	राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com	D ant
T.	जेस्टई डाक ए. डी. द्वारा :-	_
क		
য্য	अपील आदेश संख्या (Order-In-Appeal No.):	
	KCH-EXCUS-000-APP-202-2017-18	
	भारेश का दिसांक / जारी करने की नारीख /	
	Date of Order: 16.03.2018 Date of issue: 22.03.2018	
	Passed by Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Cen Excise, Rajkot	itral
	अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढे बोर्ड ओफिस उ	भादेश सं
8	०५/२०१७-एस.टी. दिमांक १६.११.२०१७ के अनुसरण में, श्री ललित प्रसाद ,आयुक्त , केंद्रीय वस्तु एवं से	
	और उत्पाद शुल्क ,राजकोट को विल्त अधिनियम १९९४ की धारा८५, केंद्रीय उत्पाद शुल्क अधिनियम	
	धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिका	री के रूप
	में नियुक्त किया गया है.	
	In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.21 with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Lalit Prasad, Commis Central Goods and Service Tax & Central Excise, Rajkot has been appointed as Ap Authority for the purpose of passing orders in respect of appeals filed under Section Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.	ssioner ppellate
ग	अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / / गांधीधाम। दवारा उपरलिखित जारी मूल आदेश से सृजित: / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/A Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :	
U	A to Do b an and any state of the Bart & David and	1-
	M/s Calyx Containers, Plot No. 221/222/234, GIDC Phase - 1 , Anjar Kutch	
	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण अपील दायर कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate a in the following way.	
(A	A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्प अधिनियम ,1944 की धारा 35B के अतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के निम्नलिखित जगह की जा सकती है ।/ Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CE / Under Section 86 of the Finance Act, 1994 an appeal lies to:-	गद शुल्व इ. अंतर्गत
(i)		
(ii	i) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीले सीमा शुल्क, केंद्रीय उत्पाद सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भव अहमदाबाद- ३८००१६ को की जानी चाहिए।/	

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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 (iti) कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुमौना, 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 सहायँक रजिस्टार के नाम में किसी भी सौर्वजिनक क्षेत्र के बैंक दवारा जारी रेखांकित बैंक डाफ्ट दवारा किया जाना चाहिए । संबधित डाफ्ट का भगतान, 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 the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-, HTML article and for grant of stay shall be accompanied by a fee of Rs. 500/-, HTML article ar

होनी चाहिए) और इनमें से कम से कम एक पति के साथ, जहां सेवाकर की मॉग ,ब्याज की मॉग 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 क्रम्शू: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अगलान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक दवारा जारी रेखांकित बैंक डाफ्ट दवारा किया जाना चाहिए । संबंधित डाफ्ट का भगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आर्देश (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 Fs. 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 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 दवारा 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.

- (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 विल्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते ममय 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, वशतें कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशिं दस करोड़ रुपए से अधिक न हो।
 - केन्द्रीय उत्पाद शल्क एवं सेवाकर के अंतर्गत "मांग किए गए शल्क" में जिम्न शामिल हैं
 - धारा 11 डी के अंतर्गत रकम (i)
 - सेनवेट जमा की ली गई मलत राशि (ii)
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देव रकम (iii)

- 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 होगे।/

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.

(B)

भारत सरकार को पुनरीक्षण आवेदन : (C)

Revision application to Government of India: इस आदेश की प्नरीक्षण याचिका निम्नलेखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा इस आदेश का पुनराक्षण याणिका निम्नालखित मामला में, कदाय उत्पाद शुल्क आधानयम, 1994 का यार 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मजिल, जीवन दीप अवन, 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:

यदि माल के किसी नकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से अंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंडार गृह से दूसरे अंडार गृह पारगमन के दौरान, या किसी (i) भंडार गह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखीने या किसी भंडार गह 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

- आरत के बाहर किसी राष्ट्र या क्षेत्र को नियांत कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी मई (ii) केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) 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.
- यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भुटान को माल निर्यात किया गया है। / (111) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2). (iv) 1998 की धारा 109 के दवारा नियत की गई तारीख अथवा सँमायाविधि 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.
- उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिदिष्ट 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 (v) उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर 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. TR-6 की प्रति संलग्न की जानी चाहिए। /
- पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए । जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न (vi) रकम एक लाख रुपये से ज्यादा हो तो रूपये 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 हैं तो प्रत्येक मूल आदेश के लिए शुल्क का अगतान. उपयुक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेंद्री कार्य से बचने के लिए यथौस्थिति अपीलीय नयाधिकरण को एक अपील या कैदीय 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 Ks. 1 lakh fee of Rs. 100/- for each.
- यथासंशोधित ल्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का ल्यायालय शुल्क टिकिट लगा होना चाहिए। / (E) 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.
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय ल्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित (F) एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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.
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, (G) अपीलायीं विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं 1 / 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

