



आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL 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.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/214 to 218/RAJ/2016	10 to 22/D/AC/2016-17	12.08.2016
	V2/168/RAJ/2017	75/R/AC/2016-17	09.03.2017

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

RAJ-EXCUS-000-APP-043-TO-048 -2017-18

आदेश का दिनांक / 11.09.2017 जारी करने की तारीख / 13.09.2017
Date of Order: Date of issue:

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

ग अगर आयुक्त/ आयुक्त आयुक्त उपायुक्त सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामगढ़ / गंधीधाम द्वारा उपरलिखित जारी मूल आदेश से नृजित /
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 :-

1. M/s. Kich Industries, Plot No. 76 to 89, S No. 38/1, Bhaichand Mehta Ind. Estate, Rajkot,,
2. M/s Kich Manufacturers, Dhebar Road(South), Atika, Yogeshwar Main Road, Rajkot
3. M/s Fitwell Technologies P. Ltd., Yogeshwar Main Road, Atika, Dhebar Road(South),Rajkot
4. M/s Jay Bajarang Industries, Yogeshwar Main Road, Atika, Dhebar Road(South),Rajkot
5. M/s.Kich Industries(unit-II), Plot No.76 to 89,S No.38/1,Bhaichand Mehta Ind. Est, Rajkot

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 अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अपिलेशन, 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 मूल्योंकन से सम्बन्धित सभी मामले 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 बतला गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन अलावा अहमदाबाद- 380016 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) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉज, ब्याज की रॉज 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 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/- 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/-.

(iv) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जित 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 रॉज, ब्याज की रॉज 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 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/- 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 नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित पत्र S.T.-7 में की जा सकेगी एवं उसमें लघु आवकत, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (उनमें से एक प्रति प्रामाणिक होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, 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 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 अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील 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 मात्र के 10 प्रतिशत (10%), जब मात्र एवं नुसंका विवादित है, या नुसंका, जब केवल नुसंका 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 विन्म शामिल है।
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेल्वेट जमा की डी नई गतत राशि
(iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विवादार्थीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगी।
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 प्राधिकार विम्वनितिकित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन टॉप भवन, बंगला 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 मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र 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 मात्र के प्रदंकरण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र के नुकसान के सम्भवे 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 मात्र के विनिर्माण में प्रयुक्त किये गए मात्र पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबैट) 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 मात्र निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) मुजिविदा उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मात्र की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समयावधि पर या बाद में पारित किए गए हैं। /
Credits 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 पत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघेषण 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 साध्य 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।
जहां संलग्न रकम एक लाख रुपये या उससे कम है 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 लघु के होते हुए भी की लिया गईं रुपये से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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 Appellate 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) कक्षासंशोधित 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-1 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 सम्बन्धित मामलों को अभिगमित करने वाले नियमों की और भी ध्यान आकर्षित किया जाएगा 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 दर्जित करने में सम्बंधित कक्षाएं, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विदेशीय 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

:: ORDERS IN APPEAL ::

The present six appeals have been filed by the five appellants, as listed below in column 3 of the Table, against Two orders in original bearing No.s (i) 10 to 22/D/AC/2016-17 dated 12.08.2016 and (ii) 75/R/AC/2016-17 dated 09.03.2017 (hereinafter referred as "impugned orders"), passed by the Assistant Commissioner, GST & Central Excise Division- I Rajkot (hereinafter referred to as "the adjudicating authority"):

Sr No.	Appeal No.	Appellant	Amount Involved	Period	Remarks
1	2	3	4	5	6
OIO No. 10 to 22/D/AC/2016-17 dated 12.08.2016					
1	V2/ 214/RAJ/ 2016	M/s. Kich Industries, Plot No. 76 to 89, S No. 38/1, Bhaichand Mehta Ind Estate, Vavdi, Rajkot	33,80,821/-	Oct, 2007 to Dec, 2010	Appellant No. 1
2	V2/215/RAJ/ 2016	M/s. Kich Manufacturer, New Kailash Society, Yogeshwar Road, Opposite Nagbai Ind, Dhebar Road, South, Atika, Rajkot	4,23,459/-	Feb, 2008 to April, 2010	Appellant No.2
3	V2/216/ RAJ/ 2016	M/s. Fitwell Technologies P Ltd, Yogeshwar Main Road, Opp. Nagbai Industrieis, Atika, Dhebar Road (South), Rajkot	32,84,465/-	Jan, 2008 to April, 2011	Appellant No.3
4	V2/217/ RAJ/ 2016	M/s. Jay Bajrang Industries, Yogeshwar Main Road, Dhebar Road(South), Atika, Rajkot	12,61,505/-	January, 2008 to February,2009	Appellant No.4
5	V2/218/ RAJ/2016	M/s. Kich Industries (unit-II) Plot NO. 76 to 89, S No.38/1, Bhaichand Mehta Ind Estate, Vavdi, Rajkot	2,20,51,444/-	Oct, 2008 to March, 2016	Appellant No.5
OIO NO.75/R/AC/2016-17 dated 09.03.2017					
6	V2/168/ RAJ/2017	M/s. Kich Industries (unit-II) Plot NO. 76 to 89, S No.38/1, Bhaichand Mehta Ind Estate, Vavdi, Rajkot	34,99,712/-	April, 2016 to Sept, 2016	Appellant No.5



