
 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b> <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय कर भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	 7 <sup>th</sup> Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
टेलीफोन : 079-26305065		टेलीफैक्स : 079 - 26305136

1407/0941

रजिस्टर्ड डाक ए.डी. द्वारा

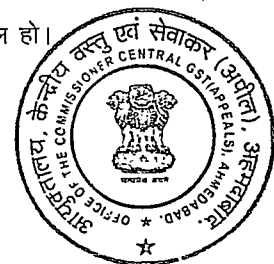
- क फाइल संख्या : File No : V2(54)146/Ahd-South/2018-19  
Stay Appl.No. /2018-19
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0147-2018-19  
दिनांक Date : 18-02-2019 जारी करने की तारीख Date of Issue 14/3/2019.  
श्री उमा शंकर आयुक्त (अपील) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. MP/350/DA/01 दिनांक: 31.10.2001 issued by Deputy 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 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.

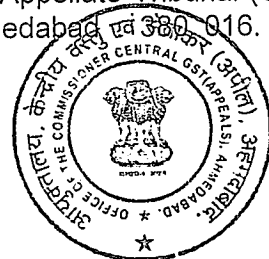
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 हारस्पिटल 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-380016. 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 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।

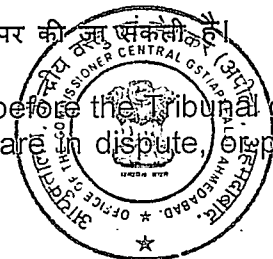
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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."

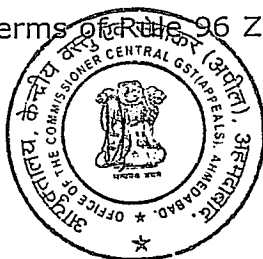


### ORDER IN APPEAL

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 MP/350/DA/2001 dated 31.10.2001 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner of erstwhile Central Excise, Division-IV, 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 Assistant 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 December 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 December 2000, it was noticed that the appellants had late paid the amount of ₹ 6,00,000/- (₹ 2,50,000/- on 26.12.2000, ₹ 2,50,000/- on 27.12.2000 and ₹ 1,00,000/- on 11.01.2001). A show cause notice, dated 08.06.2001, was issued to the appellants charging contravention of the provisions of Rule 96ZQ(3) of the erstwhile Central Excise Rules, 1944. However, the appellants neither submitted any reply to the show cause notice nor they availed the opportunity of personal hearing awarded to them. The adjudicating authority imposed penalty of ₹ 1,00,000/- for the delayed payment (paid on 11.01.2001) in terms of Rule 96 ZQ 5 (ii) of the erstwhile Central Excise Rules, 1944. He further imposed penalty of ₹ 5,000/- for the delayed payment made on 26.12.2000 and 27.12.2000 in terms of Rule 96 ZQ 5 (ii) of the erstwhile Central Excise Rules, 1944. The adjudicating authority further, demanded interest amounting to ₹ 2,925/- for the delayed payment in the month of December 2000 in terms of Rule 96 ZQ 5 (i) of the erstwhile Central Excise Rules, 1944.

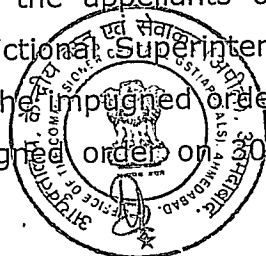


4. Being aggrieved with the impugned order the appellants have preferred the present appeal. They stated that the imposition of penalty under Rule 96 ZQ 5 (ii) of the erstwhile Central Excise Rules, 1944 is unconstitutional as Rule 96 ZQ was framed under Section 37 of the erstwhile Central Excise Act, 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 duty, the appellants stated that they never intended to evade payment of Central Excise duty and accordingly, paid the entire amount on 26.12.2000, 27.12.2000 and 11.01.2001.

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. I find that the actual date of the impugned order is 31.10.2001 (date of issue is 02.11.2001) 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 a legal 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. 412 /2019

