



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पॉलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



74/7/09421

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(54)149/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0144-2018-19  
दिनांक Date : 18-02-2019 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

14/3/2019

ग Arising out of Order-in-Original No. 15/Addl.Commr/02 दिनांक: 23.03.2002 issued by Addl. Commissioner, Div-AHD-I, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Nitdip Processors Pvt.Ltd  
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।

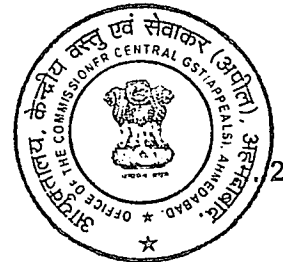
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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 केंच्य 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 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.

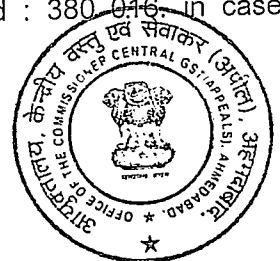
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैनटल हॉस्पिटल 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 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 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."



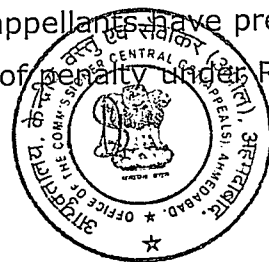
### ORDER IN APPEAL

M/s. Nitdip Processors Pvt. Ltd., 1001, Capstone, Opp. Chirag Motors, Seth Mangaldas Road, Ellisbridge, Ahmedabad (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original number 15/Addl. Commr./2002 dated 28.03.2002 (*hereinafter referred to as 'impugned order'*) passed by the then Additional Commissioner of erstwhile Central Excise, Ahmedabad-I (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants were engaged in the processing of fabrics falling under Chapter 52, 54 and 55 of the erstwhile Central Excise Tariff Act, 1985 and were also having Hot Air Stenter installed and functioning in their factory. The appellants, at that time, were governed by the provisions of Section 3A of the erstwhile Central Excise Act, 1944 read with erstwhile Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998 (*hereinafter referred to as 'the said Rules'*). On the basis of declaration filed by the appellants, Annual Production Capacity (APC) and pro-rata duty liability was determined by the Dy. Commissioner of the erstwhile Central Excise, Division-IV, Ahmedabad-I and communicated to the appellants. Accordingly, the appellant's Central Excise duty liability for the month of November 2000 was fixed at ₹ 6,00,000/-, being worked out at the rate of ₹ 2,00,000/- per chamber per month.

3. On scrutiny of their RT-12 return for the period of November 2000, it was noticed that the appellants had short paid a total duty of ₹ 4,00,000/- against the pro-rata duty fixed. A show cause notice, dated 06.09.2001, was issued to the appellants but the appellants neither submitted any reply to the show cause notice nor the availed the opportunity of personal hearing awarded to them. The adjudicating authority confirmed the demand of ₹ 4,00,000/- under Rule 96 ZQ 5 (i) of the erstwhile Central Excise Rules, 1944 read with Section 11A of the erstwhile Central Excise Act, 1944. The adjudicating authority further, demanded interest in terms of Rule 96 ZQ 5 (i) of the erstwhile Central Excise Rules, 1944 on the duty short paid to the extent of ₹ 4,00,000/- and also demanded interest at the prescribed rate quantified at ₹ 135/- in terms of Rule 96 ZQ 5 (i) of the erstwhile Central Excise Rules, 1944 on the delayed payment of ₹ 2,00,000/-. He further imposed penalty of ₹ 6,00,000/- in terms of Rule 96 ZQ 5 (ii) of the erstwhile Central Excise Rules, 1944.

