



# आयुक्त का कार्यालय, अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 26305065-079 : टेलैफैक्स 26305136 - 079 :



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(39)7/Ahd-South/2019-20 / 11397 to 11401

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-029-2019-20

दिनांक Date : 25-06-2019 जारी करने की तारीख Date of Issue 10/07/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr.Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/11/DEM/2018-19 दिनांक: 18.01.2019 issued by Deputy Commissioner, Div-V, Central Tax, Ahmedabad-South

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

Orange Print Pack  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथति 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 मामले 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 मेटल हॉस्पिटल 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 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 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. Orange Print Pack, Plot No.546,547/2,Road No.15, GIDC, Kathwada, Ahmedabad-382415 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.MP/11/DEM/2018-19 dated 18.01.2019 (henceforth,"impugned order") passed by the Deputy Commissioner, CGST, Div-V,Ahmedabad-South(henceforth, "adjudicating authority").

2. The facts of the case in brief are that the appellant are manufacturing Printed Rolls and Printed Pouches of plastics falling under Chapter 39 of the Central Excise Tariff Act,1985. On scrutiny of ER-1 returns of March 2016, it was noticed that the appellant shown clearance of 'Printed Roll of Plastic' under Central Excise Tariff Head No 39233090 paying duty @12.5% adv. The Central Excise Tariff Head No 39233090 belongs to "Carboy, bottles, flasks and similar articles- Other " and does not cover excisable goods 'Printed Rolls of Plastic'. Further, the Notification No.12/2012-CE dated 17.03.2012 was amended vide Noti. No.12/2016-CE dated 01.03.2016 inserting the following entries:

Sr.No.	Chapter or heading or sub heading or tariff item of the First Schedule	Description of goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
148AA	3923 21 00 or 3923 29	All goods	15%	-

It was observed by the jurisdictional range officer that 'Printed Roll of Plastic' classified by the appellant under CETH No 29233090 may not be appropriate and hence under letter dated 18.04.2016, he requested the appellant to clarify whether classification of 'Printed Roll of Plastic' under CETH No 29233090 is appropriate and correct and whether said goods being article of plastics for packaging of goods eligible for assessment of duty against Sr.No.148AA of Noti.No.12/2012-CE dated 17.03.2012 as amended vide Noti.No.12/2016-CE dated 01.03.2016 and requested to classify it correctly. It informed by the appellant that correct classification of their product 'Printed Roll of Plastic' would be CETH No 3920 69 19 and 'Printed Plastic Pouches' under 3923 9090. However, it was clarified by the JRO that 'Flexible Plastic Pouches' used as packaging article for holding or carrying things are nothing but 'bags and sacks' and would fall under CETH 3923 21 00 or 3923 29(dependent upon variety of plastics used in its manufacture) assessable to duty @15% ad valorem against Sr. No.148AA



of Noti.No.12/2012-CE dated 17.03.2012 as amended vide Noti.No.12/2016-CE dated 01.03.2016 and CETH 3923 90 90 as "Other" (other than sacks and bag) claiming assessment at lower rate @12.5% is without merit. Accordingly it was advised to the appellant to correctly classify the goods under major head "Sacks and Bags" CETH 3923 21 00 or 3923 29 (depending upon variety of plastics used in its manufacture) assessable to duty @15% ad valorem against Sr. No. 148AA of Noti. No.12/2012-CE dated 17.03.2012 as amended vide Noti.No.12/2016-CE dated 01.03.2016 and to pay differential duty w.e.f.01.03.2016. Further, the appellant cleared 'Printed laminated Plastic Pouches' for export on 30.01.2017 under claim of rebate under self removal procedure classifying it under CETH 2923 90 90 on payment of duty @12.5% adv. On being pointed out by JRO to classify it under appropriate head 3923 29 assessable to duty @15% against Sr. No 148AA of notification supra, the appellant debited differential duty involved on said consignment. Show cause notice issued to the appellant for recovery of differential duty on goods cleared during March 2016 to March 2017 in respect of 'Flexible Plastic Pouches' for classifying it under CETH 2923 21 00 or 3923 29 as "Sacks and Bags" was decided under impugned order confirming differential duty.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, that plastic pouches are classified by other manufacturers under sub head 39239090; that department cannot take different view for classification for same product in the interest of justice and equality; that under letter dated 27.04.2016, they had not accepted classification under sub-heading no.39232100 or 392329; that no finding in the OIO is given as to why decision cited were not accepted; that in as much as sacks and bags can be used for packing large quantity of heavy materials from 5 kg to 100kg or more and could never be used for packing the spices or readymade food articles from 100 to 1000grams. That bags and sacks can be used repeatedly for packing as durable for long time, whereas in plastic pouches, heavy weight could not be stored, could not be repeatedly used and hence pouches cannot be considered as "sacks and bags" and therefore to classify the pouches as sacks and bags under sub heading 3923 21 00 or 392329 is not proper and legal; that correct classification is under sub head 39239090; classification of said product declared by other manufacturer under sub head 39239090 is not discussed in the impugned order and accepted by the adjudication