Appeal No: 53/GDM/2017 Appellant: Calyx Containers 109

:: ORDER-IN-APPEAL ::

Being aggrieved with the Orders-in-Original No. 21/AC/Anjar/2016-2017 dated 08.03.2017 (hereinafter referred to as impugned order) passed by the Assistant Commissioner, Central Excise, Division: Anjar (hereinafter referred to as Lower Adjudicating Authority) M/s. Calyx Containers, Plot No: 221/222/234, GIDC Phase – I, Anjar (Kutch) (hereinafter referred to the appellants) have filed present appeal.

2.1 The facts of the case are that the appellant are manufacturers of PET bottles and were clearing the same upon payment of Central Excise duty. Upon scrutiny of ER-1 returns for the period from July, 2014 to December, 2015 and from the information submitted by the appellant it was noticed that the appellant had availed and utilized the CENVAT credit on "Caps and Closures" by treating them as inputs for their final products. However, from the sales invoices it was observed that they were selling manufactured PET bottles by mentioning its quantity and not a set of PET bottles & caps i.e. bottle with caps. Thus, it appeared that the appellant were selling only PET bottles i.e without cap.

2.2 The above observations culminated into issuance of Show Cause Notice dated 08.08.2016 wherein it was proposed to recover wrongly availed and utilized CENVAT credit of Rs. 73,848/- on "Cap and Closures" on the grounds that they were not used in or in relation to manufacture of final product i.e. PET Bottles.

3. The said Show Cause Notice dated 08.08.2016 was adjudicated by the Lower Adjudicating Authority vide his impugned order wherein he held that since appellant were selling / clearing the "Caps and closures" separately and not as set of Bottles and Caps therefore the same cannot be treated as "input", defined under Rule 2(k) of CENVAT Credit Rules, 2004. Therefore, he ordered for recovery of such wrongly availed CENVAT credit of Rs. 73,848/- under Rule 14 *ibid* by invoking the suppression clause and also imposed equivalent penalty under Rule 15 *ibid*.

4

Appeal No: 53/GDM/2017 Appellant: Calyx Containers

4. Being aggrieved with the Order-in-Original No. 21/AC/Anjar/2016-17 dated 08.03.2017 disallowing the CENVAT credit the appellant preferred the present appeal and submitted that this is a periodical Show Cause Notice and the earlier order on the same issue has been decided vide Order-in-Appeal No: KCH-EXCUS-000-APP-075 to 078-16-17 dated 22.03.2017 wherein it has been held that the caps meant for bottles are composite part of a container and by showing bifurcated value in the invoices does not alter the facts of the case to add that they are engaged in trading activity and caps are not parts of the bottle to keep it out of purview of "input"; that they sell bottles with caps and also bottles without caps; that while clearing the bottle and caps, they are packed separately, as per normal business practice of the industry; that to be more transparent they have shown the value of the cap separately in their invoice; that merely by showing separately in their invoice does not render the caps outside purview of category of input since their function remains the same; that they placed reliance on the case law of Central Electronics Limited - 2011 (271) ELT (686); that they also stated that they have paid an amount of Rs. 1,01,713/- as duty on clearance of caps whereas the amount of CENVAT credit availed by them is Rs. 73,843/-; that they placed reliance on the case laws of Narmada Chematur Pharmaceuticals Limited - 2005 (179) ELT 276 SC, Narayan Polyplast - 2005 (179) ELT 20 (SC), Punjab Tractors Limited - 2005 (181) ELT 380 SC, Keetex - 2008 (227) ELT 536 (Tri. Mumbai), Ashima Dyecot Limited - 2008 (232) ELT 508 (Tri. Ahmd), Computer Graphics Limited - 2007 (220) ELT 528 (Tri. Chennai), SAIL - 2007 (220) ELT 520 (Tri. Kol), Shree Krishana Industries -2005 (182) ELT 369 (Tri. Mum), Vinayak Industries - 2003 (159) ELT 456 (Tri.), Mahan Plastics - 2002 (140) ELT 160 (Tri), Silvassa Wooden Drums - 2005 (184) ELT 392 (Tri. Mum), Crompton Greaves Limited - 2008 (230) ELT 488 (Tri. Mum); that there is no loss of revenue to the government since the buyers are not entitled to CENVAT credit as packing of edible oils is not a manufacturing activity; that since they have correctly availed CENVAT credit thereof, no penalty is imposable.

