

90



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, रस 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.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/234 & 236/RAJ/2016	12/D/2016-17	23.08.2016

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

RAJ-EXCUS-000-APP-078-TO-79-2017-18

आदेश का दिनांक / Date of Order: **27.09.2017** जारी करने की तारीख / Date of issue: **29.09.2017**

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

ग अथ आयुक्त/सदस्य आयुक्त/अध्यक्ष आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गन्धीधाम) द्वारा उपरोक्तित जारी मूल आदेश से सुविधा / 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 :-**
1. M/s. Capital Polyplast (Guj.) Pvt. Ltd., Survey No. 3, Plot No. 76-79., Behind Kishan Dehydration, National Highway 27.,Bhojpara, Tal. GondalRajkot
2. Shri Vijaybhai Kurjibhai, Director of M/s. Capital Polyplast (Guj.) Pvt. Ltd.,

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति विनियमित तरीके में अपील कर सकते हैं। / 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 विनियमन, 1994 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत विनियमित 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) विशेष बेंच आयुक्त, सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विनियमन की विशेष पीठ, वेस्ट ब्लॉक नं. 2, पुरम, नई दिल्ली, को की जा सकती है। / 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 बतलाया गया अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विनियमन (मिस्टेट) की परिच्छेद 3(क) के तहत, बहुराज्यीय भवन असावा अहमदाबाद- 380016 को की जा सकती है। / 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 विनियमन, 2001 के नियम 6 के अन्तर्गत 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 राशि ज्यादा की गई और लगाया गया जुर्माना, राशि 5 लाख या उससे कम; 5 लाख राशि या 50 लाख राशि तक अथवा 50 लाख राशि 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 प्रत्यान, संबंधित अपील विनियमन की शर्तों के अंतर्गत रजिस्ट्रार के नाम से किसी भी सर्वोच्च न्यायालय के बैंक द्वारा जारी रेगुलर बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का प्रत्यान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील विनियमन की शर्तों का निर्धारण है। अंततः आदेश (स्टे ऑर्डर) के लिए अपील-चर्च 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/-.

(iv) अपील विनियमन, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विनियमन, 1994 के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि ज्यादा की गई और लगाया गया जुर्माना, राशि 5 लाख या उससे कम; 5 लाख राशि या 50 लाख राशि तक अथवा 50 लाख राशि 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 प्रत्यान, संबंधित अपील विनियमन की शर्तों के अंतर्गत रजिस्ट्रार के नाम से किसी भी सर्वोच्च न्यायालय के बैंक द्वारा जारी रेगुलर बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का प्रत्यान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील विनियमन की शर्तों का निर्धारण है। अंततः आदेश (स्टे ऑर्डर) के लिए अपील-चर्च 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) विल अपीलियम, 1994 की धारा 86 की उप-धारा (2) या (2A) के अंतर्गत दर्ज की गई अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा ST-7 में की जा सकती एवं उसके साथ अपील, केन्द्रीय उत्पाद शुल्क अध्याय आचूकन (अपील), केन्द्रीय उत्पाद शुल्क अध्याय पारित आदेश की प्रतियां संलग्न कीं (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आचूकन द्वारा सहायक आचूकन अध्याय उपस्थित, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलिय न्यायाधिकरण को अपील दर्ज करने का निर्देश देने का 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 अपीलिय प्राधिकरण (सेनैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अपीलियम 1994 की धारा 35एक के अंतर्गत, जो कि विलियम अपीलियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलिय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मात्र के 10 प्रतिशत (10%), जब मात्र एवं जुर्मोस विवादित है, या जुर्मोस, जब केवल जुर्मोस विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलिय टैक्स रशि टस करीब 50 लाख से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'जाय किए गए शुल्क' में प्रिंसल शामिल है।
- (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनैट जमा की गई गलत रशि
 - (iii) सेनैट जमा नियमवली के नियम 6 के अंतर्गत टैक्स रकम
- बशर्त यह कि इस धारा के प्राधान्य विलियम (स. 2) अपीलियम 2014 के अंतर्गत से पूर्व किसी अपीलिय प्राधिकरण के समक्ष विचारधीन स्थिति अर्थात् अपील को रद्द नहीं होने।