4. Being aggrieved with the impugned order the appellants have preferred the present appeal. They stated that the imposition of penalty under Rule 96



ZQ 5 (ii) of the erstwhile Central Excise Rules, 1944 is unconstitutional as Rule 96 ZQ was framed under Section 37 of the erstwhile Central Excise Act, 1944 and therefore, the penalty should not exceed ₹5,000/-. In support of their claim, the appellants have quoted the judgment of Hon'ble High Court of Gujarat in the case of Krishna Processors vs. Union of India. The same ratio has been approved by the Hon'ble Supreme Court of India in the case of Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise. Regarding the imposition of interest, the appellants stated that same is not correct as per the verdict of Hon'ble Supreme Court of India in the case of Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise. Regarding the payment of short paid duty amount of ₹ 4,00,000/-, the appellants stated that they have paid Central Excise duty of ₹ 2,79,756/- vide Challan number 72011 dated 28.11.2018. Regarding the remaining amount of ₹ 1,20,244/-, the appellants claimed that they had excess paid ₹ 1,20,244/-, which remains unadjusted in OIO number OIO/7/Addl. Commr./01 dated 16.02.2001. They requested to adjust the said amount against the remaining short paid amount.

5. Regarding late filing of the appeal, the appellants argued that since 31.12.2000, they had closed the operations of the processing of the fabrics. They were surprised to receive a letter dated 24.04.2017 from the Superintendent of the then AR-III, Division-III, Ahmedabad-I, demanding outstanding Central Excise duty. However, as the appellants were having no knowledge of any demand notice, they filed an RTI dated 18.08.2018 asking for the supply of certified copies of the orders vide which the duty was demanded. The Assistant Commissioner (CPIO), CGST, Ahmedabad-South, vide letter dated 24.09.2018 furnished certified copy of the impugned order which was received by the appellants on 30.09.2018. Thus, as they had not received the impugned order prior to 30.09.2018, at any point of time, the appellants requested me to consider 30.09.2018 to be the date of serving the impugned order.

6. Personal hearing in the matter was granted and held on 16.01.2019. Shri Pravin Dhandharia, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. He made Additional submissions and proof of challan.

7. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Before deciding the appeal on merit, it needs to be decided on limitation as per Section 35(1) of the Central Excise Act, 1942 and what should be the date of impugned order! I find that the actual date of the impugned order is 28.03.2002 and the appellants have filed the appeal on 29.11.2018. However, it seems that the impugned order



could not reach the appellants on time and when they received a notice from the jurisdictional Superintendent, directing them to pay the outstanding duty as per the impugned order; they filed an RTI and succeeded in procuring the impugned order on 30.09.2018. In support of their claim, the appellants have submitted before me an affidavit confirming the above fact. A scanned copy of the same is imprinted below so that the contents of the said affidavit can be discussed later on;