authority; there must be uniformity and could not be lavied taxes differently on same goods; that when two views are possible, the one in favour of the assessee would guide the classification and appellant should be given benefit of doubt; that as per circular No 1063/2/2018-CX dated 16.02.2018, department should follow the decision of higher appellate authorities, courts, high courts, CESTAT in subsequent decision; that classification of plastic pouches under sub-head 39232100 or 392329 of Central Excise Tariff Act 1985 by the adjudication authority is incorrect and illegal. Etc.,

4. In the Personal hearing held on 20.05.2019 Shri M.A.Patel, authorized representative of the appellant reiterated grounds of appeal and stated that more than 200 such manufacturers are classifying under sub-head 3920 or 39239090 or 392390.

5. I have carefully gone through the facts of the case records and submissions made therein. The issue requiring determination in the case is classification of the product 'Printed Roll of Plastic/plastic pouches manufactured and cleared by the appellant whether under Sub head 39232100 or 392329 as sack and bag or under 39239090 of Central Excise Tariff Act 1985. Based on such classification it further needs determination whether said plastic pouches were assessable to duty @15% ad valorem against Sr. No.148AA of Noti.No.12/2012-CE dated 17.03.2012 as amended vide Noti.No.12/2016-CE dated 01.03.2016 or under CETH 3923 90 90 as "Other" (other than sacks and bag) assessable at lower rate @12.5%. I reproduce below relevant entries of the Tariff head 3923:

Tariff Item	Description of goods	Unit	Rate of duty
<b>3923</b>	ARTICLES FOR THE CONVEYANCE OR PACKING OF GOODS, OF PLASTICS; STOPPERS, LIDS, CAPS AND OTHER CLOSURES, OF PLASTICS		
3923 10	- Boxes, cases, crates and similar articles:		
3923 10 10	--- Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles	kg.	12.5%
3923 10 20	--- Watch-box, jewellery box and similar containers of plastics	kg.	12.5%
3923 10 30	--- Insulated ware	kg.	12.5%
3923 10 40	--- Packing for accommodating connectors	kg.	12.5%
3923 10 90	--- Other	kg.	12.5%
	- Sacks and bags (including cones)		
3923 21 00	-- Of polymers of ethylene	kg.	18%
3923 29	-- Of other plastics:		



3923 29 10	--- Of poly (vinyl chloride)	kg.	18%
3923 29 90	--- Other	kg.	18%
3923 30	- <i>Carboys, bottles, flasks and similar articles:</i>		
3923 30 10	--- Insulated ware	kg.	12.5%
3923 30 90	--- Other	kg.	12.5%
3923 40 00	- Spools, cops, bobbins and similar supports	kg.	12.5%
3923 50	- <i>Stoppers, lids, caps and other closures :</i>		
3923 50 10	--- Caps and closures for bottles	kg.	12.5%
3923 50 90	--- Other	kg.	12.5%
3923 90	- <i>Other :</i>		
3923 90 10	--- Insulated ware	kg.	12.5%
3923 90 20	--- Aseptic bags	kg.	12.5%
3923 90 90	--- Other	kg.	12.5%

6. From the above, I found that tariff item 3923 covers all articles for conveyance of packing of goods of plastics; stoppers, lids, caps and other closures of plastics. Chapter sub heading 392330 covers the item or product described as carboy, bottles, flasks and similar articles, insulated ware and other whereas chapter head 39232100 or 392329 covers the item/articles sacks and bags(including cones) of polymers of ethylene and other of plastics. On perusal of said entries, I found that plastic articles carboy, bottles, flasks and similar articles, insulated ware and other falls under sub-heading 39233090 and sacks and bags(including cones) of polymers of ethylene and other of plastics are covered under chapter sub-heading 39232100 or 392329. The use of the said product i.e. small bags/pouches for packing of food articles such as namkeen/chawana etc has been confirmed by the appellant as well as by the adjudicating authority who physically verified its samples. It also remained undisputed facts that said bags/pouches are not used for the purpose of industrial use but used for containing and transporting goods such as food produce, powder, ice, magazine, which are common form of packaging.