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 प्रक्रिया निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के प्रथम पारुक् के अंतर्गत अंतर संचित, भारत सरकार, पुनरीक्षण आवेदन इकाई, विलियम सचालय, राजस्व विभाग, पीपी बिल्डिंग, जीवन दीप अवर, जलद आर, 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 भारत के किसी नुकसान के मामले में, जहां नुकसान किसी गलत को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या शिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह में या भंडारण में गलत के परिणाम के दौरान, किसी कारखाने या किसी भंडार गृह में गलत 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 गलत के विनिर्देश में प्रयुक्त किये गए या भरी गई केन्द्रीय उत्पाद शुल्क के (रुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गई 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 गलत 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 प्रचुरी क्रेडिट इस अपीलियम एवं इसके विभिन्न प्राधान्यों के तहत मात्र की गई है और ऐसे आदेश जो आचूकन (अपील) के द्वारा विलियम अपीलियम (स. 2), 1998 की धारा 109 के द्वारा नियंत्रित की गई तरीक अथवा हत्यावधि पर वा बंद से परीक्षा 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 धारा संख्या EA-8 में, जो कि केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के अंतर्गत 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 अपीलियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदावती के साथ, के लिए या 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 D/O 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 अदावती की जानी चाहिए। / जहां 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 दर से किया जाना चाहिए। इस संघ के होने पर भी की निम्न परीक्षा के अंतर्गत के लिए समानितरी अपीलिय 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 Appellate Tribunal or the one application to the Central Govt. As the case may lie, is filed to avoid repetitive work if exceeding Rs. 1 lakh fee of Rs. 100/- for each.

(E) बचतसंचित न्यायालय शुल्क अपीलियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति या निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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 अपीलिय न्यायाधिकरण (बार्ड ऑफि) नियमवली, 1982 में उल्लिखित एवं अन्य संबंधित मामलों की सुनिश्चित 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) उच्च अपीलिय प्राधिकरण को अपील दर्जित करने में संबंधित धारक, विस्तृत और अधिकतम परतारों के लिए, अपीलिय 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

88

:: ORDERS IN APPEAL ::

M/s. Capital Polyplast (Guj) Pvt Ltd , S. No.3, Plot No..76-79, B/H Kishan Dehydration, National High Way-27, Bhojpara, TalukaGonadal, Dist Rajkot 360311 (*hereinafter referred to as Appellant No.1*) and Shri Vijaybhai Kurjibhai Bhalal, Director of the Appellant No.1 (*hereinafter referred to as Appellant No.2*) have filed appeals against Order-In-Original No. 12/D/2016-17 dated 23.08.2016 (*hereinafter referred to as "the impugned order"*) passed by the Assistant Commissioner, Central Excise Division-II, Rajkot (*hereinafter referred to as "the lower adjudicating authority"*).

2. The facts of the case are that the Appellant no.1 is engaged in manufacture of excisable goods, namely, Non Sprinkler HDPE Pipes falling under CETH 39172190. A search was conducted by the officers of the Preventive Branch, Central Excise, Rajkot at the factory premises of the Appellant no.1. During the course of search it was found that Appellant had cleared excisable goods without payment of excisable duty even after crossing the exemption limit of Rs.1.5 crores stipulated under Notification No.8/2003-CE dated 01.03.2003. The finished excisable goods i.e. 28404 meters of Non-sprinkler HDPE pipes totally valued at Rs. 14,05,917/- lying in the factory premises of the Appellant No.1 were seized under Panchnama dated 21.11.2014. A show cause notice No. V/15- 24/ Dem/ HQ/ 2014-15 dated 07.07.2014 ("the **SCN**" for brevity) was issued to the Appellant No.1 as well as Appellant No.2 proposing Confiscation of seized goods under Rule 25 of the Central Excise Rules, 2000 (*hereinafter referred to as "the Rules"*) penalty upon Appellant No.1 under Rule 25 of the Rules and also penalty upon Appellant No.2 under Rule 26 of the Rules. The said SCN was decided by the lower adjudicating authority vide the impugned order, wherein he ordered for confiscation of seized goods i.e. 28404 meters of non-sprinkler HDPE pipes valued at Rs.14,05,917/- under Rule 25 of the Rules with an option to redeem the same on payment of Redemption Fine of Rs.3,50,000/-, Penalty of Rs.87,500/- was imposed on Appellant no.1 under Rule 25 of the Rules and penalty of Rs.43,500/- also under Rule 26(1) of the Rules. The lower adjudicating authority also ordered to appropriate security deposit of Rs.2,55,000/- furnished in form of Fixed Deposit Receipt No.15010300050680 dated 30.12.2014 issued by Bank of Baroda Rajkot in case of failure to pay redemption fine and penalty imposed.