2. Brief facts of the case are that Appellant No.1 to 5 are engaged in manufacturing of goods falling under chapter 94 of the Central Excise Tariff Act, 1985 on conversion basis for M/s. Kich Marketing Private Limited, Yogeshwar Main Road, Dhebar Road South, Atika, Rajkot now renamed as Kich Architectural Pvt. Ltd. (hereinafter referred to as the "**Principal Manufacturer**").

2.1. The procedure adopted for manufacture & clearance of the goods by the Appellants and the Principal Manufacturer is that the raw material is purchased by the Principal Manufacturer and supplied to the Appellants who manufactures goods on job work basis and supplies back the manufactured goods to the Principal Manufacturer. The Principal Manufacturer carries out activity of affixing brand name, polishing, putting up screws and such necessary accessories with manufactured goods, carries out activity of packing and then sells out the goods in open market.

2.2. Due to change in Central Excise Valuation Rules, 2000 (hereinafter referred to as "the Valuation Rules") with effect from 01.04.2007, i.e. introduction of the provisions of Rule 10A with the fact from 01-04-2007, the applicants requested the JAC to assess their returns under the provision of Rule 7 of Central Excise Rule 2002. After various correspondence between JRS, JAC and appellant, the JAC clarified that the returns filed by them need not be assessed in terms of the provisions of Rule 7 of Central Excise Rules and also clarified that neither the provisions of Rule 8 nor Rule 10A (iii) of the Central Excise Valuation Rule 2000 are applicable but the provisions of Rule 10A (ii) of Valuation Rules is applicable. The appellants discharged differential duty on the final sale value of Principal Manufacturer in addition to duty discharged by them on the basis of value arrived at by their Chartered Accountants. They further decided not to collect differential duty from their Principal Manufacturer and decided to claim refund of duty from the department being not agree with the department's view. Accordingly, all the Appellant approached the same assessment and preferred refund claims of differential duty paid by them for different periods during Oct, 2007 to April,2016. Details of the refund claims are as Tabulated under:-



Sr. No.	Name of the Claimant	Date of filing of claim for refund	Amount (Rs.)	Period covered
Appellant No.1				
1	M/s. Kich Industries	29.08.2008	13,96,646/-	Oct-07 to Nov-07
2	M/s. Kich Industries	29.08.2008	3,74,490/-	Dec-07
3	M/s. Kich Industries	16.07.2008	5,400/-	Jan-08 to Mar-08
4	M/s. Kich Industries	27.04.2008	10,30,543/-	Apr-08 to Aug-08
5	M/s. Kich Industries	04.05.2009	5,34,100/-	Sep-08 to Mar-09
6	M/s. Kich Industries	15.03.2010	34,634/-	Apr-09 to Dec-09
7	M/s. Kich Industries	16.05.2011	4,808/-	Feb-10 to Dec-10
Total			33,80,621/-	
Appellant No.2				
1	M/s. Kich Manufacturers	16.09.2008	3,76,477/-	Feb-08 to Mar-08
2	M/s. Kich Manufacturers	16.03.2009	46,128/-	Apr-08 to Dec-08
3	M/s. Kich Manufacturers	15.03.2010	66/-	Apr-09 to Dec-09
4	M/s. Kich Manufacturers	07.03.2011	788/-	Apr-10
Total			4,23,459/-	
Appellant No.3				
1	M/s. Fitwell Technologies	10.12.2008	21,91,301/-	Jan-08 to Mar-08
2	M/s. Fitwell Technologies	23.03.2009	53,468/-	Apr-08 to Jul-08
3	M/s. Fitwell Technologies	05.06.2009	8,73,069/-	Aug-08 to Sep-08
4	M/s. Fitwell Technologies	05.06.2009	1,09,394/-	Oct-08 to Mar-09
5	M/s. Fitwell Technologies	15.03.2010	49,069/-	Apr-09 to Dec-09
6	M/s. Fitwell Technologies	15.02.2011	6,884/-	Jan-10 to Jan-11
7	M/s. Fitwell Technologies	19.08.2011	1,280/-	Feb-11 to Apr-11
Total			32,84,465/-	
Appellant No.4				
1	M/s. Jay Bajrang Industries	16.07.2008	11,81,732/-	Jan-08 to Mar-08
2	M/s. Jay Bajrang Industries	16.03.2009	79,773/-	Apr-08 to Feb-09
Total			12,61,505/-	

