



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 / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/105/RAJ/2016	मूल आदेश सं / O.I.O. No. 26/D/2015-16	दिनांक / Date 28.03.2016
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-025-2017-18

आदेश का दिनांक / Date of Order: 11.07.2017 जारी करने की तारीख / Date of issue: 12.07.2017

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

ग अथवा 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 Appellant & Respondent :- M/s. Shri Pravinbhai Bhagwanjibhai Marvania Director of M/s. Soham Papers P. Ltd, Lakhdhinagar (Navagam) Road, At Lilapar, Morbi-363641

इस आदेश(अपील) से व्यक्ति कोड़े 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 अपील 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील 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 बतलाए गए अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, बहामली भवन असावा अहमदाबाद को की जानी चाहिए। / To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर निवमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है। इनमें से कम से कम एक प्रति के 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, व्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 दर्जे की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्याय आवृत्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (जन्मे से एक प्रति प्रमाणित होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त अध्याय आवृत्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलार्थी 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 Form 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 अपीलार्थी न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इले आदेश के प्रति अपीलार्थी न्यायाधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' में निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेस्टैट जमा की गयी गई राशि
 - (iii) सेस्टैट जमा नियमवली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किली अपीलार्थी न्यायाधिकरण के समक्ष विचारार्थी न्यायन 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.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
 इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अथवा 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-35 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 से 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 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 इव्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत प्रत्येक की गई है और ऐसे आदेश जो आवृत्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लघु अथवा समानाधिकार 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 उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 Chellan 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, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की विच्छा पड़ी रुपये से बचने के लिए क्याचिनि अपीलार्थी न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if exising Rs. 1 lakh fee of Rs. 100/- for each.

(E) सहायक न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्वयं आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट जमा 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 अपीलार्थी न्यायाधिकरण (क्याचिनि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को ध्यान में रखते हुए अपीलार्थी न्यायाधिकरण को अपील 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.

(G) उपरोक्त अपीलार्थी न्यायाधिकरण को अपील दर्जित करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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

:: ORDER IN APPEAL ::

Shri Pravinbhai Bhagwanjibhai Marvania (hereinafter referred to as 'the appellant'), Director of M/s. Soham Paper Mills Private Limited, Lakdhirnagar (Navagam) Road, At: Lilapar, Morbi-363641(a manufacturing unit and hereinafter referred to as "M/s. Soham") had filed the present appeal, against the Order-in-Original No. 26/D/2015-16 dated 28.03.2016 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise Division, Morbi (hereinafter referred to as 'the lower adjudicating authority').

2 The facts of the case in brief are that the search operations carried out by the Department on 17.07.2012 at M/s. Soham Paper Mills Private Limited, Morbi revealed that M/s. Soham had received total Rs.72,66,926/- from M/s. Gajanand Packaging, Morbi for duplex board without discharging Central Excise Duty. Further investigation carried out and many statements recorded, which culminated in issuance of show cause notice No. IV/03-10/D/DC/2014-15 dated 11.02.2016 to M/s. Soham as well as the appellant and others. M/s. Soham had made payment of Rs. 4,58,180/- against the central excise duty demanded along with interest amount of Rs. 5,371/- and penalty @ 15% amounting to Rs. 68,727/- on 21.07.2012 and 09.08.2012 and thereby vide their letter dated 03.03.2016 taking immunity under provisions of Section 11AC(1)(d) of the Act read with para ii to Explanation - 1 to Section 11AC of the Act as amended and substituted w. e. f. 14.05.2015 by Section 94 of the Finance Act, 2015. The SCN was adjudicated by the lower adjudicating authority vide impugned order, wherein all the proceedings in respect of the duty demanded under Section 11A(4) of the Act, interest under Section 11AA of the Act and penalty under Section 11AC of the Act against M/s. Soham have been concluded but imposed a penalty of Rs. 40,000/- under Rule 26 of the Central Excise Rules, 2002 (hereinafter referred as "the Rules") upon the appellant and others.

3. Being aggrieved by the impugned order, the appellant filed the present appeal on the following grounds:

(a) The lower adjudicating authority had granted personal hearing only to M/s. Soham and not the appellant i.e. violation of natural justice.

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(b) M/s. Soham had already paid the entire amount of Central Excise Duty, Interest and Penalty as applicable within prescribed time. The imposition of penalty under Rule 26 of the Rules on the appellant should be set aside for which they placed reliance upon following case laws:

- (i) Vikas Garg – 2014 (306) E.L.T. 94 (P&H).
- (ii) Nirmal kumar Agarwal – 2013(298) E.L.T. 51(Tri-Del.)
- (iii) Anand Agarwal – 2011(288) E.L.T. 90(Tri.-Del.)
- (iv) Tikam P. Bhojwani – 2011(272) E.L.T.88 (Tri-Ahmd.)
- (v) Raman Gandhi – 2015(323) E.L.T. 579 (Tri.-Del.)

(c) Rule 26(1) of the Rules has been amended vide Notification No. 08/2016-Central Excise (NT) dated 01.03.2016, which does not allow imposition of penalty under Rule 26 in such cases.

4. Personal Hearing in the matter was held on 27.06.2017. Shri Vikas Mehta, Consultant, appeared on behalf of the appellant and reiterated the grounds of appeal. Shri Vikas Mehta drawn attention towards Notification 8/2016-C.E. (N. T.) dated 01/03/2016 in support of their case and requested to allow the present appeal by setting aside penalty on Shri Pravinbhai Bhagwanjibhai Marvania.

FINDINGS:

5. I have carefully gone through the records of appeal memorandum including impugned order and the documents submitted by the appellant during personal hearing. The issue to be decided in the present appeal is as to whether the appellant is liable to penalty under Rule 26 or otherwise.