3. Being aggrieved with the impugned order, the Appellant No. 1 & Appellant No.2 preferred the present appeal on the following grounds:

- (i) Duty Involved in the matter along with interest has been paid in full and the entire proceedings initiated against them has already been

concluded as communicated vide letter F No. V.39/15- 156 / Adj/ 2015-16 dated 31.08.2016. Once the proceedings initiated have been concluded under above letter, imposition of redemption fine and penalty on the very same offense twice is not sustainable.

- (ii) The essence and spirit of wilful payment of duty, interest and penalty prescribed would be lost if redemption fine and penalty is imposed once the proceedings have been concluded.
- (iii) The seized goods which were subsequently released have been cleared on payment of appropriate central excise duty involved and therefore central excise duty on the seized goods have already been paid.
- (iv) It is not established that the Appellants have deliberately violated the Central Excise provisions with intention to evade payment of duty and hence no penalty under Rule 25 can be imposed.
- (v) They have paid full amount of duty in cash along with interest and willingly paid 15% penalty also before pendency of the impugned order as well as before of SCN and hence and hence there was no mala-fide intention on their part. Therefore, penalty under Rule 25 and Rule 26 is not warranted. They relied upon the Hon'ble Supreme Court's decision in the case of M/s. Amrit Foods.
- (vi) Personal penalty on Appellant No.2 is not warranted as the main proceedings have attained finality and no specific role of the Director has been set out in the show cause notice.

4. Personal hearing in the matter was attended to by Shri Vijay Bhalala, Appellant No.2 and Director of the Appellant No.1, who reiterated the grounds of appeal and also submitted a written submission dated 10.08.2017 to say that they are SSI unit; that since pipes are cleared to farmer no central excise duty is payable on their products; that they have already paid central excise duty, interest and 15% penalty before issuance of show cause notice; that show cause notice should not have been issued and proceedings were required to be concluded without issue of show cause notice and hence their appeal should be allowed.

4.1 In the written submission dated 10.08.2017, they made the following submissions:-

- (i) At the time of factory visit by the central Excise officer, their sales turnover was on the border of Rs.1.5 Crore and since they were dealing in agricultural pipes, they were under belief that pipes cleared to farmers do not attract central excise duty.

80

(ii) They have already paid Central Excise duty of Rs.9,84,184/-, Interest of Rs.92,227/- and penalty of Rs.1,47,628/- and Show Cause Notice No. V.396/AR-GDL/Div-II / Rjt / ADC/BKS/ 132/205-16 dated 21.01.2016 issued in the matter has already been decided and proceedings concluded as per Additional Commissioner, Central Excise, Rajkot's letter F No. V.39/15-156/ ADJ/2015-16 dated 31.08.2016 and submitted copy of this order.

(iii) Since the matter is concluded in terms of Section 11A(4) of the Central Excise Act, 1944 there is no reason to impose redemption fine in respect of the goods and penalty on the offense again.

(iv) Redemption fine is normally imposed in case of Central Excise goods to protect the revenue involved in the seized goods; that in their case, goods were provisionally released, accounted for in their records, cleared on payment of central excise duty and matter was concluded vide letter dated 31.08.2016.

(v) There is provision to reward the bona-fide assessee, who do not object the department and do not want to enter into undue litigation and therefore if any part of proceedings are allowed to be continued, justice would not be done to the Appellants and therefore entire proceedings initiated vide impugned order is required to be dropped *ab-initio*.

(vi) Bank guarantee of Rs.2,55,000/- submitted by the Appellants, till date has not been released by the Department, which should be ordered to be immediately released and the penalty imposed under Rule 25 of the Central Excise Rules, 2002 on the Appellant No.1 and Penalty of Rs.43,500/- imposed upon Appellant No.2 is required to be set aside.

(vii) They referred decision of Commissioner (Appeals), Kanpur in the case of M/s. J.P. Glass Industries reported as 2010(250) ELT 449 wherein it was held that when the value of clearance is not very high and within the SSI exemption limit goods are not liable to confiscation; that the ratio of decision was applicable as their unit was SSI till it crossed the limit of Rs.4 crore turn over.

(viii) The Appellant also submitted copies of (a) ledger showing payment of duty amounting to Rs.9,00,000/- through cheques in six instalment each of Rs.1,50,000/- during Dec, 2014 to March, 2015 (b) copy of Challan No. 02005290201201600200 showing duty payment of Rs.1,00,000/- on 02.01.2016

(c) Challan No. 02005291901201600010 showing duty payment of Rs.2,25,000/- on 19.01.2016 and (d) copy of Bank FD amounting to Rs.2,55,000/-.

