::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 कोर्स 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. **V2/80/BVR/ 2017** 8163 TO 8168	मूल आदेश स / O.I.O. No. **BHV-EXCUS-000-JC-64 to 68-2016-17**	दिनांक / Date **03.02.2017**

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

BHV-EXCUS-000-APP-245-2017-18

आदेश का दिनांक / Date of Order:	**16.03.2018**	जारी करने की तारीख / Date of issue:	**02.04.2018**

Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.**

अधिसूचना संख्या २६.१७दिनांक (.टी.एन) .शु.उ.के-२०१७/१० २०१७.के साथ पढ़े बोर्ड ऑफिस आदेश सं-२०१७/०५ . दिना .टी.एसक १६ ,के अनुसरण मे २०१७.११.श्री सुरेश नंदनवार ,आयुक्त , केंद्रीय वस्तु एवं सेवा कर (लेखा परीक्षा), अहमदाबाद को वित्त अधिनियम १९९४ की धारा८५ ३५की धारा १९४४अधिनियम केंद्रीय उत्पाद शुल्क , के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ मे आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप मे .नियुक्त किया गया है

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Suresh Nandanwar, Commissioner ,Central Goods and Service Tax (Audit), 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 Greenply Industries Limited, Plot No. 910 to 913, GIDC Estate, Bamanbore Taluka Chotila,Dist : Surendranagar

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 न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा 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 माँग ,ब्याज की माँग 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 क्रमश: 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 सार्वजिनक 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 ऑधिनेयम, 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 माँग ,ब्याज की माँग 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 क्रमश: 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 सार्वजिनक 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 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 प्रतियां 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.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) 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 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 है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट 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 अर्ज़ी 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 मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 अदा की 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 ।
जैहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाएँ ।
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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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 filled 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 टिकिट 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 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वैबसाइट 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

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ORDER-IN-APPEAL

M/s Greenply Industries Limited, Plot No. 910 to 913, GIDC Estate, Bamanbore, District Surendranagar - 365520, Gujarat (hereinafter referred to as the appellant), filed the present appeal before the Commissioner (Appeals) C.Ex. & Cus. Rajkot, against Order-in-Original No. BHV-EXCUS-000-JC-64 to 68-2016-17 dated 03-02-2017 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as "the respondent").

2. Subsequently, the Board Vide Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), CBEC, New Delhi has transferred the said Appeal Petition to the Commissioner, Central Tax Audit, Ahmedabad for passing Order-in-Appeal.

3. Briefly, the facts of the case are that the appellant having Central Excise Registration No. AAACG7284RXM008, are engaged in the manufacture of excisable goods viz. Plywood, Blockboard, Compressed Plywood falling under Chapter 44 of the First Schedule to the Central Excise Tariff Act, 1985 and availing benefit of CENVAT credit facility under CENVAT Credit Rules, 2004. They are working under the self assessment procedure and accordingly determining the Central Excise Duty to be paid on the clearances of final goods manufactured by them. The assessable value of the goods cleared and the duty paid thereon were reflected in the monthly ER-1 returns, filed by them.

3.1 On verification of the records, it was observed that the final goods/ products manufactured by the appellant, were also transferred/ cleared to their depots, under the cover of the Central Excise invoices, wherein, they inter alia mentioned the assessable value of the final goods and the quantum of the central excise duty paid thereon, as prescribed under Section 4 read with Rule 11 of the Central Excise Rules, 2002 (hereinafter referred to as 'CER, 2002') and in case of stock transfer to their various depots (situated all over India) for further sale, they re-determine the assessable value under the provision of Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as 'Valuation Rules').

