::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्से रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/19/EA2/BVR/2016 6518 to 6522	**Abatement Order (F. No.V/15-04/PREV/COM.LEVY/2016-17)**	**01.09.2016**

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-072-2017-18

आदेश का दिनांक / Date of Order: **18.12.2017** जारी करने की तारीख / Date of issue: **20.12.2017**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & **Respondent** :-
M/s Janmohan Company,, Sukhnath Chowk,, Opp. Police Chowky,,Junagadh - 362 001.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्याय.धिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६ को की जानी चाहिए ।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/
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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दायर की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दायर करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा किये जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से अन्य गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अन्य गृह से दूसरे अन्य गृह पारगमन के दौरान, या किसी अन्य गृह में या अन्यत्र से माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी अन्य गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs 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.

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
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.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) अंतिम उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो वृद्धि केनेट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा तत्पश्चात पर या बाद में पारित किए गए है।/
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 /- का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी कि विद्वान पक्षों ने बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को अधिनियमित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते है । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

The present appeal has been filed by the Department **(hereinafter referred to as "the appellant")** against the Abatement Order dated 01.09.2016 **(hereinafter referred to as "the impugned order")** passed by the Assistant Commissioner, Central Excise, Division-Junagadh **(hereinafter referred to as "the adjudicating authority")** from F.No. V/15-04/Prev/Com.Levy/2016-17.

2.1 Brief facts of the case are that M/s. Janmohan Company, Sukhnath Chowk, Opp.: Police Chowky, Junagadh-362 001 **(hereinafter referred to as the "respondent")** holding Central Excise Registration No. AJRPP5023CXM001 were engaged in manufacture of Unmanufactured Branded Tobacco falling under CETSH 24011090. The activity of packing/manufacturing of un-manufactured branded tobacco was under compounded levy scheme under Section 3A of the Central Excise Act, 1944 and the product unmanufactured branded tobacco was notified vide Notification No. 10/2010-CE(NT) dated 27.02.2010. The respondent opted to work with one single F.F.S. Machine under the above levy, operationalised vide Chewing Tobacco and un-manufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 (hereinafter referred to as "the Rules") issued vide Notification No. 11/2010-CE (NT) dated 27.02.2010. The respondent's duty liability was determined at Rs. 51.48 lakh per packing machine per month, in terms of Notification No. 16/2010-CE dated 27.02.2010 as amended vide Notification No. 16/2016-CE dated 01.03.2016. Accordingly, the respondent paid Rs. 51.48 lakh for the month of June, 2016 vide challan no. 52830 dated 04.06.2016.

2.2 The respondent discontinued production w.e.f. 00:00 hrs of 18.06.2016 to 30.06.2016 and for entire months of July, 2016 and August, 2016, during which their packing machine remained sealed by Jurisdictional Range Superintendent, in compliance of the provisions of the Rules. The respondent applied for abatement of duty on account of non production in terms of Rule 10 of the Rules vide their letter dated 13.06.2016. The said abatement was granted by the adjudicating authority vide his abatement order dated 01.09.2016 and ordered to be adjusted in payment of Central Excise duty liability for the month of September-2016.

3. Being aggrieved with the impugned order, the Department preferred the

present appeal *inter-alia* on the following grounds:

3.1 The Department relied upon the Rule 10 of the Rules and submitted that a manufacturer of the notified goods is eligible for abatement of duty if the conditions prescribed in Rule 10 of the Rules are satisfied. In view of the provisions of Rule 10 supra, in case a factory did not produce the notified goods during any continuous period of 15 days or more in a month, the duty calculated on proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy/Assistant Commissioner of Central Excise with a copy to the Superintendent of Central Excise, at least three working days in prior to the commencement of the said period. Whereas, in the present matter, the respondent has produced notified goods from 01.06.2016 to 17.06.2016. They had intimated to the prescribed Central Excise officers vide their letter dated 13.06.2016 about closure of their production activities w.e.f. 18.06.2016. Thus, there was no production continuously for 13 days in the month of June, 2016 and hence the period prescribed for claiming abatement under Rule 10 of the Rules is not satisfied in as much as the packing machine of the respondent was not functioning only for 13 days in the month of June, 2015 i.e. from 18.06.2016 to 30.06.2016. Therefore, they were not eligible for abatement of duty under Rule 10 of the Rules.