ASHA H. BRAHMBHATT  
NOTARY  
GOVT. OF INDIA

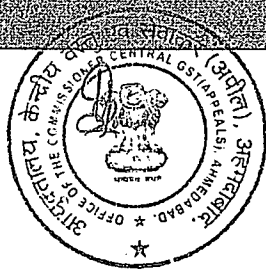
21 JAN 2019

**AFFIDAVIT**

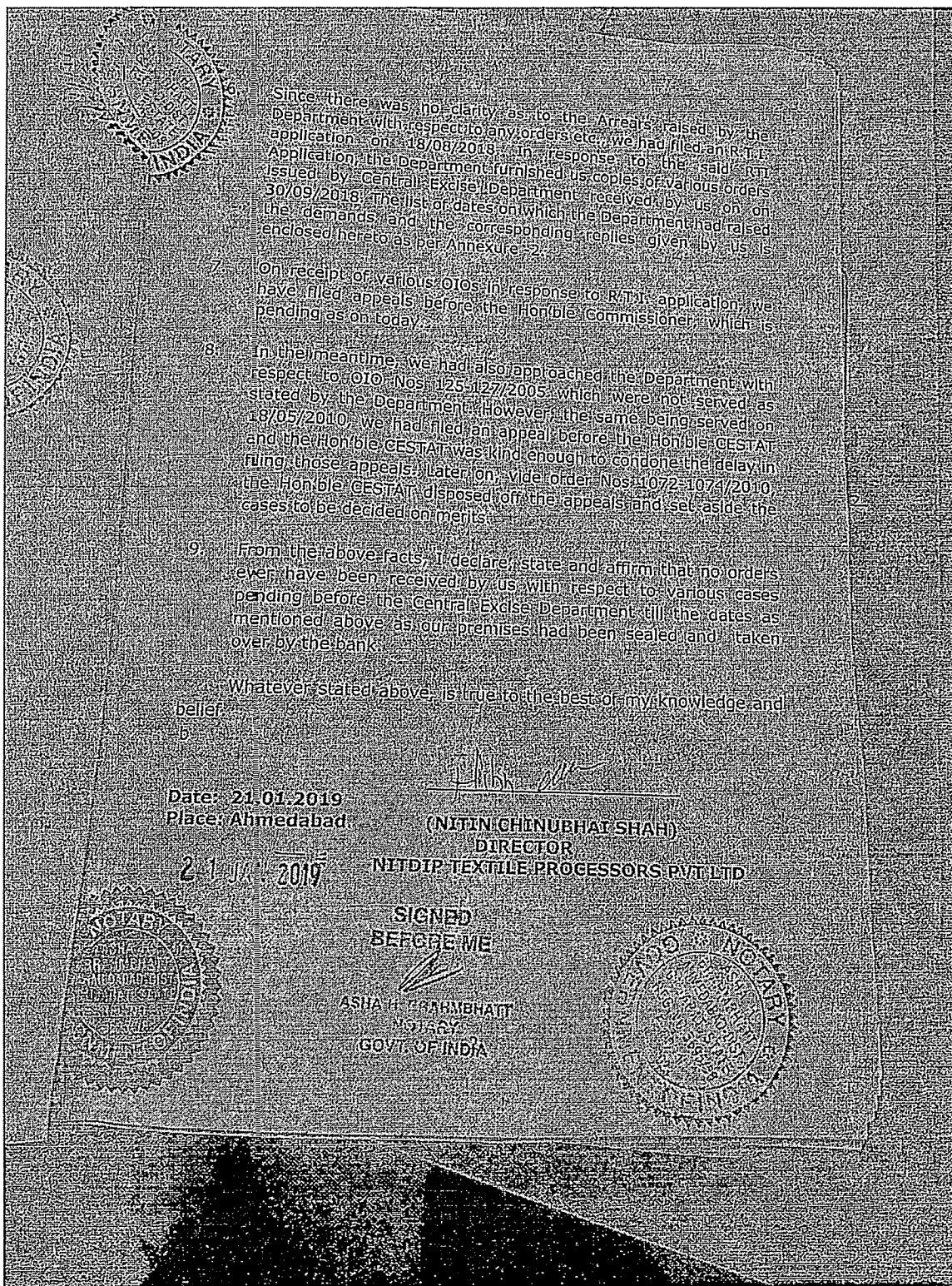
I, Nitin Chhribhai Shah, Director of M/s. Nitidip Textile Processors Private Limited, having Administrative Office at 1001 Capstone, Near Chirag Motors, Ellisbridge, Ahmedabad - 380 006 do hereby solemnly affirm and state as under:

1. That, our company was carrying on the business of processing of man made fabrics at Plot No.15, Phase 1, 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 Nagrik Sahakari 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 containing demand of excise duty against us. However, the department has never replied to any of the letter written by us.