3.2 It was observed that the appellant was claiming deductions of certain discounts to arrive at the assessable value under Section 4 of the Central Excise Act, 1944 (hereinafter referred to as 'the Act'). Accordingly, the jurisdictional Superintendent, Central Excise Range, Bamanbore vide letter

dated 13.12.2013, called for all the details and types of discounts offered by the appellant at the time of depot clearance. The appellant vide their letter dated 16.12.2013 replied that they were offering various kinds of discounts viz. Trade Discount/ Quantity Discount/ Special Discount/ Price Difference Discount/ Cash Discount/ Extra Discount/ Project Discount / Scheme Discount/ Turnover Discount/ Rural Sale Discount/ Overriding Commission/ Octroi Discount etc. which were deducted from the assessable value arrived for sale from their depots; such discounts were passed on to the customers from their relevant depots and the same were deducted from the assessable value.

3.3 The appellant vide letter dated 16.12.2013 submitted details of all type of discounts and also opinion of their legal Advisor M/s. Lakshmi Kumaran & Sridharan. According to the said reply/legal opinion the "extra discount" offered by them, to certain dealers was depending upon their relationship with the appellant and is not as per the usual trade practices. Further, it also appeared that these discounts were made known to the dealers at the time of sale only and were not known at the time of clearances of the goods from the factory. Thus, it appears that the same are not deductible from the assessable value for the purpose of payment of central excise duties.

3.4 The relevant documents were called for from the appellant in relation to discounts offered by them and the value deducted from the assessable value on account of discounts. Whereas on scrutiny of the documents it was noticed that they had stated in the above said letter that they are not claiming and also not eligible for deduction of extra discount from the assessable value, however on scrutiny it is revealed that they are claiming the deduction of extra discount form the assessable value and paid the duty on the deducted assessable value. It appears that the appellant has admitted that they are not eligible for claiming such deduction i.e. extra discount from assessable value, however on the contrary it is revealed that they have claimed such deductions from the assessable value and paid duty on deducted assessable value. The said Extra discount was not mentioned in the invoice issued at the factory gate and also not passed on at the time of clearance of goods from factory premises.

3.5 It is noticed that as per the above said letter dated 16/12/2013 of the appellant that they are passing on the turn over discount to their buyers and deducted the said turnover tax discount from the assessable value for payment of Central Excise duty. They are passing this turnover discount by issuing the credit notes at the end of financial year or as and when the buyer

achieves the specified sales value during the year. It further appears that the turnover discount is being deducted from the assessable value after the clearance of the goods from the factory as per Section 4 of the CEA read with valuation Rules 2000 and other instructions for the time being in force, any discount which is passed on subsequent to the clearance of the goods and by issuing Credit Note is not admissible to be deducted from the assessable value. Further, if the Appellant wishes to take benefit of turnover discount and to be deducted from the assessable value, then they are required to resort for provisional assessment in terms of rule 7 of CER, 2002. The appellant themselves has admitted and demonstrated in the above said letter that in case of any discount which is not known at the time of clearance of goods and being allowed at the end of the year by issuing credit notes, and if they wish to deduct such value of discount from the assessable value then they were required to resort to provisional assessment. However, they have not resorted to any such provisional assessment for the period covered by the impugned OIO. Once they have not resorted to the provisional assessment, the self assessment at the time of clearance of goods by them becomes final and any subsequent deduction from assessable value amounts to reassessment, which is not permissible in terms of Section 4 of CEA, 1944 read with Valuation Rules 2000. It further appears that they themselves have contradicted their own admission that they require to resort to provisional assessment, however, without resorting to such provisional assessment they have deducted such turnover discount. Therefore, it appears that they have blatantly violated the provisions of valuation and thereby short paid the duty on the value of turn over discounts.

4. A show Cause notice dated 04.07.2014 was issued to the appellant demanding Central Excise duty amounting to Rs.1,14,40,735/- (Rupees One Crore Fourteen lakhs seven hundred thirty five only)for the period from June-2009 to March-2014. Subsequently, following Show Cause Notices were also issued to the appellant for the further periods:

Sr.No.	SCN No.	Date	Amount	Period
1	IV/18-2/D/Greenply/2015-16	30.04.2015	402946/-	April 2014 to May 2014
2	15-50/Dem/HQ//2015-16	11.06.2015	3801521/-	June 2014 to March 2015
3	V/15-76/Dem/HQ/2015-16	21.04.2016	4005921/-	April 2015 to December 2015
4	V/15-05/Dem/HQ/2016-17	17.8.2016	1636306/-	January 2016 to March 2016