Appellant NO. 5				
1	M/s. Kich Industries, (Unit-II)	22.06.2009	6,68,934/-	Oct-08 to Mar-09
2	M/s. Kich Industries, (Unit-II)	29.03.2010	14,59,148/-	Apr-09 to Dec-09
3	M/s. Kich Industries, (Unit-II)	03.05.2010	3,87,792/-	Jan-10 to Mar-10
4	M/s. Kich Industries, (Unit-II)	07.03.2011	22,57,035/-	Apr-10 to Dec-10
5	M/s. Kich Industries, (Unit-II)	16.12.2011	10,21,991/-	Jan-11 to Mar-11
6	M/s. Kich Industries, (Unit-II)	19.03.2012	18,01,640/-	Apr-11 to Nov-11
7	M/s. Kich Industries, (Unit-II)	16.04.2012	8,89,619/-	Dec-11 to Mar-12
8	M/s. Kich Industries, (Unit-II)	26.02.2013	10,82,816/-	Apr-12 to Oct-12
9	M/s. Kich Industries, (Unit-II)	04.06.2013	5,52,351/-	Nov-12 to Mar-13
10	M/s. Kich Industries, (Unit-II)	24.12.2014	13,14,449/-	Apr-13 to Oct-13
11	M/s. Kich Industries, (Unit-II)	17.06.2014	3,31,522/-	Nov-13 to Mar-14
12	M/s. Kich Industries, (Unit-II)	25.02.2015	37,03,087/-	Apr-14 to Dec-14
13	M/s. Kich Industries, (Unit-II)	21.05.2015	11,07,645/-	Jan-15 to Mar-15
14	M/s. Kich Industries, (Unit-II)	19.01.2016	29,02,398/-	Apr-15 to Nov-15
15	M/s. Kich Industries (Unit-II)	25.04.2016	25,70,987/-	Dec-15 to Mar-16
			2,20,51,444/-	

2.3 The adjudicating authority during the course of deciding the above refund claims, issued a common Show Cause Notice No. V.84(18)-MISC-9/2009 dated



06.11.2009 to all appellants and a Show Cause Notice V.18-2407/Ref dated 16.12.2016 to the Appellant No.5 proposing to deny the refund claim made by them. The said refund claims were decided by way of impugned order wherein the adjudicating authority rejected all above refund claims.

3. Being aggrieved with the impugned order appellants filed appeal on the following grounds-

(i) The adjudicating authority has erred in rejecting the refund on the ground discussed in Para 22 and 29 of the impugned order; that the observation of the adjudicating authority that the decision of Hon'ble CESAT, Ahmedabad in the case of M/s. Rolastar Pvt Ltd Does not apply is bad in law .

(ii) The Adjudicating authority erred in rejecting the refund claim on the ground that the provisions of Rule 10A (ii) of the Central Excise Valuation Rules are applicable to the facts of the case and hence the refund as claimed is not allowed.

(iii) The ground of the rejection of the refund claim that the word "some other place" would also include the 'factory of the Principal Manufacture' is erroneous. The word "other Place" itself indicates that the premises referred is the premises, other than the premises of the Principal Manufacturer.

(iv) The adjudicating authority has ignored the fact that the principle manufacturer after receipt of the goods undertakes some activity i.e. hand polishing, branding and packaging with standard accessories and hence it is established beyond doubt that the goods under consideration even after transferring to the Principal Manufacturer are not sold in same condition as cleared from the appellants and hence the provisions of Rule 10A (ii) of the Valuation Rules would not applicable as the process undertaken by the Principal Manufacture does not amount to manufacturer which is also not disputed by the department and hence Rule 8 of the Valuation Rules would not be applicable. Therefore, formula declared by Hon'ble Supreme Court in the case of M/s. Ujagar Prints and as clarified by the Hon'ble CESTAT, Ahmedabad would be applicable according to which assessable value would be Raw Material cost Plus Job Charges only and the duty paid in excess of such valuation would be refundable to them along with interest as the refund is not sanctioned within the prescribed time limit.