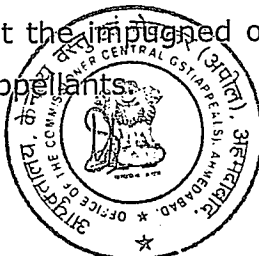
*[Signature]*







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: 1/12**

રજિસ્ટ્રારશ્રીના નોંધનીતી, બોર્ડ ઓફ નોમીનીઝ, અમદાવાદ વિભાગ, અમદાવાદ  
કે. સી-૩, બહુમાળી મકાન, લાલ દરવાજા, અમદાવાદ

અમરી હવાદ કેસ નંબર : ૭૫૪/૨૦૦૨

વાદી : શ્રી અરજીના નાગરીક ગણકારી બેંક લી., કોર્ટ-૧  
સ્વૈચ્છીક ચાર રસ્તા, નવરંગપુરા બસસ્ટેન્ડ પાસે, અમદાવાદ  
વિરુદ્ધ.

પતિવાદી: (૧) નીતદોષ ટેકાટાઈલ યોજેસ યા. લી.,  
૩૦૧, ખલા કોમ્પ્લેક્સ, સી.જી. રોડ, અમદાવાદ  
(૨) નીતનગાઈ સી. શાહ જાતે તથા કમ્પની એમ.ડી. તરીકે  
૧૪, ધ્યુવન બગલાઈ, બોંડકદેવ, અમદાવાદ-૫૬  
(૩) દોષક ચીનુભાઈ શાહ ઠે. ન. ૨ મુખ્ય.  
(૪) અનીલભાઈ રમણભાઈ શાહ ઠે. ૨૯/૧૯૦ નિધાનગર ગોળાચેટી,  
હીમતલાલ પાક, આખાવાડી, અમદાવાદ  
(૫) સ્વાતીબેન મંચુરભાઈ અમીન  
૬, અમીલક્ષ્મી કલેટમ, નહેરુપાર્ક વસ્તીપુર, અમદાવાદ

દાવા રકમ : ૧,૨૮,૬૮,૫૩/-

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

ઉપરોક્ત વાદીએ આ કોર્ટમાં અમરી દાવા દાખલ કરી, દાવા સાથે નિમ્નક ધી મનાઈ/ અવલજતીની સરજી માગેલ છે. સદરહુ અરજી તથા કેસ પેપલ વાચી આ કોર્ટે નીચે મુજબ હુકમ કર્યો.

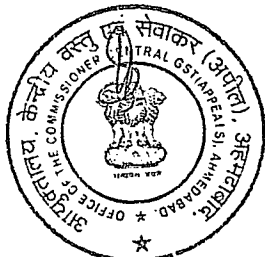
વાદીના દાવાની નિમ્નક ની અરજીના પેરા ૯(એ) અન્વયે ઈ-વેન્ટરી/ અવલજતીની કાર્યવાહી કરવા માટે કોર્ટે કમ્પનર તરીકે યી કે. કે. મહેતા ની નિમણૂક કરવામાં આવે છે. જો ચતિનાદ વાદી બેકમાં રૂા. ૧૬,૩૪,૦૦૦/- જમા કરાવે તો અવલજતીની કાર્યવાહી માંકુક રાખવી.

વાદીના દાવાની નિમ્નક ની અરજીના પેરા ૯(બી) અન્વયે ચતિનાદીની મિલકત સાથે તા. ૨૯/૫/૨૦૦૨ સુધીની કામચલાઉ મનાઈલુકમ કરમાવવામાં આવે છે. વધુમાં તમને ચતિનાદીએ આ કારણદશક નોટિસ આપી જમાવવામાં આવે છે કે, આપવામાં આવેલ મનાઈલુકમ કાચમી શા માટે ન કરવો તેમજ મનાઈ અરજીની જવાબ રજુ કરવા માટે ઉપરોક્ત ગરનાથે તા. ૨૯/૫/૨૦૦૨ ના રોજ શવારે ૧૧-૦૦ કલાકે અગ્રક હાજર રહેવું જો તેમ કરવામાં કચુર ઘણે તો તમારી ગેરહાજરીમાં ચોંચ તે હુકમ કરવામાં આવશે, જેન નોંધ લેજો.