3.2 The Department also submitted that the adjudicating authority vide his impugned order dated 01.09.2016, has granted abatement of Rs. 22,30,800/- and allowed adjustment of the same in payment of Central Excise duty liability for the month of September, 2016 which is not permissible under Rule 10 of the Rules. The respondent was required to file a claim for refund of the abatement amount and which should have been paid to them on merits. There is nothing in the said Rules to allow adjustment of abated amount against the duty liability for the other month. The Central Excise duty has to be paid by the manufacturer of notified goods in advance during every month before 5th day of the month. There is no option for payment of duty through adjustment. Thus, the impugned order allowing adjustment of the abated amount of Rs. 22,30,800/- to the respondent against their duty liability for the month of September, 2016 is legally incorrect.

3.3 The Department challenged the impugned order passed by the adjudicating authority to the extent of wrongly allowed abatement of Central

Excise duty to the respondent for the month of June, 2016, to the tune of Rs. 22,30,800/- and further allowing it to be adjusted against their duty liability for the month of September, 2016.

4. The respondent filed cross objection received by this office on 19.01.2017 wherein they submitted that:

1. The Appeal dated 13.12.2016 is abuse of process of law inasmuch as on identical facts abatement of duty was allowed earlier and inspite of the fact that there is no change of law applicable to the facts of earlier abatement orders. The facts of the present case, the conduct of Appellant in issuing the impugned Revision Order and filing of an Appeals arbitrary and unreasonable within the meaning of Article 14 and 19 of the Constitution of India apart from the fact that the impugned Revision Order is untenable.

2. As far as the Respondent is concerned, on earlier occasions also, the Respondent sought discontinuation of production and consequent abatement of duty under the provisions of the said Rules. The Respondent discontinued production from 16.05.2015 to 30.06.2015 and was allowed abatement for the period 16.05.2015 to 31.05.2015 for an amount of Rs.23,06,064/-.

3. The Respondent discontinued production from 17.07.2015 to 30.09.2015 and was allowed abatement of duty for the period 17.07.2015 to 31.07.2015 aggregating to Rs.21,61,935/- on 05.10.2015.

4. The Respondent again discontinued production from 21.10.2015 to 31.01.2016 and was allowed abatement for the period 21.10.2015 to 31.10.2015 for an amount of Rs.8,69,963/- vide order dated 29.01.2016.

5. They again discontinued production from18.06.2016 to 31.08.2016 and was allowed abatement for the period 18.06.2016 to 30.09.2016 for an amount of Rs.22,30,800/- vide order dated 01.09.2016 passed by the Assistant Commissioner, Central Excise, Junagadh Division which is reviewed by Hon'ble Principal Commissioner, Central Excise & Service Tax, Bhavnagar and directed the Appellant to file Appeal.

6. As far as legality of the Revision Order and Appeal is concerned, it is submitted that Rule 10 of the said Rules casts condition -

"in case a factory did not produce the notified goods during any continuous period of 15 days or more, the duty calculated on a proportionate basis shall be abated in respect of such period .....".

They stated that the provision does not state that non-production should be **'within a month'** as sought to be contemplated by the Appellant in the impugned Revision Order and Appeal. The inscription in para 4(iii) of the impugned Revision Order that is highlighted hereinafter -

"Thus from the above provisions, in case a factory did not produce the notified goods during any continuous period of 15 days or more ***in a month,"***

is addition by the Appellant in the statutory provisions which is impermissible and untenable. The plain language of the said Rules leaves no room for interpretation that abatement of duty contemplated under the Rules is pertaining to 15 days of non-production in a month. In fact, the Appellant is confusing **assessment excise duty** (emphasis supplied) which is on a monthly basis and **abatement of duty** as contemplated in the said Rules. It is submitted that though both of these are parts of assessment of excise duty, they are entirely different propositions.

7. In support of this contention, they relied on decision of Ld. Commissioner (Appeals), Rajkot in the case of C.C.E. & C., Rajkot V/s. M/s Atul Kurmuri Pvt. Ltd. being Appeal No. 51/EA2/RAJ/2011, Hon'ble Allahabad High Court in the case of C.C.C.E. & S.T. V/s. DharampalSatyapal Limited, reported at 2013 (9) TMI 77, New Delhi Bench of Hon'ble CESTAT in the case of Kamal KishorJarda Bhandar V/s. C.C.E. & S.T., Bhopal reported at 2015 (12) TMI 1488 - CESTAT New Delhi.

