



::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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क. अपील / फाइल संख्या /  
Appeal / File No.  
V2/178/BVR/2017

मूल आदेश सं /  
O.I.O. No.  
54 to 56/Excise/Demand/  
2016-17

दिनांक /  
Date  
24.03.2017

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

**BHV-EXCUS-000-APP-159-2017-18**

आदेश का दिनांक /  
Date of Order: 28.02.2018

जारी करने की तारीख /  
Date of issue: 09.03.2018

Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पठे बोर्डे ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपील के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- 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 Beyond Fabchem, Plot No. 126/1 GIDC Chitra, Bhavnagar**

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 अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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 रजिस्टार 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 नियमवाली, 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 रजिस्टार 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/-.

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 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 प्रतियाँ 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 दर्ज 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) 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, बशर्त कि इस धारा के अंतर्गत जमा कि 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 हैं

- (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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विवादाधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।/

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.

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(C) **भारत सरकार की पुनरीक्षण आवेदन :**

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैरंतुक 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 भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार 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 केंद्रीय उत्पाद शुल्क के छुट (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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संमायाविधि पर या बाद में पारित किए गए हैं। /  
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 केंद्रीय 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 केंद्रीय 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-5 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 टंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेट्री कार्य से बचने के लिए यथास्थिति अपील 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-1 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-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित 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 अपील न्यायाधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकारी वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
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](http://www.cbec.gov.in)



ORDER-IN-APPEAL

M/s. Beyond Fabchem, Plot No. 126/1, GIDC, Chitra, Bhavnagar -364 004 ( hereinafter referred to as "the appellant" ) registered with Central Excise department vide STC No. AJGPG1915KEM001 and engaged in manufacturing of Rubberized Textile Fabrics, other than those of Heading 5902-Adhesive Tape of a width not exceeding 20CM under CETSH 59061000 of the First Schedule of Central Excise Tariff Act,1985 has filed appeal against OIO No. 54 to 56/Excise/Demand/2016-17 dated 24.03.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise Division, Surendranagar ( hereinafter referred to as " the adjudicating authority").

2. Briefly stated, the facts are that the appellant was a proprietorship firm owned by Shri Pares H. Golakiya and was registered with Central Excise department holding registration certificate No. AJGPG1915KEM001. In the impugned order, confirmation of demand is done against 3 show cause notices issued, out of which at present the appellant has appealed against the demand of Rs. 15,13,944/- against the show cause notice dated 01.10.2015. Therefore, the brief of the concerned show cause notices is only discussed. The appellant had declared and described the major excisable goods to be manufactured as "of Rubberized Textile Fabrics, other than those of Heading 5902-Adhesive Tape of a width not exceeding 20CM" showing CETSH 59061000 as against the column No. 14 of the said application dated 19.10.2013 and registration certification was issued on 25.10.2013. Subsequently the appellant had surrendered the said registration certificate vide their letter dated 24.09.2014 stating that the business under proprietorship concern was closed and have started the same business under partnership concern firm and applied for new Central Excise Registration. The appellant started to pay central excise duty on the excisable goods declared by them after the date of application of Central Excise Registration i.e. 20.10.2013. While the excisable goods manufactured by them attracted central excise duty with effect from 01.03.2011 i.e. from the issuance of Notification No. 1/2011-CE dated 01.03.2011 and Notification No. 02/2011-CE dated 01.03.2011. It was observed in returns/records filed/submitted by the appellant that they had availed credit of duty paid on input and or/tax on input service under Cenvat credit rules, 2004 and had paid central excise duty at the rate of 2% ad valorem on the clearance of their final product under Notification No. 16/2012. The benefit of Notification No. 01/2011-CE as amended by Notification No. 16/2012-CE for payment of central excise duty at the specified rate as mentioned therein was only available provided they had not availed credit of duty on inputs and/or tax on inputs service under the provision of the Cenvat credit Rules, 2004. The appellant was engaged in manufacturing and clearing the said excisable product since F.Y 2009-10, and the appellant was required to pay central excise duty from first clearance from the date of issuance of the above referred Notification i.e. from 01.03.2011 and the differential duty to be paid amounts to Rs. 15,13,944/-. For the period of August 2014, the appellant had cleared their goods under CETSH No. 59061000 and paid duty @ 2% by availing Notification No.16/2012-CE dated 17.03.2012, but in remarks column had made a remark that " We are claiming change in classification, hence duty paid under sub heading 59061000 is under protest". Accordingly, a show cause notice No. V/15-80/Dem/HQ/2015-16 dated 01.10.2015 was issued by the Additional Commissioner, Central Excise, HQ, Bhavnagar to the appellant demanding central excise duty of Rs. 15,13,944/- for the period 01.03.2011 to 31.07.2014 and demanded central excise duty of Rs. 63,094/- for clearance of their dutiable goods during the month of August-2014 paid by them under protest should not be appropriated and adjusted towards regular payment of duty payable for the above said period vacating the protest lodged by the