અમદાવાદ  
તા. ૧૬/૪/૨૦૦૨

સંલુકત રજીસ્ટ્રાર અને સ્વચ  
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;

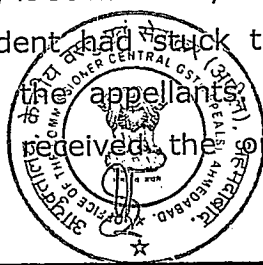





SR NO	DEPARTMENT ARREARS LETTER DATES	REMARKS	COMPANY REPLY DATES	REMARKS
1	24-07-2007	First Reminder	05-08-2007	Reply to Reminder 1- order demanded
2			30-09-2009	Reply to Reminder 1- order demanded
3			27-11-2009	Reply to Reminder 1- order demanded
4			17-12-2009	Reply to Reminder 1- order demanded
5			02-01-2010	Reply to Reminder 1- order demanded
6			18-01-2010	Reply to Reminder 1- order demanded
7			21-04-2010	Reply to Reminder 1- order demanded
8			22-03-2010	Reply to Reminder 1- order demanded
9			14-05-2010	Reply to Reminder 1- order demanded
10	04-07-2011	Second Reminder	25-08-2011	Reply to Reminder 2- order demanded
11	05-09-2011	Third Reminder		
12	19-07-2012	Fourth Reminder		
13	13-08-2012	Fifth Remider		
14	24-08-2012	Sixth Reminder	27-08-2012	Reply to Reminder 6- order demanded
15	10-09-2012	Seventh Reminder		
16	03-10-2012	Eighth Reminder	05-10-2012	Reply to Reminder 8- order demanded
17	15-01-2013	Nineth Reminder		
18	29-04-2013	Tenth Reminder	06-02-2013	Reply to Reminder 10- order demanded
19	01-10-2014	Eleven Reminder	02-05-2013	Reply to Reminder 11- order demanded
20	12-12-2014	Twelveth Reminder	20-10-2014	Reply to Reminder 12- order demanded
21	23-01-2015	Thirteenth Reminder	20-12-2014	Reply to Reminder 13- order demanded

22	11-06-2015	Fourteenth Reminder	17-03-2015	Reply to Reminder 14- order demanded
23	25-08-2015	Fifteenth Reminder		
24	11-12-2015	Sixteenth Reminder		
25	06-02-2016	Seventeenth Reminder		
26	01-07-2016	Eighteen Reminder	08-07-2016	Reply to Reminder 18- order demanded
27			10-08-2016	Reply to Reminder 18- order demanded
28	25-04-2017	Nineteenth Reminder		
29			18-08-2018	RTI APPLICATION

Thus, I find that time and again, the appellants had requested the departmental authorities to supply copies of the demand notice/ OIOs or show cause notices. However, it seems that, instead of sending the copies of OIOs, the range Superintendent had stuck to the continuous process of sending recovery notices to the appellants. To verify the fact that the appellants had actually not received the orders till they filed an RTI



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;

	<b>OFFICE OF THE SUPERINTENDENT</b> CGST, RANGE-III, DIVISION-III, AHMEDABAD-SOUTH 2 <sup>ND</sup> FLOOR, CENTRAL GST BHAVAN, AMBAWADI, AHMEDABAD - 380 015, GUJARAT Phone - (079) 26307167
---	--

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/141DA/2000 dt. 31.01.2000 and the said appeal is decided in favour of department vide OIA No. 880/2000 (384-Ahd-I)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.

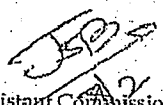
5. JRO has been constantly writing letter to the assessee to pay up the Govt. dues from time to time. Details of correspondence made with the assessee is as per Annexure 'A' attached herewith.

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:

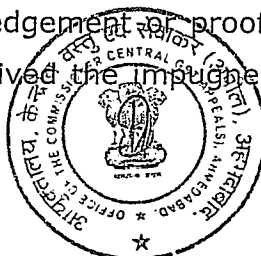
"We now therefore request you that if you believe that any order has been passed and served on us, kindly serve us a copy of the same. If Dept. has a proof of service, kindly bring the same to our notice. If no order has been served on us, there is no question of any demand being raised or property being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

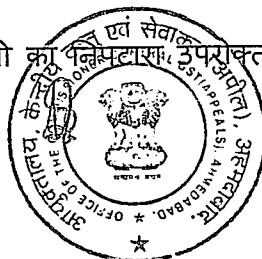
Thus, from the above letter, it can be seen that the concerned Division office could not produce any acknowledgement or proof to establish the fact that the appellants had actually received the impugned order much before filing



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 17 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 31.10.2001 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 seventeen years. 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 पुनर्विचार उपरोक्त तरीके से किया जाता है।



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

*अभिमान*

(उमा शंकर)

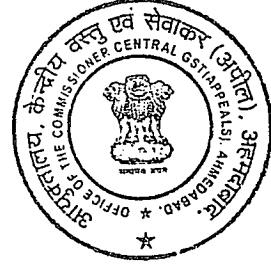
CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*S. Dutta*  
(S. DUTTA) 130319

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



To,

M/s. Nitdip Processors Pvt. Ltd.,  
1001, 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.