FINDINGS

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submission made during the personal hearing. The issues to be decided in the present case are as to

- (i) whether lower adjudicating authority was correct in confiscating seized goods and imposing Redemption Fine in lieu of confiscated goods,
- (ii) Whether imposition of Penalty under Rule 25 by lower adjudicating authority on Appellant No.1 and Personal Penalty under Rule 26 on Appellant no.2 is legal when the proceedings in respect of demand of central excise duty, interest and penalty were concluded in terms of clause (d) of sub-section (1) of Section 11AC of the Act by the Additional Commissioner vide his order dated 31.08.2017 or not.

6. I find that Appellant no.1 and Appellant no.2 have heavily relied on provisions of Section 11AC (1) (d) to submit that the proceedings under show cause notice dated 7.7.2014 had been concluded vide order dated 31.08.2016 passed by the Additional Commissioner, Rajkot and hence the impugned order dated 23.08.2016 is not correct, legal and proper and needs to be set aside. should be set aside.

6.1 I find it appropriate to refer to the relevant provisions of Section 11AC of the Act, which are reproduced below for ease of reference:-

"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) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under subsection (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined:

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent of the duty so determined;

AKH

(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 per cent. 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;

(Emphasis supplied)

6.2 Section 11AC (1) under clause (d) stipulates that all proceedings in respect of 'said duty', interest and penalty shall be deemed to be concluded and not redemption fine. I find that the Appellant has relied upon and produced copy of letter F No. V.39/15-156/Adj/2015-16 dated 31.08.2016 issued by Additional Commissioner communicating conclusion of proceedings initiated against them. Copy of the letter is reproduced below:-

 <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL EXCISE, "CENTRAL EXCISE BHAVAN", RACE COURSE RING ROAD, RAJKOT - 360 001</p> <p>Phone - (0281) 2442030, 2456222 Fax - (0281) 2452967</p> <p>F. No. V.39/15-156/Adj/2015-2016 Dated: 31-08-2016</p>	
To,	
<p>M/s. Capital Polyplast (Guj) Pvt Ltd., Survey No. 3, Plot No. 76-79, Behind Kishan Dehydration, National Highway - 27, Village: Bhogpara, Taluka: Gondal, Dist: Rajkot 360 311</p>	<p>Shri Vijaybhai Kargishas Bhulala, Director, M/s. Capital Polyplast (Guj) Pvt Ltd., Survey No. 3, Plot No. 76-79, Behind Kishan Dehydration, National Highway - 27, Village: Bhogpara, Taluka: Gondal, Dist: Rajkot 360 311</p>
Gentlemen,	
<p>Subject: Show Cause Notice F. No. V.396/AR-GDL/Div-II/Rjt/ADC/NK8/132/2015-2016 dated: 21.01.2016 issued to M/s. Capital Polyplast (Guj) Private Limited and others :: Request for conclusion of proceedings under Section 11A(4) of Central Excise Act, 1944: matter regarding :-</p>	
<p>Please refer to Show Cause Notice wherein it has been proposed to demand and recover Central Excise duty of Rs. 9,84,184/- from M/s. Capital Polyplast (Guj) Private Limited, Gondal under provision to Section 11A(4) of Central Excise Act, 1944 along with interest under Section 11AB/AA <i>ibid</i> and impose penalty under Section 11AC <i>ibid</i>. Further, it has also been proposed to impose penalty under Rule 26 of Central Excise Rules, 2002 upon Shri Vijaybhai Bhulala, Director of Capital Polyplast (Guj) Private Limited, Gondal.</p>	
<p>2. In this regard, M/s. Capital Polyplast (Guj) Private Limited, Gondal vide their letter dated: 25.07.2016 have intimated that they have paid, as per Show Cause Notice, Central Excise duty of Rs. 9,84,184/-, Interest of Rs. 92,227/- and penalty of Rs. 1,47,628/-, being amount equal to 15% of the duty demanded, therefore the proceedings initiated against them under the subject Show Cause Notice be ordered to be concluded under Section 11AC(1)(d) of Central Excise Act, 1944.</p>	
<p>3. I have carefully gone through the entire case records and find that in the Show Cause Notice itself Central Excise duty of Rs. 9,84,184/- and Interest thereon working to Rs. 92,227/- has been quantified. Therefore, penalty on duty amount @ 15%, under Section 11AC(1)(d) of Central Excise Act, 1944 works out to Rs. 1,47,628/-. Thus, the total amount payable comes</p>	
<p><i>(Signature)</i></p>	
<p>Page 1 of 2</p>	