6

5. The Central Board of Excise and Customs vide Notification No: 26/2017-Cx(NT) dated 17.10.2017 read with Order No: 05/2017-Service Tax dated 16.11.2017, has appointed undersigned as Appellate Authority under Section 35 of Central Excise Act, 1944 for the purpose of passing orders in these appeals.

6. Accordingly, hearing of this matter was fixed on 23.01.2018 and in response the appellant vide their letter dated Nil received on 22.01.2018 submitted the copy of Order-in-Appeal No: KCH-EXCUS-000-APP-075 to 078-16-17 dated 22.03.2017 and waived the opportunity of personal hearing by requesting that the matter be decided on its basis. However, a personal hearing in the matter was held on 20.02.2018, which was attended by Shri Ghanshyam Sheth, Partner of the appellant firm during which he reiterated the submissions already made in their grounds of appeal.

Discussions & Findings :

7. I have carefully gone through the entire appeal memorandum and the submissions made orally during the personal hearing. I find that appellant has deposited an amount of Rs. 5,539/- vide Challan dated 14.04.2017 being 7.5% of the amount of Rs. 73,848/- confirmed. Thus, I find that there is sufficient compliance to provisions of Section 35F(i) of Central Excise Act, 1944 and accordingly I proceed to decide these three appeals.

8. I find that whole issue has generated from the act of the appellants wherein they have shown the prices of bottles and caps/closures separately in the invoices issued by them. Therefore, the department was of view that they have traded the caps/closures, which is an exempted activity and since it is exempted activity no CENVAT credit of traded goods is admissible.

9. I find from the submission of the appellant that on caps/closures they carry out the process of deflashing, degating, finishing, matching of fitments of caps on semi-finished bottles received

by them; that the final product becomes usable only after such process; that they sell bottles with caps and also bottles without caps; that while clearing the bottle and caps, they are packed separately, as per normal business practice of the industry; that to be more transparent they have shown the value of the caps separately in their invoice; that merely by showing caps/closures separately in their invoice, this does not render the caps/closures outside the purview of "input" since their function remains the same.

 I find that identical issue for the earlier period was a matter of consideration before the Commissioner (Appeals-III), Rajkot and vide Order-in-Appeal No: KCH-EXCUS-000-APP-075 to 078-16-17 dated
22.03.2017 it has been held as under:

> The first and foremost fact of the issue is that "б. caps and PET bottles bought out from the market on which CENVAT credit has been taken are duly assessed to at the time of clearance and duty has been paid by the appellant. This fact is not disputed by the department. Further, it also put on record that PET bottles purchased from market are subjected to the process of de-gating, de-flashing, cap alignment fitting, finishing, etc to make the product usable which again is not challenged. Secondly, caps meant for bottles are composite part of a container which can not be denied. Therefore, showing bifurcated value in the invoice does not alter the facts of the case to hold that the appellants are engaged in trading activity and caps are parts of a Bottle to kept it out from the purview of the "input".....

In light of above decisions, I hold that the as much as duty has been paid on the final product in which the inputs was used and the quantum of duty paid on the final products is not less than the credit taken on the inputs, the whole exercise becomes

8

revenue neutral and therefore no purpose will be served in any of the action covered in the impugned four orders"

11. I find that the facts and circumstances of the case on hand and the earlier cases are same and identical. Therefore, I have no hesitation in holding that the caps and closures are composite part of the containers cleared by the appellants, despite its value shown separately in the invoice as per general practice prevailing in the industry. Thus, they are valid inputs and accordingly the CENVAT credit thereon is admissible.

12. In light of above discussions and findings, I set aside the impugned order of the Lower Adjudicating Authority and allow the appeal filed by the appellant.

Labil. Turne

F. N. V.2/53/GDM/2017 Place: Rajkot. Dated: 16.03.2018

(LALIT PRASAD) COMMISSIONER, CGST & CEX, RAJKOT/ COMMISSIONER (APPEALS-III), CGST & CEX, RAJKOT

By Speed Post To, M/s. Calvy Conte

M/s. Calyx Containers, Plot No: 221/222/234, GIDC Phase –I, Anjar – 370 110 Dist: Kutch.

Copy to:

- The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- The Commissioner, GST & Central Excise, Kutch.
- The Commissioner, GST & Central Excise, Rajkot.
- The Assistant Commissioner, GST & CEX, Anjar Bhachau.
- Appeal File Number 54/GDM/2017
- Appeal File Number 55/GDM/2017
- 7) Guard File.