4. Personal hearing in the matter was attended by Shri Paresh V Sheth on behalf of all the appellants and he reiterated the grounds of appeals. He also submitted a written submission pointing out that their case is not covered under Rule 10 A (ii) as principal manufacture are affixing brand, polishing and putting screws &



other accessories & doing packing before goods are sold. Thus, the goods are not being cleared as such. They also contended that Rule 10A(ii) would be applicable if the goods are cleared to depot/consignment agent from job worker; that at the most they could be covered under Rule 10A9(iii) and then the value arrived at will be job worker + material cost only and not the margin of branding and value of accessories is to be deducted and also cost of freight. Shri Sheth referred and relied upon the case laws of M/s. Rolastar Pvt Ltd reported as 2012 (276) ELT 87 (Tri-Ahd) confirmed by Hon'ble Supreme Court reported as 2013(298)E.L.T. A186 (S.C.), M/s. Indian Extrusion Ltd reported in 2012 (283)ELT 209(Tri- Mumbai), M/s. Advance Surfactants India Ltd reported as 2011 (274) ELT 261 (Tri. Bang) and in the case of M/s. Kitex Ltd reported as 2016 (338)ELT 174(SC).

4.1. The written submission filed by Shri Paresh Sheth, on behalf of all the appellants during the personal hearing wherein it was *inter-alia* contended as under:-

(i) All the applicants, prior to 01.04.2007, were discharging duty on the basis of the formula prescribed by the Honorable Supreme Court in the case of M/s. Ujagar Prints. On account of introduction of the provisions of Rule 10A in the Central Excise valuation Rules 2000 with the fact from 01-04-2007, the applicants requested the adjudicating authority to assess their returns under the provision of Rule 7 of Central Excise Rule 2002. The adjudicating authority clarified that the returns need not be assessed in terms of the provisions of Rule 7 of Central Excise Rules. The said authority also informed that neither the provisions of Rule 8 nor Rule 10A (iii) of the Central Excise Valuation Rule 2000 are applicable but the provisions of Rule 10A (ii) of Central Excise Valuation (Determination of Price of Excisable Goods) Rule 2000 is applicable. The said contention of the adjudicating authority was not agreeable and therefore they decided to discharge duty on the final value of M/s. Kich Marketing Pvt. Ltd., not to collect differential duty from M/s. Kich Marketing Pvt. Ltd. and instead, to claim refund of duty from the department.

(ii) M/s. Kich Marketing Pvt. Ltd. i.e. Principal Manufacturer carried out an activity of affixing brand name, polishing, putting up, screw and other necessary accessories with the said manufacture goods and then packing. In other words, the said M/s. Kich Marketing Pvt. Ltd. was under taking some activity on the manufactured goods, though not amounting to manufacture, and then was selling the goods in the market. (Para 2 of the show cause notice). In other words the goods manufactured and supplied to M/s. Kich Marketing Pvt. Ltd. were not sold in as is condition.



(v) The applicants say and submit that during such process, the preventive officers visited the factory premises of M/s. Kich Industries and after investigation, proposed to club clearances of all other units with the clearance of M/s. Kich Industries. Meanwhile, the department issued show cause notice, proposing rejection of refund claim. Since the investigation was under going, the department issued common show cause notice, proposing rejection of refund claim filled by all the aforesaid applicants. Pending adjudication of the show cause notice issued by the Commissioner of Central Excise, Rajkot, proposing clubbing of clearances of all the appellants, the show cause notices under consideration were kept in abeyance.

(vi) The show cause notice, proposing clubbing of clearances of all the applicants in the clearance value of M/s. Kich Industries was adjudicated by the Commissioner of Central Excise, Rajkot vide Order in Original No. 17 to 20/Commr/2012 dtd. 16-03-2012. The said order was challenged before the Honorable CESTAT, Ahmedabad. The Honorable CESTAT, Ahmedabad set aside the order vide order dtd. 22-11-2012 and settled the law that all the units are independent units and the clearance clubbed by the department did not correct. The Honorable Gujarat High Court vide order dtd. 10-10-2013 dismissed the departmental appeal number 643 to 648 of 2013 on the ground that the Tax Appeals are not maintainable and the only remedy available with the department is to file appeal before Honorable Supreme Court under Section 35L. The said order was accepted by the department as informed vide letter dtd. 24-12-2013 from file no. 387/W/66/2013-JC. The same is referred by the Honorable Additional Commissioner in his Order in Original No. 166/ADC(BS)/2014 dtd. 06-01-2014 in the case of M/s. Kich Marketing Pvt. Ltd.