Sr. No. 632/2019

ASHA H. BRAHMBHATT  
NOTARY  
GOVT. OF INDIA

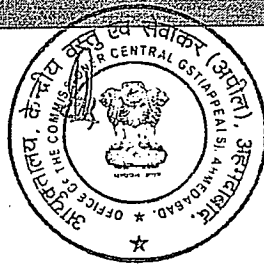
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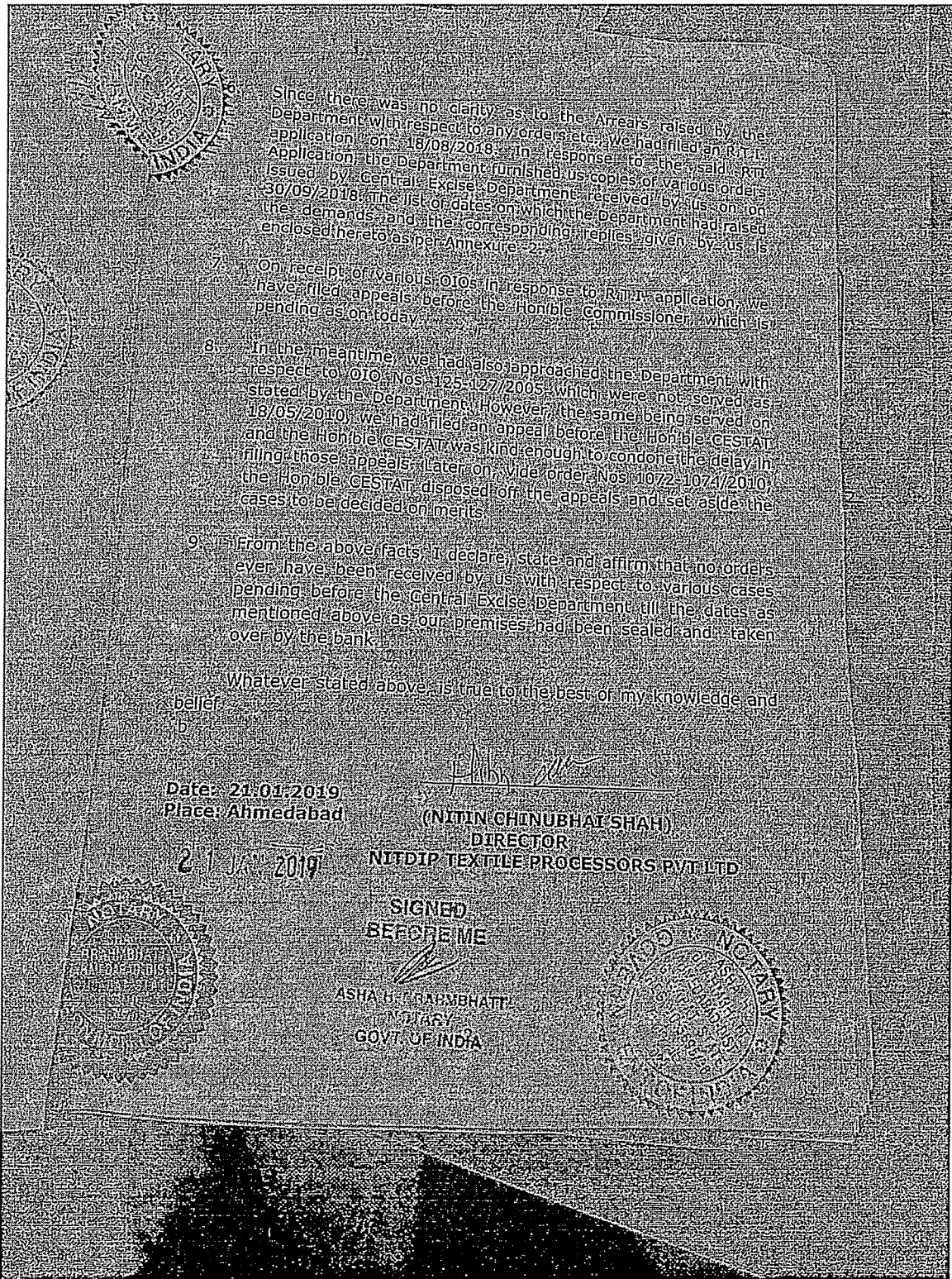
**AFFIDAVIT**

I, Nitin Chinubhai Shah, Director of M/S. Nidip Textile Processors Private Limited, having Administrative Office at 1001, Capstone, Near Chirag Motors, Ellisbridge, Ahmedabad - 380 006, do hereby solemnly affirm and state as under:

1. That our company, was carrying on the business of processing of man made fabrics at Plot No.15, Phase I, G.I.D.C., Vatva, Ahmedabad from the year 1982.
2. That the said above mentioned factory was closed on 31.12.2000 and has been closed ever since then.
3. That the said company had taken finance from Charotar Nagik Sahakar Bank, Anand and since the loans remained outstanding the said bank had taken over the possession of the said premises along with inventory on 16/04/2002. (Copy of the Order attached as per Annexure -1)
4. That on receipt of the pending arrears letter from the Department we had filed a reply and mentioned the correspondence address at which the Department can send the details. (Copy attached as per Annexure -2)
5. That the Excise Department sent us Reminders for Recovery of Arrears from 2007 onwards, to which we have reverted every time and asked department about the copies of orders confirming demand of excise duty against us. However, the department has never replied to any of the letter written by us.