5. The adjudicating authority, under the impugned order, confirmed the demand of Rs.2,25,62,339/- and ordered the same to be recovered along with interest. Penalty of Rs.2,25,62,339/- was also imposed under the provisions of Section 11AC of the Central Excise Act, 1944. Also ordered to treat payment of an amount of Rs. 1,93,026/- made by the Appellant as duty payment under Section 11(A)(5) of the Central Excise Act, 1944 and imposed penalty of Rs. Rs. 1,93,026/- under 11AC (b) read with Section 11(A)(5) of the Central Excise Act, 1944.

6. Being aggrieved with the impugned order, appellant preferred the present appeal on 7th April 2017 on the following grounds:-

(i) In the present case, three out of four conditions stipulated in Section 4(1)(a) are satisfied inasmuch as (a) there was a sale of excisable goods, by the Appellants to the dealers; (b) the Appellants and the dealers are not related; and (c) price on which duty was discharged was the sole consideration for the sale of the final products. However, the fourth condition of having sale for delivery at the time and place of the removal i.e. the factory gate is not satisfied since place of removal in the present case is not the factory gate but the depots of the Appellants.

(ii) Even though Section 4 effective from 1st July, 2000 does not mention anything about the admissibility of deduction towards discount, the discounts of various types which are known prior to or at the time of removal of the goods, even though may be quantified later, are permissible discounts even under the transaction value regime.

(iii) Extra Discount and Turnover Discounts were made known to the dealers before or at the time of clearance of goods from the factory.

(iv) The condition of providing proof for passing of Turnover Discount and Extra Discount to end consumer of the goods sold by the Appellants to their dealers is imposed by the Ld. Joint Commissioner without any legal basis and is not sustainable.

(v) Turnover Discount is a standard discount offered by the Appellants to all the dealers on achievement of specified sales volume, and is passed on by the Appellants to the dealers at the end of the year by issuance of credit notes.

(vi) Sales promotion schemes in terms of which the various discounts are passed on to the dealers are known to the dealers well in advance, which is evident from a letter dated 01.04.2013 wherein a list of dealers is attached stating dealer's name along with dealer's sign and

seal with the heading as "Trade Circular and New Discount Structure" effective from 1st April 2013.

(vii) In some cases the impugned Extra Discount is separately reflected (and deducted from the total sales value) in the sale invoices issued by the Appellants during the relevant period, the dealers of the Appellants are well aware in advance with regard to the Extra Discount being offered to them. The Extra Discount is passed on by way of credit notes is factually inaccurate, inasmuch as in some cases Extra Discount is indicated in the invoice also and reduced from the invoice value. Thus, the discount policies and trade circulars enclosed that both the Extra Discount and Turnover Discount are a part of the usual trade practice. The fact that the same have been given regularly during the relevant period starting from June 2009 to March 2016 itself shows that the same are a part of the usual trade practice.

(viii) Since, Turnover Discount is announced before the clearance of goods from the factory and the dealers are well aware of the discount available to them, it is admissible as a deduction from the assessable value irrespective of the fact that it is passed on subsequent to clearance of goods, by issuance of credit notes.

7. Personal hearing in the matter was held on 16.02.2018, wherein, Shri R. K. Hasija, Advocate/consultant appeared on behalf of the appellant and reiterated the Grounds of Appeal and requested for a week time to submit additional points to defend the case.

7.1 The appellant vide their additional submission dated 19.02.2018 has submitted the audit reports dated 19.10.2011 and 17.12.2013 and stated that their business model has been examined by the department time to time and such objection was never been raised by the department. Even no such issue was raised by the CERA during their audit for the period from 01.04.20007 to 31.03.2012 conducted between 25.03.2012 and 01.04.2013.