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appellant. The notice was adjudicated vide the impugned order, wherein the adjudicating authority confirmed the demand of Rs. 15,13,944/- under Section 11A(4) of the Central Excise Act, 1944 with interest and penalty. The adjudicating authority further confirmed the demand of Rs. 64,987/- under Section 11A of Central Excise Act, 1944 and since the same has been paid by the appellant, the adjudicating authority ordered appropriation of the same towards the regular payment of duty payable for the month of August 2014 and vacate the protest lodged by them.

3. Feeling aggrieved, the appellant had filed the appeals on the following grounds :

- That the adjudicating authority has erred in confirming the demand of Rs. 15,13,944/- by not reclassifying the goods under sub head no. 59070099 or under sub head no. 59779090 and extending the exemption applicable to the said sub head number;
- That the adjudicating authority has erred in confirming the demand without considering the submissions made as also the amount reversed towards the Cenvat credit availed and had also ignored the settled law that once the Cenvat credit is paid back, it could not be said to be availed by the assessee and therefore the benefit of Notification No. 01/2011-CE cannot be denied;
- That the product under consideration is not classifiable under sub head no. 59061000 and therefore is not chargeable to duty and consequently no part of demand is liable to be confirmed;
- That the adjudicating authority has ignored the settled law that there is no estoppel against the change in classification and therefore non consideration of such submission vitiate the order under consideration is thus null and void.
- That the adjudicating authority had erred in imposing equal penalty and confirming the interest payment and the grounds raised for setting aside the duty may be treated as part of the grounds raised for setting aside the penalty and interest confirmed;

4. Personal hearing was held on 19.02.2018. Shri Paresh Sheth, Advocate appeared on behalf of the appellant and reiterated the submissions made in the respective appeal memorandums.

5. The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as regards to the case of appellant vide Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017 and Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Deptt of Revenue, CBEC, Service Tax Wing.

6. I have carefully gone through the facts of case, the grounds mentioned in the appeal and the submissions made by the appellant. The question to be decided in the appeal is regarding non/short payment of central excise duty by the appellant in violation of Notification No. 01/2011-CE dated 01.03.2011 as amended vide Notification No. 16/2012-CE dated 17.03.2012 and whether the appropriation and adjustment of duty towards regular payment of duty, by vacating the protest lodged by the appellant for the period of August 2014 is properly confirmed by the adjudicating authority.

7. The adjudicating authority in his findings has observed that the appellant was engaged in manufacture and clearance of the goods falling under CETSH 59061000 since 2009-10 attracting tariff rate of duty. The product manufactured by the appellant has been listed at Sr. No. 75 of the Notification No. 01/2011-CE dated 01.03.2011 on which they were required to

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pay the central excise duty @ 1% w.e.f 01.03.2011 and @ 2% w.e.f 17.03.2012. It was further observed that the appellant had started paying central excise duty only after the date of application of central excise registration i.e. 20.10.2013. Therefore the appellant was liable to pay central excise duty from 01.03.2011 to 19.10.2013 amounting to Rs. 7,50,234/- which they have not paid. Further the appellant had paid central excise duty @ 2% w.e.f 20.10.2013 to July 2014 by availing the benefit of the Notification No. 01/2011-CE as amended vide Notification No. 16/2012-CE dated 17.03.2012 but they had also availed the Cenvat credit and utilised the same towards their central excise duty liability which was against the conditions laid down in the said notification. The appellant had paid back the Cenvat credit with interest and argued that once the Cenvat credit with interest is paid back the same is treated as not availed but the adjudicating did not agree with the contention of the appellant stating non fulfilment of the conditions laid down in the above said Notifications.