Rs. 12,24,039/- (Central Excise duty: Rs. 9,84,184/- + Interest: Rs. 92,227/- + penalty @ 15%: Rs. 1,47,628/-), which as per the data available in the Show Cause Notice have been paid on or before 21.01.2016. Therefore, I find that benefit of conclusion of proceedings, as envisaged under Section 11AC(1)(d) of Central Excise Act, 1944, is admissible to M/s. Capital Polyplast (Guj) Private Limited.

4. In view of above, M/s. Capital Polyplast (Guj) Private Limited, Gondal, are eligible for conclusion of proceedings under Section 11AC(1)(d) of Central Excise Act, 1944, the proceedings under Rule 26(1) of Central Excise Rules, 2002 against Shri Vijay Kurjibhai Bhalala, Director of M/s. Capital Polyplast (Guj) Private Limited, Gondal is also ordered to be concluded.

Atc
CAPITAL POLYPLAST (GUJ) PVT. LTD.
[Signature]
Director

Yours sincerely,

[Signature]
(Pranod Vasave)
Additional Commissioner,
Central Excise,
Rajkot.

Copy to:

- 1) The Deputy Commissioner (AE), Central Excise, Rajkot.
- 2) The Assistant Commissioner, Central Excise, Division-II, Rajkot.
- 3) Superintendent of Central Excise, A. R. Gondal.

6.3 I find that the Additional Commissioner has ordered for conclusion of proceedings only in respect of 'said duty', interest and penalty as Section 11AC deals with the amount of penalty only, if duty and interest as required are already paid and 15% or 25% penalty, as the case may be are also paid. I am of the considered view that the penalty under Section 11AC in respect of duty demand can not be equated with the confiscation of the goods seized and imposition of redemption fine in lieu of confiscation under Rule 25 of the Central Excise Rules, 2002. Therefore, reliance placed by the Appellant on proceedings concluded by the Additional Commissioner, Central Excise, Rajkot in respect of redemption fine also is misplaced and not at all legal and proper.

7. I also find that the adjudicating authority vide impugned order confiscated the seized goods valued at Rs.14,05,917/- with an option to redeem it on payment of redemption fine of Rs.3,50,000/-. I also find as discussed above that Section 11AC nowhere stipulates conclusion of proceedings in respect of

redemption fine to be imposed on confiscated goods. The confiscation of seized goods and imposition of redemption fine in lieu of confiscation are governed by Rule 25 of the Central Excise Rules, 2002.

7.1 I find that adjudicating authority in his findings at para 15.1 of the impugned order has observed that

- (i) Appellant no.1 had not obtained central excise registration even after crossing the value based threshold exemption limit under exemption Notification 8/2003-CE dated 01.03.2003
- (ii) Appellant no.2 has maintained private diaries for clandestine clearances to monitor their cash transactions without being shown in the records/ statutory records
- (iii) Appellant no.2 admitted central excise duty liabilities on the finished goods cleared without raising invoices even after crossing the exemption limit
- (iv) the seized goods were stock of unaccounted goods manufactured by Appellant no.1 for clandestine clearance without payment of duty.

7.2 It is on record that the appellants had confessed and corroborated the documentary evidences gathered during the search of the factory premises of Appellant no.1 that the goods seized were not accounted for. I find that Appellant no.2 has admitted violation of provisions of Rule 25 of the Rules in as much as the goods were being manufactured but not being shown in the statutory records and being cleared without payment of Central Excise duty under impression that duty is not payable on HDPE pipes being cleared to farmers. The value of the seized goods was Rs.14,05,917/-and central excise duty involved is Rs.1,73,771/-. In view of above, redemption fine of Rs.3,50,000/- is very high more so when entire central excise duty has already been paid along with interest thereon and 15% penalty also. The interest of justice would be met by imposing redemption fine of Rs.2,00,000/- only. I accordingly reduce redemption fine to Rs.2,00,000/- in lieu of confiscation of seized goods.