Discussion and Findings:-

8. I have gone through the Appeal Memorandum, in particular the grounds of appeal, the submissions made by the Appellant from time to time and the materials on record.

8.1 I find that, the dispute in the present case relates to the deduction of 'Extra Discount' and 'Turnover Discount' as eligible deductions from the assessable value under Section 4 of the Excise Act, 1944.

Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

As per the Section 4 of Central Excise Act, 1944, the value should be the transaction value in case the goods are cleared from the factory (Section 4(1)(a). Whereas in terms of Section 4(1)(b) above, in the case of sale from their Depots, the value is to be determined as per the Rule 7 of the Valuation Rules, which is as under:

Rule 7.

"Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment".

8.2 Ongoing through the provisions of Section 4 of the Central Excise Act, 1944, it is clear that the provisions of Section 4(1)(a) applies in the case of ex-factory sale i.e. where the time and place of removal is factory gate. However in a situation such as the present, when the place of removal is the depot then the value of goods are to be decided as per section 4(1)(b) of the Act ibid. Section 4(1)(b) applies in any other case, including the case where the goods are not sold, which states that value be the value determined in manner as may be prescribed.

Therefore in the case of sale of goods from the depot the value has to be determined as per the Rule 7 of the Central Excise Valuation Rules, 2000. Rule 7 is absolutely clear. It does not provide any scope for ambiguity. Accordingly once the provisions of Rule 7 are applied to determine the value, subsequent change in the value on account of discount is not permissible in terms of the said rules. In case the appellant is not sure about the valuation at that point of time when the goods are removed, value can be determined provisionally by resorting to provisional assessment. This is also prescribed in Trade Notice number 95/2002 dated 24.09.2002. By not resorting to provisional assessment appellant has made final assessment of the goods cleared from the factory to the depot. The option of provisional assessment was always available to the appellant which was not opted by them. This means that they agreed to pay/charge the duty on the value arrived at per Rule 7 read with Section 4(1)(b) of the Act. In view of the above the appellant is not entitled to claim any deduction/discount.

8.3 Without prejudice to the above I find that, in case of the discount which cannot be ascertained or known at the time of removal of goods, the Board vide its circular dated 30th June, 2000 has clarified that, "Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently – as for example, year-end discount – the assessment for such transactions may be made on a provisional basis. However, the assessee has to disclose the intention of allowing such discount to the Department and make a request for provisional assessment. "Paragraph 9 of the said Circular No. 354/2000–TRU dated 30th June, 2000 which deals with the discounts reads as under:

> *"9. As regards discounts, the definition of transaction value does not make any direct reference. In fact, it is not needed by virtue of the fact that the duty is chargeable on the net price paid or payable. Thus if in any transaction a discount is allowed on declared price of any goods and actually passed on to the buyer of goods as per common practice, the question of including the amount of discount in the transaction value does not arise. Discount of any type or description given on any normal price payable for any transaction will, therefore, not form part of the transaction value for the goods, e.g. quantity discount for goods purchased or cash discount for the prompt payment etc. will therefore not form part of the transaction value. What is important is that it must be established that the discount for a given transaction has actually been passed on to the buyer of the goods. The differential discounts extended as per commercial considerations on different transactions to unrelated buyers if extended cannot be objected to and different actual prices paid or payable for various transactions are to be accepted for working assessable value.* ***Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently – as for***

example, year-end discount – the assessment for such transactions may be made on a provisional basis. However, the assessee has to disclose the intention of allowing such discount to the Department and make a request for provisional assessment."

[Emphasis supplied]

Such circulars are issued for the information and guidance of the public/ assessee as well as the officers of the department, based on the provisions made in the Act & Rules. Therefore it cannot be claimed that they are mere procedural and cannot be swept under the carpet.

8.4 Furthermore it is not the case of the assessee that they were ignorant about the above CBEC's circular. In fact as it appears from the show cause notice and the impugned order that the appellants had resorted to such provisional assessment for the period 26.12.2011 to 27.12.2012 (Para 3.18 of the OIO refers). The reasons for not following the said prescribed procedure of provisional assessment during the period prior to 26.12.2011 & after 27.12.2012 cannot be comprehended. This is all the more so when after the receipt of first shown cause notice dated 04.07.2014 they continued to claim such deductions from the assessable value without resorting to provisional assessment.