(Signature)





From the above, it can be seen that the appellants were involved in the business of processing of manmade fabrics at Plot No. 15, Phase I, G.I.D.C., Vatva, Ahmedabad from the year 1982. They had closed their factory/activity on 31.12.2000 for good. Further, it can also be seen that possession of their assets was taken over by Charotar Nagrik Sahakari Bank, Anand, on 16/04/2002, as the appellants had defaulted in the payment of loans taken from the former. I also find that on receipt of the pending arrears letter from the Department, the appellants had filed a reply and mentioned the correspondence address at which the Department can send the details. Therefore, it is believable that the impugned order sent by the department, might not have reached the appellants.



On being asked, the appellants have submitted before me, a photocopy of interim order issued by the Jt. Registrar, Board of Nominees, Ahmedabad. I reproduce below, a scanned copy of the same, for more clarification;

**Annexure: 1/1.2**

રજીસ્ટ્રારશ્રીના નોંધીની, બોર્ડ ઓફ નોમીનીઝ, અમદાવાદ વિભાગ, અમદાવાદ ઠ. સી-૩, બહુમાળી મકાન, લાલ દરવાજા, અમદાવાદ

અમરી હવાદ કેસ નંબર : ૭૫૬/૨૦૦૨

વાદી : ધી ચરતર નાગરીક મહકાટી લેક લી., કોર્ટ-૧  
સ્વેતીક ચાર રસ્તા, નવરંગપુરા બલ્ડેટ પાર્ક, અમદાવાદ વિરુદ્ધ.

પતિવાદી: (૧) નીલદીપ ટેલાટાઈલ ચીસેસ ચા. લી., ૩૦૧, ખલા કોમ્પ્લેક્સ, સી.જી. રોડ, અમદાવાદ  
(૨) નીલનભાઈ સી. શાહ જાતે તથા કમનીના એમ.ડી. તરફે ૧૪, યુવન બગીચા, બોંડકદેવ, અમદાવાદ-૫૬  
(૩) દીપક ચીનુભાઈ શાહ ઠ. ન. ૨ મુખ.  
(૪) અનીલભાઈ રમણભાઈ શાહ ઠ. ૨૯/૧૬૦ હાદ્યાનગર ગોચીટી, હીમતલાલ પાક, અમદાવાદ  
(૫) સ્વાતીબેન મયુરભાઈ અમીન ઠ, અનીલમી કલેટમ, નહેરુપાર્ક વસ્તીપુર, અમદાવાદ

દાવા રકમ : ૧,૨૮,૯૮,૫૩/-

**:: ઈ-વેન્ટરી/અવલજ્તી તથા કામચલાઉ મનાઈલુકમ ::::**

ઉપરોક્ત વાદીએ આ કોર્ટમાં અમરી દાવા દાખલ કરી, દાવા સાથે નિન્ડ થી મનાઈ/અવલજ્તીની સરજી આપેલ છે. સદરહુ સરજી તથા કેસ પેપલ વાચી આ કોર્ટ નીચે મુજબ લુકમ કર્યાં.

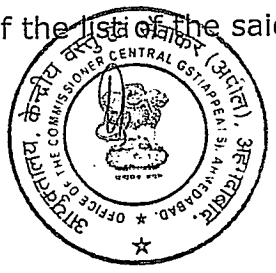
વાદીના દાવાની નિન્ડ ની સરજીના પેરા ૯(એ) અવધે ઈ-વેન્ટરી/અવલજ્તીની કાર્યવાહી કરવા માટે કોર્ટ કમિસ્નર તરીકે ચી કે. કે. મહેતા ની નિમલક કરવામાં આવે છે. ચી પતિવાદ વાદી લેકમ રા. ૧૬,૩૪,૦૦૦/- જમા કરાવે તો અવલજ્તીની કાર્યવાહી મોકુફ રાખવી.