8. Penalty has been imposed on Appellant No.1 in the impugned order under Section 25 of Central Excise Rules,2002 whereas proceedings in respect of penalty Appellant No.1 has been concluded vide order dated 31.08.2016. Since, order of the Additional Commissioner concludes penalty on Appellant No.1, hence penalty under Rule 25 on the appellant again under Rule 25 is not imposable as it is subject to penalty under Section 11AC (1) (d) of the Act. Hence, I set aside penalty of Rs.87,500/- imposed on Appellant No.1. However, Appellant no.2 is a

natural person concerned, who knew that the excisable goods were liable to confiscation, which is also admitted by Appellant No.2 during investigation as recorded at Para 15.5 of the impugned order. Hence, he is liable to penalty under Rule 26 of the Rules which is not subject to penalty under Section 11AC of the Act. I, therefore, find no infirmity in the impugned order for imposing penalty of Rs.43,500/- on Appellant No.2 under Rule 26 of the Rules and reject the appeal to this extent.

9. In view of above, I allow appeal partially by setting aside penalty on Appellant No.1 and reducing redemption fine to Rs.2,00,000/- while retaining penalty imposed on Appellant No.2.

९.१ अपीलकर्ताओ द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 These two appeals filed by the Appellants stand disposed off in above terms.


(कुमार संतोष)
आयुक्त (अपील्स)

By Regd Post
To

1.	M/s. Capital Polyplast (Guj) Pvt Ltd S. No.3, Plot No..76-79, B/H Kishan Dehydration, National High Way-27, Bhojpara, Taluka Gondal, Dist Rajkot 360311	मेसर्स केपिटल पोलिप्लास्ट (गूज) प्रा ली सरवे नं ७६-७९, किशान डी हाइड्रेशन के पीछे नेशनल हाइवे -२७ भोजपरा , तालुका - गोंडल जिल्ला -राजकोट - ३६०३११
2	Shri Vijaybhai K. Bhalala, Director, M/s. Capital Polyplast (Guj) Pvt Ltd S. No.3, Plot No..76-79, B/H Kishan Dehydration, National High Way-27, Bhojpara, Taluka Gondal, Dist Rajkot 360311	श्री विजयभाई के भालाला डाइरेक्टर मेसर्स केपिटल पोलिप्लास्ट (गूज) प्रा ली सरवे नं ७६-७९, किशान डी हाइड्रेशन के पीछे नेशनल हाइवे -२७ भोजपरा , तालुका - गोंडल जिल्ला -राजकोट - ३६०३११

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-II, Rajkot.
- 4) Guard File.
- 5) F No.V2/236//RAJ/2016

natural person concerned, who knew that the excisable goods were liable to confiscation, which is also admitted by Appellant No.2 during investigation as recorded at Para 15.5 of the impugned order. Hence, he is liable to penalty under Rule 26 of the Rules which is not subject to penalty under Section 11AC of the Act. I, therefore, find no infirmity in the impugned order for imposing penalty of Rs.43,500/- on Appellant No.2 under Rule 26 of the Rules and reject the appeal to this extent.

9. In view of above, I allow appeal partially by setting aside penalty on Appellant No.1 and reducing redemption fine to Rs.2,00,000/- while retaining penalty imposed on Appellant No.2.

९.१ अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 These two appeals filed by the Appellants stand disposed off in above terms.

सत्यापित,

[Signature]
28/11

[Signature]
27/11/2017

(कुमार संतोष)

आर. एन. मीणा, आयुक्त (अपील्स)

अधीक्षक (अपील)

By Regd Post

To

1.	M/s. Capital Polyplast (Guj) Pvt Ltd S. No.3, Plot No. 76-79, B/H Kishan Dehydration, National High Way-27, Bhojpara, Taluka Gondal, Dist Rajkot 360311	मेसर्स केपिटल पॉलिप्लास्ट (गुज) प्रा ली सरवे नं ७६-७९, किशन डी हाइड्रेशन के पीछे नेशनल हाइवे -२७ भोजपरा , तालुका - गोंडल जिल्ला -राजकोट - ३६०३११
2	Shri Vijaybhai K. Bhalala, Director, M/s. Capital Polyplast (Guj) Pvt Ltd S. No.3, Plot No. 76-79, B/H Kishan Dehydration, National High Way-27, Bhojpara, Taluka Gondal, Dist Rajkot 360311	श्री विजयभाई के भालाला डाइरेक्टर मेसर्स केपिटल पॉलिप्लास्ट (गुज) प्रा ली सरवे नं ७६-७९, किशन डी हाइड्रेशन के पीछे नेशनल हाइवे -२७ भोजपरा , तालुका - गोंडल जिल्ला -राजकोट - ३६०३११

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-II, Rajkot.
- 4) Guard File.