(vii) They referred the decision of Honorable CESTAT Ahmedabad on the identical issue in the case of M/s. Rolastar Pvt. Ltd. reported in 2012 (276) ELT (87) and M/s. Indian Extrusions reported as 2012(283)ELT-209 before the adjudicating authority.

FINDINGS

Kich 5. I have carefully gone through the impugned order, grounds of appeal, records of personal hearing and written submission filed by the appellants. I find that the moot point involved in the refund claimed by the appellants is valuation of job worked goods where principal manufacturer, on receipt of said goods, carrying out polishing, branding, packing with bought out screws, other accessories etc. which activities do not amount to manufacture, before selling the goods in the market.



6. I find that the relevant facts for consideration in the present issue are that the appellants are manufacturing excisable goods on job work basis and clearing back to the Principal Manufacturer. The Principal Manufacturer at his end carries out polishing of said goods, affixing his brand name, packing after putting up screw and some related accessories before selling the said job worked goods in the market. It has not been disputed by the department that the activities carried out by the Principal Manufacturer is not manufacturing activity and hence they are not liable to pay central excise duty. However, the department is of the view that Rule 10A (ii) of the Valuation Rules is applicable in this case and the appellants i.e. job workers of the Principal Manufacturer are required to pay central excise duty on the value at which principal manufacturer sells the goods in the market. To understand the provisions of Rule 10A(ii) of the Valuation Rules, the same is reproduced below:-

"10A. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as Principal Manufacturer), then,-

(i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods 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 said goods from the factory of job-worker;

(iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods:

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation- For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorized by him."

(Emphasis supplied)

6.1. The reading of Rule 10A (ii) reveals that it applies to determine the value of the goods in case (i) goods are not sold by principal manufacturer from the factory of the job worker and (ii) goods transferred to some other place from where the **said goods** are sold. In the instant case, first condition is satisfied as the goods are not sold at the factory of the job worker. However, second condition is not satisfied as the goods returned back to the principal manufacturer, which undergo



further processing and hence the goods sold are not "said goods". The word "said goods" used in Rule 10 A(ii) defines scope of Rule 10A (ii) as legislated, which is that the manufactured goods cleared by job worker are to be sold without undertaking any process at the hand of the principal manufacturer i.e. going into the hand of the buyers either from the factory gate of the job worker or from any other place like depot or consignment agent of the principal manufacturer in the same condition as cleared from the job worker. This is not happening in the present case. To be more precise, the goods sold by the principal manufacturer are not the "said goods" which are transferred to them from the job workers since the said goods undergo processes of polishing, branding, packing after putting screws and some accessories at the end of the principal manufacturer. Therefore, it can not be said that the goods which are transferred to the principal manufacturer from the job workers/ Appellants are actually sold as it is or in the same condition. Hence, it cannot be said that the "said goods" are sold from where it was transferred to by the job worker. The job workers have not transferred the goods to a selling place but returned to the Principal Manufacturer for further processing, however, these processes do not amount to manufacture. The essence of Rule 10A (ii) is that central excise duty is to be charged at the price of the goods sold by the Principal Manufacturer if the said goods are not subjected to further processes. However, in the present case, the goods cleared by the job workers are subjected to further processing. Hence, Rule 10A (ii) is not applicable in the present case.

6.2 The department is proposing that the value of the job worked goods to be taken for payment of central excise duty should be the price at which Principal Manufacturer is selling the goods after carrying out non-manufacturing activities. If the department's view is accepted, then the activities undertaken by the Principal manufacture in form of "Polishing", "Branding", "placing screws and few bought out accessories in the packing", and "packing" will have to be considered as 'manufacture' whereas these processes are not manufacture as per Section 2(f) of the Act and these processes are also not deemed 'manufacture' as per Chapter Note or Section Note. Since the Principal Manufacturer is not carrying out manufacturing processes and this fact has not been disputed by the department in the Show Cause Notice or even in impugned order, then selling price of the Principal Manufacturer has to be considered as inclusive of Trading Margin, on which central excise duty cannot be demanded. In this case, job workers i.e. appellants are manufacturer as rightly held by the adjudicating authority and goods returned to the Principal Manufacturer, who undertakes further processes, not amounting to manufacture, then, central



excise duty can't be demanded from Appellant/ job workers at the sale price of the further processed goods. This situation is best explained as value addition done outside the factory of clearance of said goods where processes undertaken are not amounting to manufacture. In such a scenario, central excise law does not permit to charge central excise duty on value addition due to non-manufacturing processes. This is a peculiar situation not covered under Rule 10A (ii) and this is no more *res integra* in light of the decisions of CESTAT and Hon'ble Supreme Court / High Courts as discussed below:

7. I find that the Hon'ble CESTAT, Mumbai in the case of M/s. Indian Extrusions reported as 2012(283) ELT 209 (Tri-Mumbai) has discussed the issue of valuation of job worked goods where goods returned to principal manufacturer, who had consumed the said goods for packing of their final products. Hon'ble Tribunal in this case, after discussing the provisions of Rule 10A and Rule 8 of the Valuation Rules held that revenue can take recourse to provision of Rule 11 of the Valuation Rules. Relevant portion of the decision is reproduced below:-

"5.5 This Tribunal in the case of Advance Surfactants India Ltd., cited supra, in an identical situation, held that Rule 10A(i) or (ii) or Rule 8 of the Valuation Rules will not apply in respect of job worked goods consumed by the principal manufacturer and not sold. It was further held that Rule 11 will apply in such cases and Revenue can take recourse to provisions of Rule 11 which talks about using reasonable means consistent with the principles and general provisions of the Valuation Rules read with sub-section (1) of Section 4 of the Central Excise Act, 1944. Keeping this in mind, the ratio laid down by the Hon'ble Supreme Court in the case of Ujagar Prints will squarely apply, that is, to ascertain the assessable value on the cost of raw materials plus processing charges. Similar view has been taken by this Tribunal in the case of Palco Metals Ltd. v. Rolstar Pvt. Ltd. (supra). In the light of these decisions, in the instant case also, the same principle will apply and, therefore, the discharge of duty liability by the appellant on the basis of Ujagar Prints formula, that is, on the cost of raw materials plus job charges is correct in law. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any"

7.1 I find that the Hon'ble CESTAT in the case of M/s. Advance Surfactants India Ltd reported as 2011(274)ELT 261 (Tri-Bang), while dealing with the situation where job worked goods are further processed by the principal manufacturer to manufacture their final products, has held that neither Rule 10A (i) nor Rule 10A (ii) was applicable and the Provisions of Rule 10A(iii) would apply. Hon'ble CESTAT also rejected revenue's plea that only Rule 1 to 10 would apply to follow Rule 10A (iii) and not Rule 11. It was held that Revenue has to take recourse to provisions of Rule 11, which talks about reasonable means consistent with the principles and general provisions of these rules read with sub-section (1) of Section 4 of Central Excise Act,



1944 and therefore ratio laid down by the Hon'ble Supreme Court in the case of *Ujagar Prints* was held to be applicable. Relevant Paras of the judgment is reproduced below:-

"7.1 It can be seen from the above reproduced provisions that provisions of Rule 10A can be brought into play only when there is a situation where excisable goods are produced or manufactured by a job worker on behalf of a person and cleared to the buyer of the principal and/or cleared to a depot or a consignment agent. The intention of the Legislature was to capture the tax on the goods, on the value of the said goods when cleared to the ultimate consumers. In the case in hand, we find that provisions of Rule 10A(i) and (ii) does not arise as has been recorded by us in the earlier paragraphs. Provisions of rule 10A(iii) gets attracted which talks about a situation where 10A(i) or (ii) does not apply. The said provision (iii) very clearly mandate that in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable shall mutatis and mutandis apply for determination of value of the excisable goods. This would indicate that the provisions of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 has to be gone through serially. It is not the Revenue's case that provisions of Rules 3, 4, 5, 6 and 7 would also apply in this case. Revenue is of the view that provisions of Rule 8 will apply. In order to understand the Revenue's case, we reproduce the provisions of Rule 8.

7.2 ...

8. ...

8.1 ...

9. ...

10. In yet another case, this Tribunal has very clearly held that provisions of Rule 8 not applicable to a situation of job worker. The said ratio of the judgment is reproduced as under :-

"4. Rule 8 of the Valuation Rules reads "Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and fifteen per cent of the cost of production or manufacture of such goods." For the provision of this rule to apply, therefore, two requirements are to be fulfilled. The first is that the excisable goods that the assessee manufactures are not sold by him. The second is that they must be "used for consumption" either by him or on his behalf in the production or manufacture of other articles. While the first condition is fulfilled, that there is no sale by the assessee, the second that the goods are manufactured by the assessee are used or, as the rule says, "consumed" by the assessee or on his behalf in the production or manufacture of other articles clearly will not apply. The goods that were used by the appellant in the production of finished goods were not those that were manufactured by the supplier of the raw material. The Circular of the Board 619/10/2002-CX, dated 19-2-2002 reported in 2002 (140) E.L.T. T28 provides that goods manufactured on job work would have to be valued in terms of Rule 11 read with Rule 6 of the Valuation Rules "read with" the judgment of the Supreme Court in *Ujagar Prints Ltd. - 1989 (39) E.L.T. 493* and *Pawan Biscuits Co. Pvt. Ltd. - 2000 (120) E.L.T. 24*. In *Ujagar Prints*, the Supreme Court said that value for assessment of the goods manufactured by a job worker will consist of the total of the cost of