There have been rulings of various Courts including the Apex Court that where the Rule is framed in plain, unambiguous and clearly worded, there is nothing to read in between them and has to be followed in principle.

8.4 The following passage from the opinion of Late Rowlatt. J. in Cape Brabdy Syndicate vs Inland Revenue Commissioners, 1921 (1) KB 64, 71 has become the locus classicus and has been quoted with approval in a number of decisions of the Hon'ble Supreme Court.

....in a taxing act one has to look merely at what is clearly said. There is no room for any intendment. There is no enquiry about tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the Language used."

In the case of Commissioner of Sales Tax, Uttar Pradesh vs. The Modi Sugar Mills Ltd. – 1961 2 SCR 1879, J. C. Shah J. observed that:

"in interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot import provisions in the statutes so as to supply any seemed deficiency"

In the case of Good Year India Ltd. vs. UOI – 1990 (49) ELT 39 the High Court of Delhi has analyzed as to how a statute is to be interpreted. – The high court Observed

"The primary principle of interpretation is that a constitutional or statutory provision should be construed according to the intent of they made it. Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise, and plain, and thus by itself proclaims the legislative intent in unequivocal terms the same must be given effect to, regardless of the consequences that may follow. [AIR 1979 SC 193 relied upon] [para 19]"

Hon'ble Apex Court in the case of UOI vs Ind-Swift Laboratories Ltd. – 2011 (265) ELT 3 has observed as below:

"Interpretation of statutes - Rule of reading down statutory provision - A statutory provision is generally read down in order to save such provision from being declared unconstitutional or illegal - Rule of reading down is in itself a rule of harmonious construction in a different name and generally used to straighten crudities or ironing out creases to make a statute workable - Supreme Court precedent rulings holding that in the garb of reading down a provision, it is not open to read words and expressions not found in provision/statute and venture into judicial legislation - Rule of reading down to be used for limited purpose of making particular provision workable and to bring it in harmony with other provisions of statute. [paras 17, 18]".

The appellants have cited various case laws in favour of their contention that the impugned discounts could be deducted from the assessable value and therefore there is no short payment of duty. I find that the facts and law cited in the cited cases and the case on hand are distinguishable and therefore not applicable.

8.5 In view of the forgoing discussions I hold that the demand of differential duty by including the quantum of "Extra Discount" and "Turnover Discount" in the assessable value confirmed by the impugned order holds good.

8.6 The appellants have further claimed that the benefit of cum-duty prices should be extended to them in terms of Explanation to Section 4.

I find that in a catena of judgments including that of the Hon'ble Supreme court it is held that benefit of cum duty price is not available in case of fraud. I rely on few such decisions as under:

Dhillon Kool Drinks & Beverages Ltd. vs CCE Jalandhar – 2011(263) ELT241(T)

Asain Alloys Ltd. Vs CCE Delhi III – 2006(203)ELT 252

Sarla Polyster Ltd. vs CCE Surat II 2008 (222) ELT 376

Amrit Agro Industries vs. Cce Ghaziabad 2007 (210) ELT 183 (SC)

In the case of Amrit Agro supra the Hon'ble Apex court on the issue of Cum-duty-price also held that unless it is shown that the price of goods is inclusive of duty no benefit under cum duty price can be claimed. The relevant extract of the judgment is reproduced hereunder:

> *Valuation (Central Excise) - Recomputation of quantum of duty - Cum-duty price - Unless it is shown by manufacturer that price of goods includes excise duty payable by him, no question of exclusion of duty element from price will arise for determination of value under Section 4(4)(d)(ii) of Central Excise Act, 1944 - One cannot go by general implication that wholesale price would always mean cum-duty price, particularly when assessee had cleared the goods during relevant years on basis of exemption Notification No. 4/97-C.E. –*