8. Here, I find that the appellant had reversed the Cenvat credit availed for the period from October 2013 to July 2014 amounting to Rs. 3,04,984/- and had also filed suitable intimation vide letter dated 24.09.2014. In this matter, I would like to rely on the decision of Hon. CESTAT, Ahmedabad in the case of Maize Products reported in 2007 (79) RLT 0662 whereby the Hon. Bench had accepted that even if the amount is reversed at a later date, it can very well be said that no Cenvat credit is availed. Accordingly, I hold that as the appellant had reversed the Cenvat credit availed, it cannot be said that the appellant had availed Cenvat credit of duty paid on the inputs and hence the exemption claimed cannot be denied. Since the credit availed is paid back alongwith interest, the amount proposed to be recovered i.e Rs. 15,13,944/- in the impugned order is set-aside. Since the demand does not hold, the imposition of penalty and confirming the interest is also set aside.

9. The adjudicating authority in his finding has observed that the appellant while undertaking their business as proprietorship firm upto July 2014 had not disputed the classification of the manufactured goods, but for August 2014, they paid central excise duty under protest claiming that they intend to change the classification of their goods. Further from 17.09.2014, their partnership firm was registered, wherein they had classified their goods under CETSH 59061000, they had not changed their classification in their application for registration. However, the adjudicating authority held that the appellant had vide their letter dated 24.09.2014 informed that their product cannot be classified under CETSH 59061000, but under 59070099, and that they will clear the goods under CETSH 59061000 but by paying the duty under protest and reserving the right to claim refund till the issue is finalised. The adjudicating authority held that the appellant had neither submitted any proof nor any test report in support of their claim of classification and further held that the classification dispute should have been settled with the Jurisdictional Assistant Commissioner.

10. Here, I find that appellant had a dispute regarding the classification of the goods manufactured by them and accordingly vide their letter dated 24.09.2014 had informed the department about the same and paid duty under protest. I find that the appellant had submitted the copy of certificate issued by Government approved Chartered Engineer, M/s Multi Engineers dated 12.03.2015 wherein it is certified that the product under consideration is 100% cloth based whereas the BOPP Tap (Adhesive Tap) is 100% BOPP Material Tap. Further the certificate also shows that the basic raw material as well as chemicals used are also different and are not similar to each other and the product being manufactured by the appellant cannot be compared with the Adhesive Tap. Further other documentary evidences have been provided from the appellants dealers stating that the product under consideration is

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being used by Textile Processing units for printing of sarees or dresses and the said waterproof cloth tape are affixed on border of screens laid on the printable tables, to avoid leakage of printing ink and further-certified that such waterproof tape are not being marketed or are not capable of being marketed as packing material or cannot be marketed in lieu of adhesive tape.

11. I place reliance on the decision in the case of Union of India V/s. Garware Nylons Ltd. [1996 (87)ELT 12(SC) :

*" Classification of goods: Burden of proof on the taxing authorities to show that a particular item is taxable in the manner claimed by them - mere assertion is of no avail -Taxing authority to lay evidence especially when the claim of the assessee supported by trade inquiries and affidavits of the persons dealing the subject goods"*

So, I find certificates issued by the Chartered Engineer and others, at this point has to be taken into consideration when the classification has to be decided. Here, I hold that the product under consideration is of a kind suitable for industrial use and can be defined as a "Textile Article" because this is used only in printing process and it is 100% cloth base as certified by the Chartered Engineer's certificate dated 12.03.2015. Therefore, I go with the contention of the appellant and disagree with the adjudicating authority regarding vacating the protest of payment of central excise duty paid amounting to Rs. 64,987/- for the month of August 2014 and classifying the product under consideration under CETH 59061000. Accordingly, I hold that the product under consideration is to be classified under CETH 59070099 as claimed by the appellant.

12. In view of above, the impugned order dated 24.03.2017 with respect to confirming the demand of Rs. 15,13,944 - and Rs. 64,987 - is set aside and appeal is allowed accordingly.

13. The appeal filed by the appellant stands disposed of in above terms.

*(Signature)*  
DR. BALBIR SINGH

ADDITIONAL DIRECTOR GENERAL (DGTS),  
DGTS, AZ. GIMEDAH.

F.No. V2/178/BVR/2017

Date : . . . 2018

BY RPAD

To,

M/s Beyond Fabchem,  
Plot No. 126/1, GIDC, Chitra,  
Bhavnagar -364 004.

Copy to:

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Bhavnagar.
3. The Jt Addl Commissioner - Systems, CGST, Rajkot
4. The Assistant Commissioner, Central Excise, City Division, Bhavnagar
5. The Assistant Commissioner, Central Excise Division, Surendranagar.
6. Guard File.
7. P.A