



::आयुक्त (अपील) 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.  
V2/55/GDM/2017

मूल आदेश सं /  
O.I.O. No.  
22/AC/Anjar/2016-17

दिनांक /  
Date  
08-03-2017

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

**KCH-EXCUS-000-APP-204-2017-18**

आदेश का दिनांक /  
Date of Order: 20.03.2018

जारी करने की तारीख /  
Date of issue: 26.03.2018

26.03.2018

Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पठे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री ललित प्रसाद, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, राजकोट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों 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, Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot 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 Calyx Containers, Plot No. 221/222/234, GIDC Phase - I, Anjar Kutch**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अपीलों 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

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- (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 के 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 fee 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 प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन 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, 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) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं 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.

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

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त टंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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-1 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 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 ::**

Being aggrieved with the Order-in-Original No. 22/AC/Anjar/2016-17 dated 08-03-2017 (**hereinafter referred to as "the impugned order"**) passed by the Assistant Commissioner, Central Excise, Division-Anjar (**hereinafter referred to as the "Lower Adjudicating Authority"**), M/s. Calyx Containers, Plot No: 221/222/234, GIDC Phase-I, Anjar (Kutch) (**hereinafter referred to as "the appellants"**) have filed present appeal.

**2.1** The facts of the case are that the appellants are manufacturer of PET bottles and clear the same on payment of Central Excise duty at appropriate rate. Upon scrutiny of ER-3 returns for the period from July, 2014 to December, 2015 and from the information submitted by the appellants vide letters dated 01-12-2015 and 16-02-2015, it was found that they had manufactured and cleared PET Bottles falling under CETSH No. 3923 3090 and paid Central Excise duty at appropriate rate; that they availed CENVAT credit of Central Excise duty paid on inputs, capital goods and Service Tax paid on input services, under CENVAT Credit Rules, 2004; that they had purchased Caps and Closures from the open market and availed CENVAT credit of duty paid on it by treating the same as "inputs" for their final products i.e. PET bottles. It was also found that they had cleared caps and closures by showing it separately in the sale invoices.

**2.2** Since caps and closures were not used in or in relation to manufacture of final products by the appellants therefore, the same were not "inputs" as defined under Rule 2(k) of the CENVAT Credit Rules, 2004. The appellants have purchased various types of caps and closures and the same were sold without undergoing any process therefore it did not amount to manufacture as per Section 2(f) of the Central Excise Act, 1944. Accordingly, the appellants were not eligible to charge and collect Central Excise duty under Section 3 ibid in respect of these products. However, the appellants had charged in their invoices and collected sums representing duty of Central Excise amounting to Rs.81,319/- without any authority of law during the period of July, 2014 to December, 2015. Thus, the amount of Rs. 81,319/- collected as Central Excise duty, by the appellants on the goods which were not manufactured by them, was required to be appropriated under Section 11D of the Central Excise Act, 1944.



**2.3** Accordingly, a Show Cause Notice dated 08-08-2016 was issued to the appellants proposing demand/recovery of the said amount of Rs.81,319/- under Section 11D of the Central Excise Act, 1944 along with interest. It was also proposed to impose penalty under Section 11AC *ibid* read with Rule 25 of the Central Excise Rules, 2002.

**3.** The said Show Cause Notice was subsequently adjudicated by the Lower Adjudicating Authority vide his impugned Order-in-Original dated 08-03-2017 wherein he held that Caps and Closures cannot be termed as "inputs" since they were not used directly or indirectly in or in relation to manufacture of final products. Further, the said caps and closures were sold as such without undergoing any further process. Therefore, appellants were not legally entitled to charge and collect Central Excise duty thereon however they have collected the same. Therefore, he held that said amount is recoverable under Section 11D(3) of the Central Excise Act, 1944 but since the same has already been deposited therefore no interest is payable. However, he imposed penalty on the appellants equivalent to the amount of confirmed demand under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

**4.** Being aggrieved with the impugned order the appellants have filed the present appeal on the grounds 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 and closures meant for bottles are composite part of the bottles 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 & closures are not parts of the bottle to keep it out of purview of "inputs". Therefore the caps and closures are "inputs" for their final products and hence they have correctly charged Central Excise duty and paid to the credit of government. Therefore, Section 11D of the Central Excise Act, 1944 cannot be invoked in their case and consequently, no penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

**5.** The Central Board of Excise and Customs vide Notification No. 26/2017-C.E. (N.T.) 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 this appeal.