Further in the case of Shakti Motors vs. Commissioner of Serivce Tax, Ahmedabad – 2008(12) STR 710 (Tr-Ahmd), the Hon'ble tribunal at Ahmedabad held in the following terms:

> *"Valuation (Service tax) - Cum-tax value - Demand raised under Authuorised Service Station service and Business Auxiliary Services - Plea of treatment of amount received as cum-tax to scale down the quantum of demand - In terms of Section 67(2) of Finance Act, 1994 if invoice specifically not says that gross amount charged includes Service tax, it cannot be treated as cum-service tax price - Cum-tax benefit not extendable in absence of evidence to show that invoice prepared in this manner - Section 67 ibid.* ***[para 3]"***

In conclusion I hold that benefit of cum-duty-price claimed by the noticee cannot be acceded to.

8.7 The appellants have also gone forward to contend that since there was no provision in ER-1 returns to disclose the "Extra Discount" and "Turn over Discount", non-declaration of the same cannot be said to be suppression. They have also contended that they were under a bona fide regarding deduction of the impugned discount. They also contended that the issue involved interpretation of law and therefore no suppression or mis-representation can be alleged.

I find that the provisions of Section 4 of the Central Excise Act, 1944 & the valuation rules framed there under, especially Rule 7 are explicit as discussed in the foregoing. Therefore the plea that the issue involves interpretation of law does not hold good. The claim of the appellants that there was no suppression as there was no provision for declaration of the discounts in the ER-1 returns, and the claim of their bona fide also holds no water.

It is a fact that the appellant never disclosed to the department the deduction of the impugned discounts to arrive at the assessable value. Moreover though they were aware of the requirement of resorting to provisional assessment they knowingly did not follow the same except for a certain period. They also never sought any clarification from the department. A person giving his own interpretation to the provisions of law and then arguing that he was under a bona fide belief cannot escape from liability to pay duty arising out of invocation of larger period of limitation.

This view was also held by CESTAT, PRINCIPAL BENCH, NEW DELHI in the case of COMMISSIONER OF CENTRAL EXCISE, RAIPUR Versus RAJ WINES - 2012 (28) S.T.R. 46 (Tri. - Del.) – HELD

"In the matter of involving Section 80 of the Finance Act, 1994, we are not in agreement with the finding of the Commissioner (Appeals). A person giving his own interpretation of notification and then arguing that he was under the bona fide belief cannot get the protection of such Section 80."

8.8 Moreover in the present regime of liberalization, self-assessment and filing of ER – 1 /ST-3 returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such wrong doings only during audit or preventive/other checks. In the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai, it is held that extended period can be invoked when department came to know of service charges received by appellant on verification of his accounts.

It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he fails to exercise due care and diligence. It was so held in the case of K.I. International Ltd. Versus Commissioner of Custom, Chennai - 2012 (2) ECS (126) (Tri-Chen).

The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) – has held:

> ***"12.*** *Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five*

years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."

It has been held by Apex Court in case of Commissioner of Customs, Kandla vs. Essar Oil Ltd.-2004 (172) E.L.T. 433 (S.C.) that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the deceived. Undue advantage obtained by the deceiver, will almost always call loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu V. Jagannath [1994(1) SCC 1]).

8.9 In view of the above findings and the judgments cited I have no hesitation in holding that the appellant resorted to fraud, by suppressing the taxable value of the goods by deducting ineligible discounts and thereby evading duty and therefore I hold that this is a fit case where the provisions of Section 11A(4) of the Central Excise Act, 1944 can be invoked for confirming the demand of duty. For the same reasons I also hold that the assessee has rendered themselves liable to penalty under Section 11AC of the Act ibid. My views are further fortified by the order in the case Samsung India Electronics Ltd. - 2014 (307) ELT 160 (tri. Del) –

In view of the above I also find that the decisions cited by the assessee in support of their contention that extended period cannot be invoked, are distinguished.

