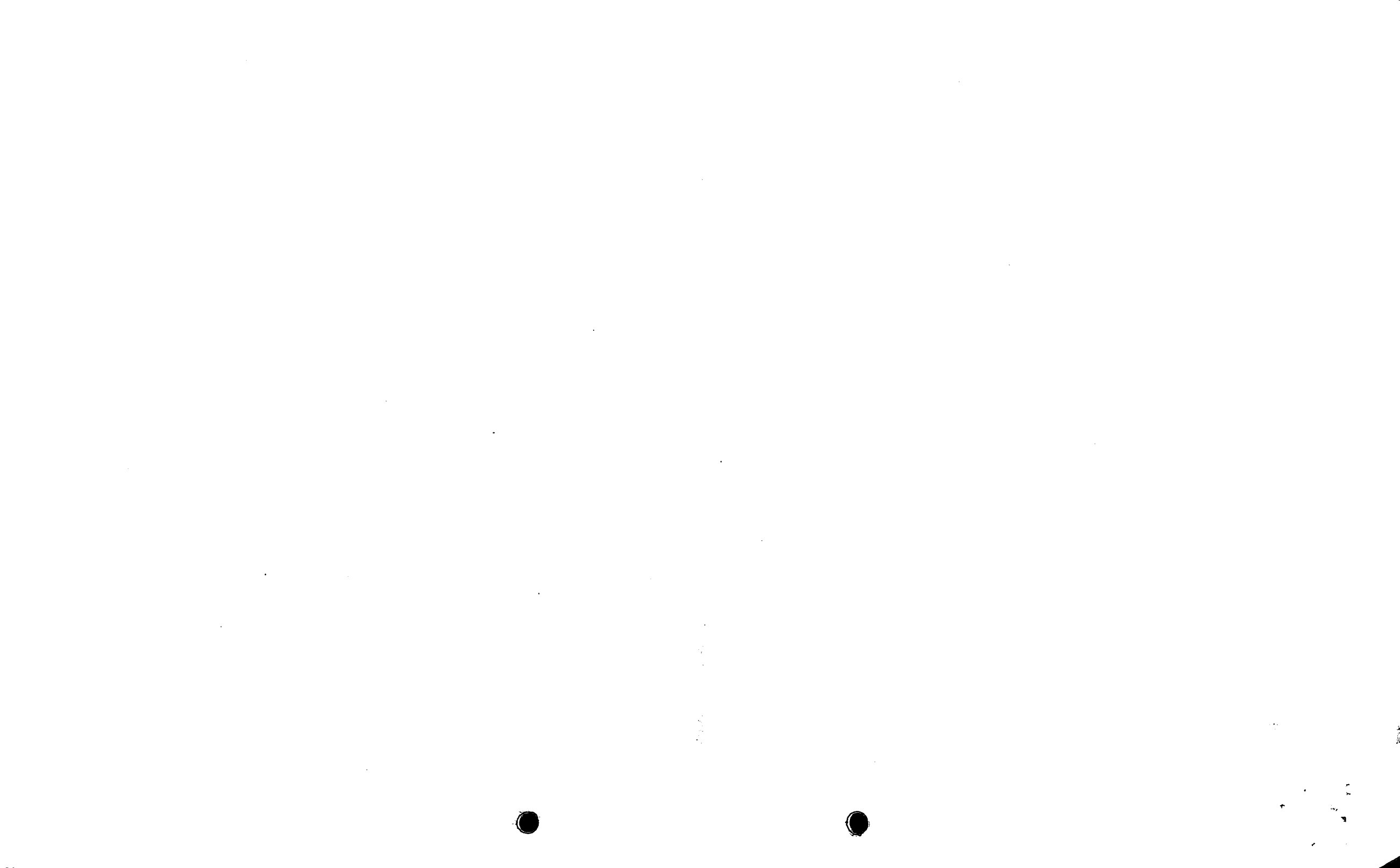
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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 मैटल 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 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 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।

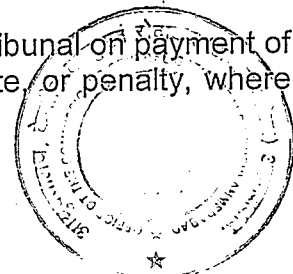
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