7. It is one of the argument of the appellant that plastic pouches are classified under sub head 39239090 by number of manufacturers of such types of goods in Ahmedabad region and department cannot take different view for classification for same product in the interest of justice and equality. I find that disputed period in the present case pertains to the year 2016-17 which is the era wherein manufacturers registered with the department has to mandatorily choose right heading or sub-heading of the Tariff and determine the applicable rate for the goods manufactured by them. For determining the rate of duty for a product, the assessee has to first ascertain the relevant Tariff heading or sub-heading of Tariff item under which said article is covered. The duty is payable at these schedule rate if there is no exemption pertaining to the goods in question. However, in case where there is exemption notification



in relation to an article, the actual rate of duty (effective rate of duty) is to be worked out after taking into consideration the relevant exemption notification. The assessee has therefore, to carefully worked out the effective rate of duty taking into consideration the various exemption available to the goods in question. However, In order to protect the interest of Revenue, the department is also entrusted with the work of scrutiny of the returns and thereby to identify wrong classification/availment of exemption notification if any by the assessee. The accountability of the department thus starts with acceptance of classification/exemption notification claimed by the assessee. Normally, the classification done by the assessee or exemption if any claimed stands accepted if not disputed by the department. So far as classification of the goods is concerned, the department cannot give discriminatory treatment to manufacturers of same type of goods. This view has been taken by Hon'ble High Court of Gujarat in case of Ralli Engine Ltd. vs Union Of India (Uoi) And Ors. reported in 2004 (95) ECC 415 relevant part of which is reproduced below:

2. The petition contains challenge to the **discriminatory treatment** being given by the Commissionerates in three different States, i.e., Gujarat, Maharashtra and Tamil Nadu in respect of the same product. The petitioner-Company is a manufacturer of agricultural knapsack sprayer engine which is used as a part/component in mechanical appliances for spraying pesticides in fields and farms. The product is being classified under Heading No. 84.24 in Maharashtra (manufacturer-High Power Engineering Company Private Limited, Satara) and in Tamil Nadu (manufacturer-Greaves Limited, Chennai) whereas in Gujarat it is classified under Heading No. 84.07 in the petitioners' case by the Assistant Commissioner of Central Excise at Valsad under the Commissionerate of Central Excise, Valsad.

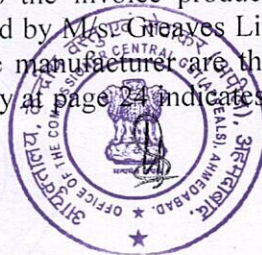
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5. This Court had earlier by Order dated 24.12.2003 in Special Civil Application No. 17946 of 2003 relegated the petitioner-Company to the Assistant Commissioner with a specific direction that the Assistant Commissioner shall compare the machines being manufactured by three different manufacturers in three different States and decide whether discriminatory treatment is given to the petitioner-Company and respondent No. 3, the Assistant Commissioner was also expected to call for the information from the concerned officers of different States. The relevant observations are as under:

(i) As far as machines being manufactured by High Power Engineering Company Private Limited is concerned, respondent No. 3 has clearly expressed the view that they have cleared their goods HP 35 Agricultural Engine without payment of duty under Chapter Heading 84.24 and that the Central Excise authorities of said M/s. High Power Engineering Company Private Limited have confirmed that the same is allowed to be cleared without payment of duty.

(ii) Respondent No. 3 has referred to the invoice produced by the petitioner-Company regarding goods manufactured by M/s. Greaves Limited and opined that the said invoice was not issued by the manufacturer, therefore does not give correct picture. [Annexure C collectively at page 24 indicates that invoice is issued





by the Mumbai Branch of Greaves Limited and therefore there is no reason why the invoice issued by Mumbai Branch of Greaves Limited could not have been looked into by respondent No. 3].