Accordingly the charge of suppression & mala fide with intent to evade duty is convincingly established against them and I am also unable to accept any claim of *bona fide*.

8.10 The applicant has also contended that their unit was audited and therefore also the facts were within the know of the department.

I find that the audit conducted for the previous period is no bar for invoking extended period. Whether the normal period or extended period of limitation is applicable has to be appreciated in light of the statuette and previous audit is not a factor stipulated in the statuette. The statuette clearly provides that extended period is applicable if the ingredients such as fraud, suppression, wilful mis-statement, etc. as specified in to Section 11A(4) of the Central Excise Act, 1944 come into play. Further it need not be emphasized

that the audit conducted by the officers of Revenue department are based on the principals of Test Checks and each and every document maintained by the assesse is not checked at the time of audit. In the instant case it appears that the assesse have adopted dubious practice of deducting impugned discounts from the assessable value without authority of law and without following the procedure prescribed. Thus, in the instant case it appears that the ingredients as specified under proviso to Section 11A(4) of the Central Excise Act, 1944 are fulfilled and as such the issue of unit having been audited previously does not take away the extended period from the department.

8.11 The above view is also held in following judgments/orders:

(i) Chemfab Alkalis Vs CCE Pondichary -2010 (251) ELT 264 (Tri – Chennai. Held:

"Audit parties visit all excisable units from time to time - Their visit cannot mean that extended period will not apply in respect of any unit, as that would render provision regarding extended period totally redundant - Section 11A of Central Excise Act, 1944. ***[para 6]".***

(ii) HCL Technology Ltd. - 2010 (254) ELT 175 (Tri. Del) –Held:

"5. As regards the applicability of longer limitation period, it is not the Appellant's case that the supplier's invoices on the basis of which Cenvat credit has been enclosed with the ST-3 returns. Without invoices, it is extremely difficult to the concerned central excise officer to know as to whether the Cenvat credit had been correctly taken. The Appellant's plea is that the unit had been audited does not prove that the Departmental officers had knowledge about the Cenvat credit, as the audits by the internal audit parties of the department or the C&AG are only test checks in which hundred percent records are not checked. In view of these circumstances, we are of the prima facie view that the longer limitation period has been correctly invoked."

(iii) Collector Of C. Ex., Aurangabad Vs T***igrania*** M***etal*** & S***teel*** I***ndustries – 2001 (132) ELT 103. Held:***

"Suppression of material facts - Mere visit of Department's Audit party to the factory of Respondents not enough to infer Revenue's knowledge about the wrongful availment of benefit under Notification No. 208/83-C.E., dated 1-8-1983 by Respondents - Respondents having availed the benefit under Notification ibid, had the burden to prove Revenue's knowledge which they failed to discharge"

(iv) Jaishri Engineering Co. (P) Ltd. Vs Collector *of C. Ex. - 1989 (40) E.L.T. 214 (S.C.) – Held:*

"The fact that the Department visited the factory of the appellant and they should have been aware of the production of the goods in question, were no reason for the appellant not to truly and properly to describe these goods. As a matter of fact, not only did the appellant, as found by the Tribunal, described these goods properly but also gave a misleading description."

9. In view of the foregoing discussion and findings, I do not find any reason tointerfere with impugned order of the Ld. Adjudicating Authority and pass the following order.

ORDER.

10. I reject the appeal filed by the appellant and uphold the impugned Order-in-original.

16-3-18

(Suresh Nandanwar)
Commissioner

F.No. V2/80/BVR/2017 Date : 16.03.2018

By R.P.A.D

To,

M/s. Greenply Industries Limited,
Plot No. 910 to 913, GIDC Estate,
Bamanbore, District Surendranagar - 365520, Gujarat

Copy to :

1. The Chief Commissioner of Central Tax, GST, Ahmedabad Zone.
2. The Principal Commissioner of Central GST, Rajkot.
3. The Additional/Joint Commissioner, Central GST, Rajkot.
4. The Assistant/Deputy Commissioner, Central GST, Division-Morbi, Rajkot Commissionerate.