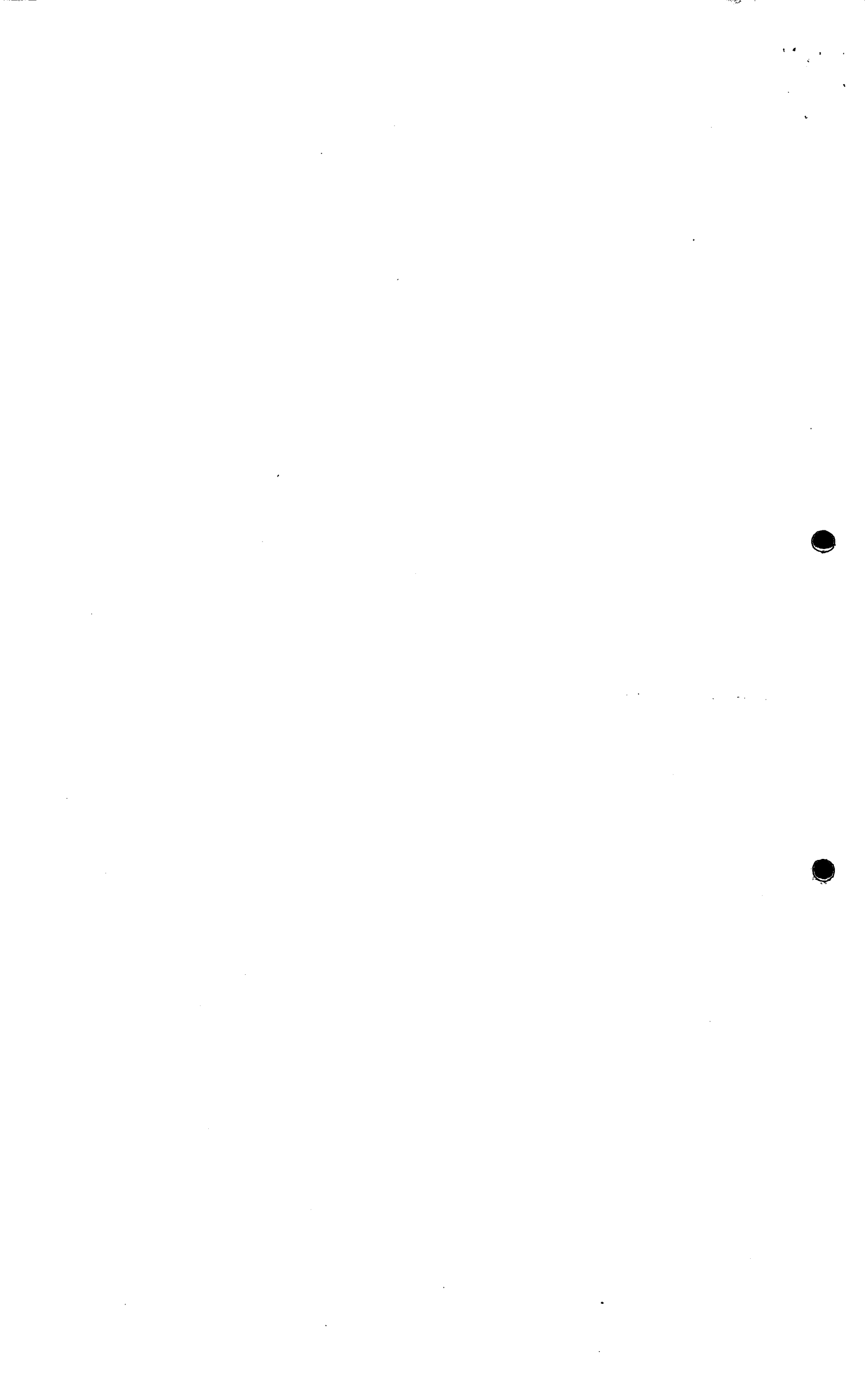
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 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."





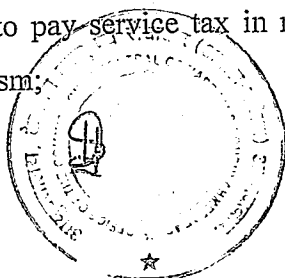
ORDER-IN-APPEAL

This departmental appeal has been filed by Assistant Commissioner, CGST, Division-V, Ahmedabad South Commissionerate in terms of Review Order No. 04/2018-19 dated 04.09.2018 passed by the Commissioner, CGST, Ahmedabad South [for short appellant] against OIO No. MP/06/Dem/2018-19 dated 30.05.2018, passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad-South [for short adjudicating authority] in the case of M/s Macro Polymers Pvt Ltd, 165, 139A, Gujarat Vepari Mahamandal, Odhav, Ahmedabad – 382415 [for short respondent].