8. They also put on record that present Rule 10 is *parimateria* with Rule 10 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 (hereinafter referred to as the 'PMPM Rules'). While interpreting the provisions of the said Rule 10 of the PMPM Rules, Hon'ble High Courts and various co-ordinate benches of Hon'ble CESTAT consistently held that non-production for the period should be for 15 days or more and the said non-production period may fall in two calendar month. The Respondent, therefore, also relies on the following judgments -

(a) C.C.E. V/s. K.P. Pan Products Pvt. Ltd. Reported at 2013 (9) TMI 771 - Allahabad High Court;

(b) C.C.E. & C, Nasik V/s. Prakash products reported at 2011 (3) TMI 1204 - CESTAT Mumbai;

(c) R. G. Food products V/s. CCE, Delhi-I in Appeal No. 50462/2014-EX(DB) - CESTAT New Delhi;

9. They further stated that in view of above referred facts coupled with the Appellant has allowed abatement of duty to the Respondent in the earlier periods on identical facts and in view of statutory provisions and also judicial pronouncements as obtaining on the present subject, the impugned Revision Order is untenable and claim for abatement of excise duty of Rs.22,30,800/- is required to be allowed.

10. It is further alleged that grant of abatement and allowing adjustment of the same in payment of Central Excise Duty liability for the subsequent period is not permissible under Rule 10 of the said Rules and that the Respondent is required to file a claim of refund of the abated amount which should have been paid on merits and that there is nothing in the said Rules to allow adjustment of abated amount against the duty liability for the other month and therefore, abatement order allowing adjustment of abated amount of Rs.22,30.800/- to the Respondent against their duty liability for the month of September 2016 is legally incorrect. Against this, the Respondent submits that the said contention of the Department is patently untenable for the reasons stated herein after:

10.1 As submitted hereinabove, they did not produce the notified goods during a continuous period of 15 days from 18.06.2016 to 31.08.2016 and accordingly entitled to abatement of duty on a proportionate basis for the period when the factory was not producing notified goods. The alleged contention in the impugned notice is that abatement amounts to refund and, therefore, the procedure for availing refund is required to be followed. In this regard, it may be noted that the expression "abatement" has not been defined anywhere in the Act or in the Rules. Therefore, the popular or dictionary meaning of the said expression is required to be looked into, which is as under –

- In Black's Law Dictionary, the term "abatement" has been defined as a reduction, a decrease, or a diminution; the suspension or cessation, in whole or in part, of a continuing charge, such as rent. In the context of tax, abatement has been stated to be diminution or decrease in the amount of tax imposed.

- In the New Oxford Dictionary of English, "abatement" has been defined as the ending, reduction or lessening of something.

- In the Dictionary of English Language, "abatement" has been defined as an amount abated, a deduction from the full amount of tax.

On the other hand, "refund" has been defined as to pay back "money" to give or to put back. Tax abatement is ordinarily known as reduction of or exemption from tax by a Government for a specific period. A tax incentive is also stated to be a form of tax abatement. Thus, the ordinary meaning of abatement is reduction, diminution and, therefore, when the Respondent is entitled to abatement of duty, he is entitled to reduction of duty to that extent and not refund thereof as is sought to be contended in the impugned Revision Order. It would have been a different matter if the rules prescribed for the manner in which abatement has to be granted. However, in the absence of any rule in this regard or any specific provision providing for the mode of availing abatement, the course of action adopted by the Respondent cannot be said to be in violation of any rule or any provision of the Act. As can be seen on a plain reading of rule 10 of the Rules, the same merely provides that in case of factory which has not produced the notified goods during a continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period. The abatement, however, is subject to the condition stipulated in rule 10, namely that, the manufacturer of such goods is required to file an intimation to that effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise as

the case may be, with a copy to the Superintendent of Central Excise, at least three working days prior to the commencement of such period, who on receipt of such information, is required to direct sealing of all the packing machines available in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that these cannot be operated during the said period. In the case of present Respondent, all these conditions are fulfilled and also not in dispute. Therefore, as stipulated under rule 10 of the Rules, the Respondent is entitled to get abatement calculated on a proportionate basis, which is required to be abated against future duty liability.