વાદીના દાવાની નિન્ડ ની સરજીના પેરા ૯(બી) અવધે પતિવાદીની મિલકત સાથે તા. ૨૪/૨૦૦૨ સુધીની કામચલાઉ મનાઈલુકમ કરમાવવામાં આવે છે. વધુમાં તમો પતિવાદીએ આ કારણદશક નોટિસ આપી જલાવવામાં આવે છે કે, આપવામાં આવેલ મનાઈલુકમ કાચમી આ માટે ન કરવી તેમજ મનાઈ સરજીની જવાબ રચુ કરવા માટે ઉપરોક્ત ગરનાયે તા. ૨૪/૨૦૦૨ ના રોજ સવારે ૧૧-૦૦ કલાકે અશક હાજર રહેવું ચી તેમ કરવામાં કચુર ઘણે તો તમારી ગેરહાજરીમાં ચી તે લુકમ કરવામાં આવશે, જે નીચ લેકી.

અમદાવાદ તા. ૧૬/૪/૨૦૦૨

સંચુકત રજીસ્ટ્રાર અને સ્પેશ  
બોર્ડ ઓફ નોમીનીઝ, અમદાવાદ  
વિભાગ, અમદાવાદ વતી-

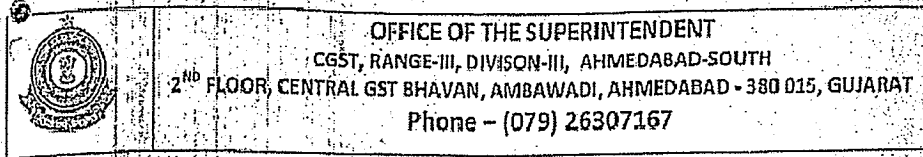
Further, the appellants have also submitted photocopies of proof of correspondence that had undergone between them and the concerned range Superintendent. A scanned copy of the list of the said correspondence is also shown below;







application, this office had sent a letter dated 29.01.2019 to the Assistant Commissioner, CGST, Division-III, Ahmedabad-South. In reply, the Assistant Commissioner, vide letter dated 08.02.2019 issued from F. No. D-III/AR-III/Misc. Corr./18-19, informed that the concerned Division office does not have any acknowledgement of delivery/receipt of the impugned order (15/Addl. Commr./2002 dated 28.03.2002). A scanned copy of the said letter is reproduced below, before I move any further;



F.No D-III/AR-III/Misc. Corr./18-19

Date: 07.02.2019

08

To

The Assistant Commissioner (Appeal),  
Central GST,  
Ahmedabad.

Sub:- Receipt of OIOs by M/s. Nidip Textile Processors Pvt. Ltd. - m/r

....

Please refer your office letter F. No. V2(54)149/Ahd-South/2018-19 dated 29.01.2019 on above captioned subject.

2. In this respect, it is to report that out of four cases as asked in above letter dated 29.01.2019, the assessee had preferred an appeal in the case mentioned at Sr. No. 02 - OIO No MP/14IDA/2000 dt. 31.01.2000 and the said appeal is decided in favour of department vide OIA No. 880/2000 (384-Ahd-1)CE/Commr(A)/Ahd. Dt. 30.08.2000.

3. Please find enclosed herewith copy of letter dated 29.08.2011 of M/s. Nidip Textile wherein the party has stated that in respect of Sl. No. 1 to 4

"details not available/request to give it"

4. As the matter pertains to the year 2002 and from the record available with this office, acknowledgement to the OIOs as stated at Sl. No. 1 to 4 are not available on file.

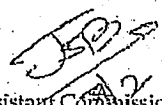
5. JRO has been constantly writing letter to the assessee to pay up the Govt. dues from time to time. Details of correspondence made with the assessee is as per Annexure 'A' attached herewith.