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raw material, manufacturing cost and the manufacturing profit. Rule 11 is residuary rule determining the value. In other words, the value of such goods manufactured on job work will be governed by the ratio of the judgment of the Supreme Court in Ujagar Prints."

11. That still leaves us with a question of how the determination of value has to be done as provided under Rule 10A(iii). By elimination of Rule 2 to 10 as they may not apply in a situation like in this case provisions of Rule 11 will apply and Revenue has to take the recourse to provisions of Rule 11 which talks about using reasonable means consistent with the principles and general provisions of these rules read with sub-section (1) of Section 4 of Central Excise Act, 1944. Keeping this in mind, we find that the ratio laid down by the Hon'ble Supreme Court in the case of Ujagar Prints and followed by various other decisions of this Tribunal and accepted by Revenue in their various Circulars will squarely apply i.e. to ascertain the assessable value on the cost of materials plus processing charges. In our view, the appellants have been correctly valuating their products by adopting this method."

(Emphasis Supplied)

7.2 I find that a decision of the Hon'ble CESTAT in the case of M/s. Kitex Ltd reported as 2008(225)ELT 446 (Tri-Bang) upheld by the Hon'ble Supreme Court reported as 2016(338) ELT 174 (S.C.), has held that where activity carried out by the principal manufacturer does not amount to manufacturer, the value to be adopted is only the value at the end of the job workers premises and valuation adopted by the job worker on the Apex Court's decision in the case of M/s. Ujagar Prints. The relevant portion is reproduced as under:-

"2. The Tribunal in the impugned judgment has arrived at a finding that after receiving the product from job worker, at whose end excise duty is duly paid, the assessee simply cuts them into Dhosis and, therefore, in terms of Rule 12(B) read with Circular No. 557/53/2000-CX, dated 3-11-2000, it will continue to be classifiable as fabric under Chapter 52/54/55 and such a process undertaken by the appellant does not amount to manufacture. The relevant discussion in this behalf reads as under :-

"Therefore, when the job worker returns the processed goods to the appellants, that amounts to clearance and the duty liability crystallizes at that stage. As per the Board's clarification and the circular issued, the valuation is done on the basis of the principles enunciated in the Ujagar Prints case. That means the value to be adopted for payment of duty is basis of the raw materials cost plus the job charges. After receiving the materials, the appellant simply cuts them and packs them and then thereafter he sells the same. In that process, definitely there is value addition but in terms of Rule 12B and the Board's Circular, the value to be adopted is only the value at the end of the job workers premises. Moreover, the processes undertaken by the appellant do not amount to manufacture. Therefore, we hold that the appellants discharged the duty liability correctly and there is no merit in the demand of the revenue for fixing the duty liability on the sale value of the goods sold by the appellant. That is completely against the provisions of Rule 12B read with Board's Circular. Therefore, the major demand amounting to Rs. 46 lakh cannot be sustained."

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3. We have gone through Rule 12(B) as well as the Circular relied upon by the Tribunal and find that the said Rule as well as the Circular are rightly interpreted by the Tribunal. We, thus, do not find any merit in this appeal and the same is, accordingly, dismissed."

(Emphasis Supplied)

8. In light of the various judgments as discussed above, I am of the considered view that Rule 10A (ii) will not be applicable in the appellants cases and view taken by the adjudicating authority is contrary to the intention of the legislation and provisions in the central excise law. Since, Rule 10 A (ii) is not applicable, valuation is to be adopted by following Rule 10A (iii) of the Valuation Rules as it is nobody's case that Rule 10A (i) is applicable in the instant case. Rule 10A (iii) stipulates to apply provisions of foregoing rules, wherever applicable, mutatis mutandis for determination of the value of the excisable goods. It is not the department's case that provisions of Rules 3, 4, 5, 6, 7 & 8 would apply in this case and hence valuation is to be determined by applying residuary Rule 11 of the rules, which says as under:-

"RULE 11: If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act."