6. I find that the lower adjudicating authority has observed that M/s. Soham through the appellant had adopted modus operandi to clear excisable goods without payment of central excise duty and hence penalty under Rule 26 of the Rules is justified. However, it is also a fact that M/s. Soham had paid the entire amount of Central Excise Duty, Interest and Penalty as applicable within prescribed time and before issue of SCN.

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7. I also find that entire proceeding against M/s. Soham have been concluded vide impugned order by granting them immunity under provisions of Section 11AC (1) (d) of the Central Excise Act, 1944 read with para (ii) to Explanation – 1 to Section 11AC of the Central Excise Act, 1944 substituted w. e. f. 14.05.2015, which reads as under:

11AC. (1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows.—

- (a).....
- (b).....
- (c).....

(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen percent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;

- (e).....
- (2).....
- (3).....

Explanation 1.— For the removal of doubts, it is hereby declared that—

(i) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before the date on which the Finance Bill, 2015 receives the assent of the President shall be governed by the provisions of section 11AC as amended by the Finance Act, 2015;

(ii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been issued but an order determining duty under sub-section (10) of section 11A has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, shall be eligible to closure of proceedings on payment of duty and interest under the proviso to clause (a) of sub-section (1) or on payment of duty, interest and penalty under clause (d) of sub-section (1), subject to the condition that the payment of duty, interest and penalty, as the case may be, is made within thirty days from the date on which the Finance Bill, 2015 receives the assent of the President;

(iii).....
Explanation 2.—

(Emphasis supplied)

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7.1 Para (i) to Explanation – 1 to Section 11AC of the Central Excise Act, 1944 makes it very clear that in the event of proceedings where no show cause notice has been issued before the date on which the Finance Bill, 2015 receives the assent of the President shall be governed by the provisions of Section 11AC as amended by the Finance Act, 2015.

7.2 It is a fact on record that the impugned SCN had been issued on 11.02.2016 i. e. after the date on which the Finance Bill, 2015 received the assent of the President (14.05.2015) and therefore, the provisions of para (i) to Explanation 1 to Section 11AC of the Central Excise Act, 1944 would be applicable instead of para (ii) to Explanation 1 to Section 11AC of the Central Excise Act, 1944 as held by the lower adjudicating authority.

8. Section 11AC of the Act was amended by the Government, as it evident from the amended provisions, to reduce litigation in penalty related cases and assesseees were given opportunity to settle their tax disputes and get the proceedings closed on payment of duty, interest thereon and reduced penalty @ 15% of duty within specified period. I find no penalty is imposable against the appellant under Rule 26 of the Central Excise Rules, 2002 when the main noticee i.e. M/s. Soham Paper Mills Pvt. Ltd. had paid duty along with interest and penalty at appropriate rate and the entire proceedings have been held to be concluded in terms of Section 11AC (1)(d) of the Central Excise Act, 1944. The judgement of the Hon'ble High Court of Punjab and Haryana in the case of Vikas Garg reported as 2014 (306) ELT 94 (P & H) is squarely applicable in the present case, wherein the High Court has held -

"6. We do not find any merit in the said argument. Once the proceedings against the firm stand concluded, penalty proceedings against partners of the firm cannot continue as Rule 26 of the Rules is not an independent provision but has to be read with Section 11A of the Act. The firm has satisfied the due of the Revenue, therefore, the imposition of penalty under Rule 26 of the Rules are not justified."

8.1 I also rely upon the decision of the Hon'ble CESTAT in the cases of Abir Steel Rolling Mills reported as 2013-TIOL-1048-CESTAT-DEL and VIP INDUSTRIES LTD reported as 2015-TIOL-1931-CESTAT-AHM, wherein the same view has been held.

9. It is also on record that Rule 26 of the Rules has been amended vide

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Notification No. 08/2016-Central Excise (NT) dated 01.03.2016 at para 7, which reads as follows:

7. In the said rules, in rule 26, after sub-rule (1), the following proviso shall be inserted, namely:-

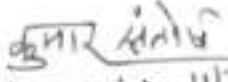
"Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded."

10. It is on record that the proceedings vide SCN dated 11.02.2016 in respect of duty, interest and penalty for the main notice i. e. M/s. Soham were treated as concluded under clause (d) of Section 11AC(1) of the Act vide the impugned order dated 28.03.2016, then the appellant was not required to be imposed penalty under amended Rule 26 of the Rules. Since full duty, interest and penalty had been paid by M/s. Soham and their proceedings were treated as concluded and no appeal has been filed by the department against the impugned order, penalty against the appellant shall also be deemed to be concluded as per amended Rule 26 of the Rules.

11. In view of above facts and circumstances of the case, I allow the appeal and set aside the penalty imposed on the appellant under Rule 26 of the Rules.

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

12. The appeal filed by the appellant stands disposed off in above terms.


(कुमार संतोष) 11/7/2017
आयुक्त (अपील्स)

By R.P.A.D.

To,

Shri Pravinbhai Bhagwanjibhai Marvania, Director of M/s. Soham Papers Private Limited, Navagam Road, Lilapar, Morbi.	श्री प्रवीनभाई भगवांजिभाई मरवानिया, डाइरेक्टर ऑफ मै. सोहम पपर्स प्राइवेट लिमिटेड, नवागाम रोड, लीलापर, मोरबी.
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Copy to:

- 1) The Chief Commissioner, CGST & C. Ex., Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, CGST & C. Ex., Rajkot Commissionerate, Rajkot.
- 3) The Assistant Commissioner, CGST & C. Ex. Division, Morbi
- 4) The Superintendent, CGST & C. Ex., AR-Morbi
- 5) Guard File.