10.2 Further, the said Rule 10 does not make any stipulation about the abatement having to be claimed by filing an application, therefore, although it does not imply anything to be contrary either. Whereas the Rule 9 of the said Rules in its proviso stipulates that "in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by 20th day of the following month."

When seen in the light of this proviso, it amply clear that when the intention of the Government was that the amount should be refunded, an express provision was made therefore; in the said Rule 10, there is no such provision, hence the said Rule 10 provides for abatement and the said abatement so determined required to be adjusted against future liability.

11. Against the allegation as to the filing of Refund Application instead of claim for Abatement, they submitted that present Rules under compounded levy scheme stipulate method, time and manner of payment of duty, interest and penalty and same being a comprehensive scheme in itself, the general provisions of Central Excise Act and Rules stand excluded. This issue is considered by Hon'ble Supreme Court in the case of Hans Steel Rolling Mill vs. CCE, Chandigarh 2011 (3) TMI 2 (SC) / [2011 (265) ELT 321 (SC)], wherein it is held that the compounded levy scheme is a separate scheme from the normal scheme for determination of excise duty of goods manufactured. Rules under compounded levy

scheme stipulate method, time and manner of payment of duty, interest and penalty and same being a comprehensive scheme in itself, the general provisions of Central Excise Act and Rules stand excluded. The Hon'ble Supreme Court has further observed that the importing one scheme of tax administration to a different scheme is not appropriate and would disturb the smooth functioning of such unique scheme. In view of the Hon'ble Supreme Court's judgment, provisions of the filing of refund application under Section 11B of the Act is not applicable, therefore, allegation as to the failure to file Refund Application is illegal and liable to be dropped at once.

12. The Respondent states that it is also fortified in its contention in view of following decisions of Hon'ble High Court and various coordinate Benches of CESTAT -

The Commissioner V/s. M/s. Thakkar Tobacco Products Pvt. Ltd., reported at 2015 (11) TMI 319 - Gujarat High Court;

M/s. Thakkar Tobacco Products Pvt. Ltd. & Vishnu Pouch Packaging Pvt. Ltd. V/s. CCE., Ahmedabad - II reported at 2015 (2) TMI 606 - CESTAT Ahmedabad;

M/s. Zest Packers Pvt. Ltd., & Unicorn Packers Pvt. Ltd. V/s. CCE., Ahmedabad-II reported at 2015 (8) TMI 25 - CESTAT Ahmedabad;

CCE. Bhopal V/s. M/s. JagdambayFlavours reported at 2016 (11) TMI 104 - CESTAT New Delhi;

M/s. Raja Pouches V/s. Commissioner of Central Excise, Raipur reported at 2016 (11) TMI 152 - CESTAT New Delhi.

13. They submitted that third limb of the impugned Revision Order and Appeal about necessity to file separate refund application instead of application for abatement is squarely covered by decision of Hon'ble High Court of Gujarat reported at The Commissioner V/s. M/s. Thakkar Tobacco Products Pvt. Ltd. In the said decision, Hon'ble Gujarat High Court has specifically rejected contention of the Department that the assessee is required to file separate refund application instead of application for abatement of duty.

14. Further submitted that the assessee can *suomotu* take abatement and adjust the same against future duty payment liability, as the said Rule 10 does not debar from doing so. In support of this submission the Respondent relies on judgment of Hon'ble Gujarat High Court in the case of M/s. Thakkar Tobacco Products Pvt. Ltd. The said decision is pronounced by Hon'ble Gujarat High Court which is jurisdictional High Court for all Offices of Central Excise within Gujarat State. In view of Law of Precedence and principle of judicial discipline, the Revision Order and Appeal filed is abuse of process of law as it is issued in utter disregard to law laid down by Hon'ble Gujarat High Court. Therefore, also impugned Revision Order and Appeal filed required to be quashed and set aside.

15. In the premises as aforesaid, the present Appeal filed by Hon'ble Principal Commissioner, Central Excise and Service Tax, Bhavnagar may please be dismissed in the interest of justice and Abatement Order dated 01.09.2016 issued by Hon'ble Assistant Commissioner, Central Excise, Junagadh Division may please be held as proper, correct and be upheld as legally sustainable in the interest of justice.