(iii) Respondent No. 3 has referred to and relied upon classification of such machines in case of M/s. HMP Engineers Limited, Surat which Company was also manufacturing the same type of product and the Central Excise authorities at Surat had classified the same under Chapter Heading No. 84.07 and confirmed the demand.

6. It is the specific case of the petitioners that because of the classification made by the Central Excise officers in the State of Gujarat, the manufacturers in Gujarat are receiving discriminatory treatment. As regards M/s. HMP Engineers Limited, Surat, the learned counsel for the petitioners states that the said Company came to be closed down for the same reason in May 2002 as they also could not compete with the above named manufacturers in Maharashtra and Tamil Nadu who are not required to pay excise duty on the same product. The petitioner-Company also has to close down its manufacturing operations in December 2003 because it was not in a position to compete with the manufacturers from Maharashtra and Tamil Nadu who are required to pay excise duty at nil rate whereas the petitioner-Company has to pay excise duty at 16% ad-valorem and the petitioner-Company could not absorb this high rate of excise duty on its own without passing the same on to the purchasers.

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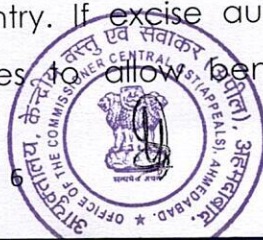
It is clear that the other manufacturers, like the petitioners, also are merely making engines which are fitted into the knapsack agriculture sprayers being manufactured by the purchasers from the petitioners and the two other manufacturers and then such sprayers with the engines are sold to farmers for agriculture use.

9. In view of the above facts and circumstances, we are of the view that **when the same product is being manufactured by three different companies--M/s. High Power Engineering Company Private Limited, Satara, Maharashtra, M/s. Greaves Limited, Chennai, Tamil Nadu and the petitioner at Valsad, Gujarat, the interest of justice demand that the respondent-authorities are required to give similar treatment to the product being manufactured by the petitioner-Company.**

10. Accordingly, the respondents are restrained from recovering excise duty from the petitioner Company on Agricultural Knapsack Sprayer Engine being manufactured by the petitioner-Company otherwise than at the rate at which the Central Excise authorities are recovering excise duty from the manufacturers of the same product in other States.

11. Since this interim relief is being granted mainly for the reason indicated in para 8 above, it will be open to the Central Board of Excise and Customs to consider the matter afresh for giving uniform treatment to the manufacturers of the same product all over the country. It will be open to the respondent authorities to move this Court for appropriate orders after the Central Board of Excise and Customs takes appropriate decision in the matter.

8. Further, it was held by Hon'ble High court of Gujarat in case of Darshan Boardlam Ltd v/s Union of India reported in 2013 (283) ELT 401(Guj) that Central Excise is a central levy and therefore, such a levy has to be collected uniformly from all similarly situated manufacturers located all throughout the country. If excise authority of a particular Commissionerate or State refuses to allow benefit of exemption to



manufacturers located in that Commissionerate or State but other manufacturers located elsewhere are allowed such exemption, then the same would be in violation of Article 14 of Constitution of India and also of Article.

9. I therefore find force in the above argument of the appellant wherein it is claimed that the department cannot take different view for classification for same product in the interest of justice and equality. However, in order to properly justify the issue and before extending the benefit based on said argument, it would be crucial to ascertain the practice of classification other manufacturers of Ahmedabad region whether they are classifying such goods under sub-head 3920 or 39239090 or 392390 as claimed by the appellant or otherwise. I therefore, remit the case back to the original adjudicating authority with a direction to verify randomly the practice of classification of Printed Rolls and Printed Pouches of plastics manufactured by other manufacturers in his jurisdiction/Ahmedabad region and to order a fresh after giving opportunity of producing documentary evidence in this regard to the appellant and following the order of Hon'ble High Court quoted supra.

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

उमा शंकर

(उमा शंकर)

केंद्रीय कर, प्रधान आयुक्त (अपील्स)

Date:

Attested

(D.A.Parmar)  
Superintendent, Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,

M/s. Orange Print Pack,  
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1. The Chief Commissioner of Central Tax, Ahmedabad.
2. The Commissioner of Central Tax, Ahmedabad-South.
3. The Additional Commissioner, Central Tax (System), Ahd-South.
4. The Asst./Deputy Commissioner, Central Tax, Division-III, Ahd-South.
5. Guard File.
6. P.A.