2. Briefly stated that the facts to the case are that the respondent is holding Central Excise and service tax registrations. The respondent had registered an expense of Rs. 14,40,000/- in their books of accounts during the period 2013-14 to 2015-16 on account of payment made to their director Shri Shirish Manidhar and was receiving commission income from the shipping lines. It was further noticed that the respondent failed to pay the service tax on the outward service of “Renting of immovable property” as under the head of services provided by a director for renting the business premises to the respondent in terms of Notification No. 30/2012-ST dated 20.06.2012 as amended by Notification No. 45/2012-ST dated 07.08.2012 and on “Business Auxiliary Services” provided by them to their client on the ground that the value of total output services provided by them in any financial year was less than Rs. 10 lakhs. However, it was also observed that since they were availing CENVAT credit of the central excise duty paid on inputs and capital goods as well as of the service tax paid on input services used commonly in manufacture of dutiable goods as well as output services, such exemption was not available in view of the conditions mentioned in the clause 2 of the Notification No. 33/2012-ST and to this effect a show cause notice was issued to the respondent demanding service tax alongwith interest and penalty under section 73(1), 75 & 78 of the Finance Act, 1994 [for short FA]. The adjudicating authority found that Shri Shirish Manidhar Parikh had executed the rent agreement with the respondent in his personal capacity and the discount/incentives received by the respondent from shipping lines were not on behalf of another person. In view of these finding the adjudicating authority dropped the demand raised in the notice vide impugned order.

3. Aggrieved by the impugned order, the appellant has filed the instant appeal, chiefly, on the following grounds:

- The service tax is demanded on reverse charge basis in respect of the property taken on rent from Shri Shirish Manidhar Parikh, who is also Director of the respondent for commercial purpose, as renting of immovable property is a declared service and as the property is not a residential dwelling, such service is liable to service tax;
- The respondent is falling under the category of body corporate and the service provider is the director of the respondent; thus in terms of sec 68(2) of FA read with Rule 2(1)(d) of Service Tax Rules, 1994 and Notification No. 30/2012-ST as amended by Notification No. 45/2012-ST, the respondent is liable to pay service tax in respect of renting of immovable property under reverse charge mechanism;





- It is a settled principle that no words are to be added to a statute or notification, the adjudicating authority is traversed the boundaries set by the Notification No. 30/2012-ST as amended by Notification No. 45/2012-ST, in as much there is no exclusion to the services provided by the Director in his personal capacity to the company;
- Once it is established by the revenue that the respondent is engaged in manufacturing of dutiable goods as well as in providing taxable services and is using common inputs, input services and capital goods, the onus to rebut the same with cogent and valid evidences lies with the respondents. In absence of this fact being established, the benefit taken by the respondent under Notification No. 33/2012-ST is not maintainable.

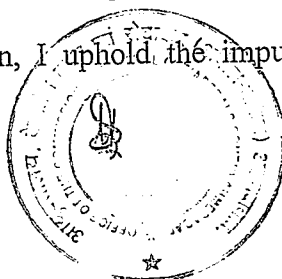
4. The respondent in their letter dated 12.12.2018 submitted that they do not want to be heard in person and the present appeal may be decided on the basis of the submission made by them on 14.11.2018.