5. The personal hearing in the matter was attended to by Shri Jatin Mehta, Advocate and Shri Paresh V. Sheth, Advocate. They reiterated grounds of memorandum of cross-objections; they stated that there are various judgements of Hon'ble High Court & CESTAT on the subject matter; that the then Commissioner (Appeals), Rajkot vide his Order-In-Appeal dated 30.01.2012 in case of M/s. Atul Kurmuri Pvt. Ltd., Metoda, Rajkot had also allowed such abatement and the Department has already accepted this order; that they would file affidavit that neither DGCEI nor Preventive branch of the Commissionerate has found any intimation filed by them fake/wrong till date; that since our bonafide has been proved, we should be allowed to get abatement as permitted by the adjudicating authority following the Rules and case laws held by the Hon'ble High Court, CESTAT and Commissioner (Appeals).

FINDINGS:

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandums and the written and oral submissions of the appellant as well as of the Respondent. Here issues to be decided are that whether (i) the

abatement of Central Excise duty as envisaged under Rule 10 of the Rules, for the period from 18.06.2016 to 30.06.2016 for 13 days granted to the respondent is correct, legal and proper or not and (ii) whether the abatement of Central Excise duty granted by the adjudicating authority by way of adjustment in payment of Central Excise duty liability for the month of September, 2016 is correct or otherwise.

7. I find that the first issue is relating to abatement of Central Excise duty as defined under Rule 10 of the Rules, which is re-produced for ready reference:

> ***10. Abatement in case of non-production of goods.*** *- In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, at least three working days prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that the packing machines so sealed cannot be operated during the said period :*
>
> *Provided that during such period, no manufacturing activity, whatsoever, in respect of notified goods shall be undertaken and no removal of notified goods shall be effected by the manufacturer except that notified goods already produced before the commencement of said period may be removed within first two days of the said period:*
>
> *Provided further that when the manufacturer intends to restart his production of notified goods, he shall inform to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, of the date from which he would restart production, whereupon the seal fixed on packing machines would be opened under the physical supervision of Superintendent of Central Excise.*
>
> (Emphasis supplied)

7.1 The rule is very clear which stipulates that in case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period. It no where says continuous 15 days or more in a calendar month but only continuous period of 15 days or more.

7.2 I find that the contention of the Department that the respondent has not satisfied the condition of non-production of notified goods during continuous period of 15 days or more in the month of June, 2016 because the production took place from 01.06.2016 to 17.06.2016 and no production continuously was only for 13 days in the month of June, 2016 fro 18.06.2016 to 30.06.2016 is misplaced as well as misconceived as there is no such wording applied in Rule 10 of the Rules. The words 'in a month' mentioned and relied upon by the

Department do not exist in Rule 10. Bare reading of Rule 10 of the Rules, would show that as per the Rule, the respondent is entitled to abatement provided there has been no production in the factory for a continuous period of 15 days even if in any particular month it is less than 15 days or even in two months. The rule nowhere provides that continuous non-production of excisable goods should be during a given calendar month. Admittedly in this case, there was no production in the factory of the respondent from 18.06.2016 to August-2016 for a continuous period of more than 15 days and the only FFS machine was sealed by the Range Superintendent. The Department nowhere has contended that other conditions like intimation not in time or no filing/giving of intimation but only ground is that continuous 15 days should be in a given calendar month, which is without basis.

7.3 In this regard, I rely on case law of Shree Flavours Pvt. Ltd. reported as 2014 (304) E.L.T. 441 (Tri. - Del.) wherein the Hon'ble CESTAT has held as under:

> "4. We find that on the said issue, there are number of decisions of the Tribunal laying down that the period of 15 days closure, need not fall within the same calendar month. It is sufficient if the unit is closed for a continuous period of 15 days, irrespective of the fact that the said period falls within two calendar months. One such reference can be made to the Tribunal decision in the case of CCE, Bhopal v. Kalpan Pan Masala Pvt. Ltd. reported in 2012 (285) E.L.T. 296 (Tri. - Del.). As such, we find no merits in the above reasoning of the Revenue."

(Emphasis supplied)

7.4 The above order of the Hon'ble CESTAT has been affirmed by the Hon'ble High Court of Punjab & Haryana reported as 2015 (321) E.L.T. A152 (P & H). Therefore, I am of the considered view that the claim of the respondent for abatement is fully justified under Rule 10 of the Rules and the appeal filed by the Department is not tenable at all.