6. Further, a copy of party's letter dated 10.08.2016 is also enclosed for kind perusal please wherein the party requested as below:

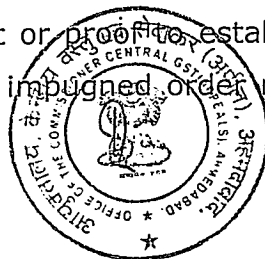
"we now therefore request you that if you believe that any order has been passed and served on us, kindly serve us a copy of the same. If Dept. has a proof of service, kindly bring the same to our notice. If no order has been served on us, there is no question of any demand being raised or property being attached."

This is for favour of kind information, perusal and necessary action at your end please.

Yours faithfully,

  
Assistant Commissioner,  
CGST, Division-III,  
Ahmedabad South.

Thus, from the above letter, it can be seen that the concerned Division office could not produce any acknowledgement or proof to establish the fact that the appellants had actually received the impugned order much before filing



the RTI application. However, I find that the appellants have received several other correspondences from the department and even in certain cases they have received Orders issued after the year 2000; so, how they have not received the impugned order remains an enigma for me. I believe that the appellants, being active in the fabric processing field for long, are quite seasoned and they should have known the repercussion of default in the payment of government dues. Further, I find that the Division office could not produce any acknowledgement of delivery of the impugned order. But this procedural lapse cannot provide green channel for the appellants as the department cannot be forced to keep evidences of correspondences that occurred more than 16 years ago. I do not agree with the appellants that the date of departments reply to their RTI application should be treated as the date of receipt of the impugned order. Further, in support of their claim, the appellants have quoted one of their own cases {O-I-A number 125 to 127/2005(Ahd-DCE)/Commr.(A-II) dated 27.07.2005} where the Hon'ble Tribunal, West Zonal Bench, Ahmedabad, vide order number S/780-782/WZB/AHD/2011 dated 09.05.2011, had condoned the delay. Going through the said order, in identical situation, I find that the Hon'ble Tribunal has gone into the circumstances and condoned the delay. Hon'ble Tribunal has not taken the date of receipt of RTI as the date of receipt of the appealable order. Since Tribunal has decided the issue, I have no other alternative to follow the same. Thus, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 28.03.2002 and the appeal has been filed before me on 29.11.2018. In view of the above, I find that the claim is delayed by nearly sixteen years and eight months. The Government has provided certain facilities, time to time, for the convenience of the assessee. Knowingly or unknowingly, if one fails to comply with the Service Tax provisions, then there are rules to facilitate the assessee under certain terms and conditions. Assessee, if not satisfied with the demand, may prefer appeal to the higher authorities [in this case, the Principal Commissioner/Commissioner (Appeals)] **within 2 months** from the date of receipt of order from such adjudicating authority. The Commissioner (Appeals) **may** allow a further period of only **1 month**, if sufficient cause for late filing of appeal is shown and proved to him. Thus, in view of the above facts, I find that the appeal filed by the appellants is time barred and hence, I reject the appeal on the ground of limitation itself.

8. Therefore, in view of the discussion held above, I reject the appeal filed by the appellants being time barred

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निम्न द्वारा उल्लिखित तरीके से किया जाता है।



9. The appeal filed by the appellants stands disposed off in above terms.

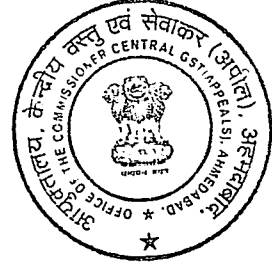
*अशोक*  
(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*S. Dutta*  
(S. DUTTA) 130319

SUPERINTENDENT, CENTRAL TAX (APPEALS),  
AHMEDABAD.



To,  
M/s. Nitdip Processors Pvt. Ltd.,  
1.001, Capstone, Opp. Chirag Motors,  
Seth Mangaldas Road, Ellisbridge,  
Ahmedabad

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad (South).
- 3) The Asst. Commissioner, Central Tax, Division-III, Ahmedabad (South).
- 4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad (South).
- 5) Guard File.
- 6) P. A. File.