6. Accordingly, personal hearing in the matter was fixed on 23-01-2018 which was informed to the appellants vide letter dated 29-12-2017. In response, the appellants vide their letter dated Nil received on 22-01-2018 submitted a copy of the Order-in-Appeal No. KCH-EXCUS-000-APP-075 to 078-16-17 dated 22-03-2017 and requested to decide the matter. A personal hearing in this 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 oral submissions made by the Partner of the Appellants during the personal hearing held on 20-02-2018. I find that the appellants have deposited an amount of Rs. 6,099/- vide Challan dated 14-04-2017 being 7.5% of the confirmed demand amounting to Rs.81,319/-. 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 the present appeal.

8. I find that whole issue has been generated from the act of the appellants wherein they have shown the prices of bottles and caps separately in the sale invoices issued by them. This lead to the conclusion by the department that they have traded the caps and closures as no manufacturing activity was undertaken by the appellants and it was a case of trading of caps and closures. Therefore, they cannot charge and collect Central Excise duty under Section 3 of the Central Excise Act, 1944, on caps and closures sold by them. I also find that in this case suppression clause has been invoked to confirm the demand and also penalty has been imposed on the appellants.

9.1 I find from the grounds of appeal filed by the appellants that they are manufacturer of PET bottles and procured Caps and Closures from other manufacturers on which they have availed CENVAT credit, thus they have contended that the caps and closures were their "inputs" and just by showing the value of the caps and closures separately in their invoice does not render the caps and closures outside from the purview of inputs since their function remains the same.





**9.2** I find that the appellants were served with another Show Cause Notice, dated 08-08-2016 for the same period which is covered under present appeal, for recovery of wrongly availed CENVAT credit on caps and closures under Rule 14 of the CENVAT Credit Rules, 2004. The said show cause notice was adjudicated by the Lower Adjudicating Authority vide Order-in-Original No. 21/AC/Anjar/2016-17, dated 08-03-2017 wherein it has been held that the caps and closures cannot be termed as "inputs" since the value of the same was shown separately in their invoices. Therefore demand of wrongly availed CENVAT credit was confirmed under Rule 14 of the CENVAT Credit Rules, 2004 and penalty under Rule 15 ibid read with Section 11AC of the Central Excise Act, 1944 was imposed. The Appellants filed appeal No. 53/GDM/2017 against the said Order-in-Original and the same stands decided vide Order-in-Appeal dated 16-03-2018 by this Appellate Authority wherein it has been held that the caps and closures are their valid inputs and just because they have shown value of the caps and closures separately in the sale invoices does not lead to the conclusion that they are not valid inputs.

**9.3** I further 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:

*"6. The first and foremost fact of the issue is that 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 not part of a Bottle to kept it out from purview of the "input"....*

.....  
.....

*In light of the above decisions, I hold that as much as the duty has been paid on the final products in which 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 therefore becomes revenue neutral and therefore no purpose will be served in any of the action covered in the impugned four orders"*



**9.4** 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 PET bottles cleared by the appellants, despite its value shown separately in the invoices as per general practice prevailing in the industry. Thus, they are valid inputs and since the caps and closures are their valid inputs, they have legally collected the amount of Central Excise duty from their buyers. Also they have already deposited the said amount of Central excise duty collected from the buyers in the Government account, therefore, provisions of Section 11D of the Central Excise Act, 1944 cannot be invoked in this case. Thus, in these circumstances I hold that the demand under Section 11D ibid does not survive and therefore, no penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 can be imposed on the appellants.

**10.** In view of the above discussions, I set aside the impugned order and allow the appeal filed by the appellants.

F. No. V.2/55/GDM/2017  
Place: Rajkot.

Dated: 20-03-2018

(LALIT PRASAD)

COMMISSIONER, CGST & CEX, RAJKOT/  
COMMISSIONER (APPEALS),  
CGST & CEX, RAJKOT

**By Speed Post**

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

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Kutch Commissionerate, Gandhidham.
- 3) The Commissioner, GST & Central Excise, Rajkot Commissionerate.
- 4) The Assistant Commissioner, GST & CEX, Anjar - Bhachau.
- 5) Guard File