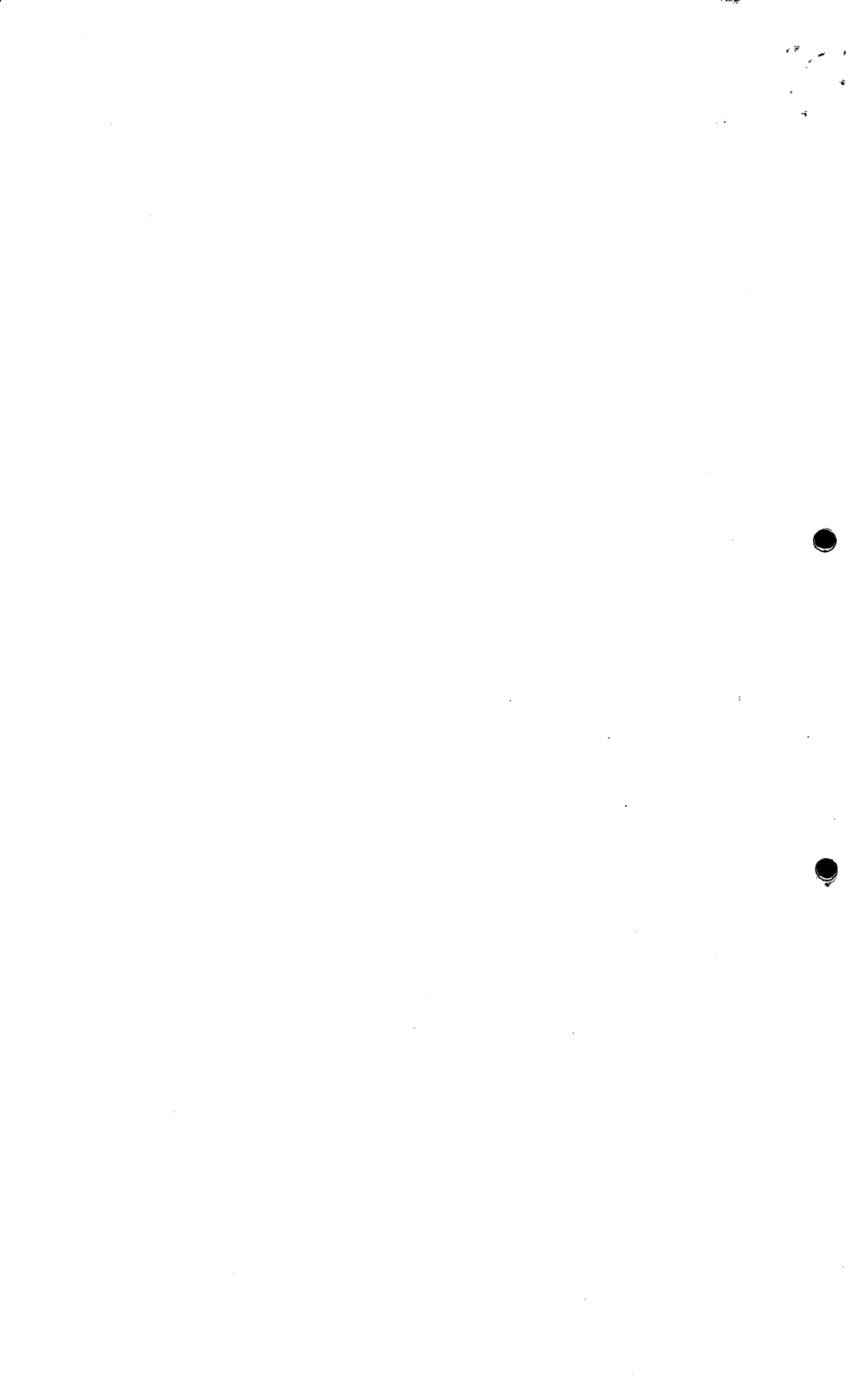
5. I have carefully gone through the facts of the case on records and submissions made by the appellant and respondent. The issue for decision before me is whether the respondent company was liable to pay Service Tax under Reverse Charge Mechanism in terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20/06/2002 towards Renting of immovable property service received from Shri Shirish Manidhar Parikh Directors of the respondent company.

6. In terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994, as amended vide Notification No. 46/2012 dated 07/08/2012, the person liable for paying tax in relation to service provided or agreed to be provided by a Director of a company to the said company is the recipient of such service. Further in terms of Notification No.30/2012-ST dated 20/06/2002, as amended vide Notification No. 45/2012-S.T. dated 07/08/2012, in respect of services provided or agreed to be provided by a Director of a company to the said company, 100% of the tax is payable by the person receiving the service. The contention of the appellant in the grounds of appeal is that the Renting of immovable property service provided by the Director was chargeable to Service Tax at the end of the respondent under reverse charge mechanism.

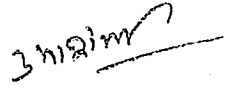
7. The undisputed fact in the present case is that the Director was being paid Rent by the respondent company for hiring of immovable property. However, it does not mean that the Director had rendered service to the respondent company in their capacity as Director. The rent received by him in his personal capacity and not in their capacity as Director of the respondent company. Therefore, Service Tax was payable by the individual person and there was no scope of recovering Service Tax from the respondent on Reverse Charge Mechanism. The charge made by the department that the impugned activity attracted Service Tax under the reverse charge mechanism in terms of Rule 2(1)(d)(EE) of Service Tax Rules, 1994 and Notification No.30/2012-ST as amended is based on the incorrect surmise that the Director was providing the said services in his capacity as Director. Therefore, the demand rejected by the adjudicating authority in the impugned OIO is proper.

8. In view of the above discussion, I uphold the impugned order. The appeal filed by the department is rejected.





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




(उमा शंकर)

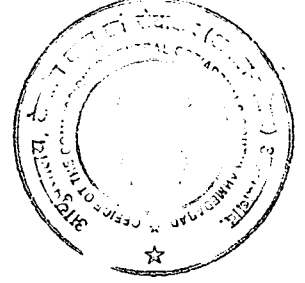
आयुक्त

केन्द्रीय कर (अपील्स)

Date: / 12 /2018

Attested


(Mohanan V.V)
Superintendent,
Central Tax (Appeals),
Ahmedabad.



By R.P.A.D.

To

M/s Macro Polymers Pvt Ltd.,
165, 139A, Gujarat Vepari Mahamandal Odhav,
Ahmedabad-382415

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad South.
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad South.
4. The Assistant Commissioner, CGST, Division-V, Ahmedabad South.
5. Guard File.
6. P.A.

20