8. The second issue involved in the case is whether the abatement of Central Excise duty for the month of June, 2016 granted by the adjudicating authority by way of adjustment in payment of Central Excise duty liability for the month of September, 2016 is proper, legal and correct or otherwise.

8.1 I find that it is not in dispute that there was a closure of factory for more than 15 days and the required procedure of due intimation of closure, sealing and due intimation of re-opening was followed. In other words, it is not in dispute that the requirements stipulated in Rule 10 of the said Rules were fulfilled. Rule 10 does not make any stipulation about the abatement to be claimed by filing another application in addition to intimation provided under

Rule 10(1) of the Rules. Rule 9 of the said Rules stipulates that "in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by 20th day of the following month." This implies that the intention of the Government was that excess paid duty should be refunded. 176

8.2 Rule 10 of the Rules provides for abatement of duty calculated on proportionate basis in case where the factory does not produce notified goods during any continuous period of fifteen days or more. However, such abatement is subject to the conditions stipulated thereunder as referred to in Rule itself. Once such conditions are satisfied, the assessee becomes entitled to abatement of duty to the extent of the days the factory did not produce the notified goods. On plain reading of Rule 10 of the Rules, it is apparent that while the same provides that duty calculated on a proportionate basis shall be abated, it does not provide for any separate procedure for doing so. Rules 96ZQ, 96ZO and 96ZP of the Central Excise Rules, 1944, which also contained compounded levy, there were express provisions for making an order of abatement by the Commissioner whereas Rule 10 of the Rules is silent in this respect. Hence, it can be inferred that the Government has consciously omitted making similar provisions. In absence of any specific provision for an abatement, the impugned order providing abatement by calculating duty on a proportionate basis of a particular month from the duty payable in the succeeding month is not violative of the rules in any manner.

8.2.1 The issue of filing refund of claim vis-à-vis abatement by passing order has been decided by the Hon'ble Supreme Court in the case of Hans Steel Rolling Mills reported as 2011 (265) ELT 321 (SC) wherein it is held that filing of refund claim by the respondent is not required as the compounded levy scheme is a separate scheme from the normal scheme for determination of excise duty of goods manufactured. Rules under compounded levy scheme stipulate method, time and manner of payment of duty, interest and penalty and same being a comprehensive scheme in itself, the general provisions of Central Excise Act and Rules stand excluded. The Hon'ble Supreme Court has further observed that the importing one scheme of tax administration to a different scheme is not appropriate and would disturb the smooth functioning of such unique scheme.

8.3 It is not disputed that the adjustment of abatement as per Rule 10 of the

Rules, the action of the adjudicating authority in computing the proportionate amount of duty towards the abatement and setting it off against the duty payable in the next month does not adversely affect the revenue in any manner. The abatement, is not akin to refund and means reduction of duty payable. Therefore, when the duty stands reduced to the extent provided in the rule, there is no liability to pay the same, inasmuch as, to that extent the duty stands abated. Therefore, if the adjudicating authority has correctly calculated the proportionate of duty and set off the same against the duty payable for the next month, it cannot be said that the said action is contrary to the statutory scheme. The said rules do not provide for the manner in which duty is required to be abated, nor do they provide that abatement shall be by an order of the Commissioner or any other authority and provides for abatement of duty, then no fault can be found in the order of the adjudicating authority on this aspect.

8.4 I find that my above views are supported by a decision in the case of M/s. Thakkar Tobacco Products Pvt. Ltd. reported as 2015 (328) E.L.T. 473 (Tri. - Ahmd.) and already upheld by the Hon'ble Gujarat High Court reported as 2016 (332) E.L.T. 785 (Guj.). In view of above, I find that the adjudicating authority has rightly allowed the abatement of duty by way of adjustment of duty payable from the next month, as per order. The appeal does not succeed on this issue also.

9. Therefore, I find that the impugned order passed by the lower adjudicating authority is correct, legal and proper. Hence, I uphold the impugned order and reject the appeal filed by the Department.

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

9.1 The appeal filed by the appellant is disposed of in above terms.

18/12/2017

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.
To,

M/s. Janmohan Company, Sukhnath Chowk, Opp.: Police Chowky, Junagadh-362 001	मे. जनमोहन कंपनी, सुखनाथ चोक, पुलिस चोकी के सामने, जूनागढ़ - ३६२००१.