8.1 I find that Rule 11 refers to determination of the value by using reasonable means consistent with the principles and general provisions of Rules and Section 4(1) of the Central Excise Act, 1944. In this regard, I rely Hon'ble CESTAT's judgment in the case of M/s. Advance Surfactants India Ltd (supra), wherein it has been held that the ratio laid down by the Hon'ble Supreme Court in the case of M/s. Ujagar Prints will squarely apply to ascertain the assessable value of the traded goods. Therefore, I hold that adjudicating authority's view to deny the refund adopting Rule 10A (ii) is not correct, legal and proper. It is not forthcoming from the impugned order that the adjudicating authority has looked into the valuation adopted by the appellant, claimed to be in line with the ratio laid down in the case of M/s. Ujagar Prints. Therefore, I set aside the impugned order and allow the appeal by way of remand. The adjudicating authority shall decide the refund amount considering the valuation adopted by the appellant and principles as laid down by the Hon'ble Supreme Court in the case of M/s. Ujagar Prints.

9. The decision of the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del) has held that Commissioner (A) has power to remand even after amendment of Section 35A(3). I also rely upon the decision of the Hon'ble Tribunal in the case of CCE, Meerut-II Vs.



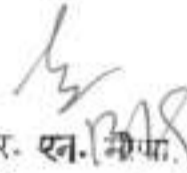
Honda Seil Power Products Ltd. reported as 2013 (287) ELT 353 (Tri-Del) wherein similar views have been paraphrased in respect of inherent power of Commissioner (Appeals) to remand a case. Further, the Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. has held that even after the amendment in Section 35A(3) of the Central Excise Act, 1944, after 11.05.2011, the Commissioner (Appeals) would retain the powers of remand.

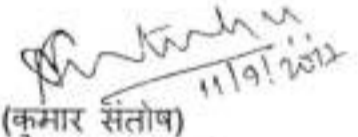
10. In view of the above detailed discussion, I set aside the impugned orders and remand the matter back to the lower adjudicating authority, who shall verify the correctness of the valuation adopted by the appellant and the principles laid down by the Hon'ble Supreme Court as held hereinabove and shall decide the refund claims of the appellants within 3 months passing detailed speaking orders after offering fair and reasonable opportunities to the appellants.

11. The appeals filed by the appellants stand disposed off in above terms.

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

सत्यमेव जयते.


आर. एन. मेधा


(कुमार संतोष) 11/9/2012

आयुक्त (अपील्स)

अधीक्षक (अपील)

By Speed Post

To

1.	M/s. Kich Industries, Plot No. 76 to 89, S No. 38/1, Bhaichand Mehta Ind Estate, Vavdi, Rajkot.	मेसर्स किच इंडस्ट्रीज प्लॉट नं ७६ से ८९, सर्वे नं ३८/१, भाईचन्द मेहता इण्ड इस्टेट, वावडी, राजकोट
2	M/s. Kich Manufacturer, New Kailash Society, Yogeshwar Road, Opposite Nagbai Ind, Dhebar Road South, Atika, Rajkot.	मेसर्स किच मनुफेक्चरर कैलाश सोसाइटी, योगेश्वर रोड नागबई इण्ड के सामने देबर रोड साउथ, अटीका राजकोट
3	M/s. Fitwell Technologies P Ltd. Yogeshwar Main Road, Opp. Nagbai Industries, Atika, Dhebar Road (South), Rajkot	मेसर्स फिटवेल टेक्नोलोजिस प्रा ली योगेश्वर मेन रोड नागबई इण्ड के सामने देबर रोड साउथ, अटीका राजकोट
4	M/s. Jay Bajrang Industries, Yogeshwar Main Road, Dhebar Road(South), Atika, Rajkot	मेसर्स जय बजरंग इंडस्ट्रीस योगेश्वर मेन रोड नागबई इण्ड के सामने देबर रोड साउथ, अटीका, राजकोट



5	M/s. Kich Industries (unit-II) Plot NO. 76 to 89, S No.38/1, Bhaichand Mehta Ind Estate, Vavdi, Rajkot	મેસર્સ કિચ ઇન્ડસ્ટ્રીઝ (યૂનિટ -II) પ્લોટ નં ૭૬ સે ૮૯ , સર્વે નં ૩૮/૧ , ભાઈચન્દ મેહતા ઇન્ડ ઇસ્ટેટ, વાવડી, રાજકોટ
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Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise Rajkot Division-I, Rajkot.
- 4) Guard File.
- 5) F No.s (i) V2/214/RAJ/2016 (ii) V2/215/RAJ/2016 (iii) V2/216/RAJ/2016
(iv) V2/217/RAJ/2016 (v) V2/168/RAJ/2017

