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आयुक्त (अपील्स) 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

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No	मूल आदेश नं / O.I.D. No	दिनांक / Date
	V2/279 & 280 /RAJ/2016	13/D/2016-17	27.09.2016

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

RAJ-EXCUS-000-APP-144-TO-145-2017-18

आदेश का दिनांक / Date of Order:	21.12.2017	जारी करने की तारीख / Date of issue:	26.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अथवा आयुक्त/ सहायक आयुक्त/ उप-आयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क-सेवाकर, राजकोट / जामनगर / गान्धिधाम) द्वारा उपरलिखित जारी मूल आदेश से सुजित /
Arising out of above mentioned O/O 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 :-**
1M/s. Shri Ram Ploy plast, 8B National High way,At Dumiyani Taluka -Upleta,Dist. Rajkot
2.Shri Chintan Dipakbhai Sapariya, Authorised person of M/s. Shri Ram Ploy plast

इस आदेश(अपील) से स्वयं कहे व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल कर सकता है /
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) बर्लीकरण सुन्पावन से सम्बन्धित सभी प्रकार की 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 बतौर गए अपील के अलावा सब सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, , द्वितीय तल, बहामाली भवन अहमदाबाद 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 अन्तर्गत 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 मांग अथवा की मांग और अलावा सेवा शुल्क, 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक 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। अथवा आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा कराया 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 अन्तर्गत 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 जिस आदेश के विरुद्ध अपील की गयी है, उसकी प्रति साथ में संलग्न करें (अपील से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग अथवा की मांग और अलावा सेवा शुल्क, 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक 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। अथवा आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा कराया होगा /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied 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 दायों की राशि अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती एवं उसके साथ अनुसूच, केन्द्रीय उत्पाद शुल्क अध्याय अनुसूच (अपील), केन्द्रीय उत्पाद शुल्क दफ्तर परिसर अर्द्धक की प्रतियाँ संलग्न की (जिसमें से एक प्रति पंजीकृत होती चाहिए) और अनुसूच दफ्तर संलग्न अनुसूच अध्याय अनुसूच, केन्द्रीय उत्पाद शुल्क) संलग्न, को अपीलार्थ न्यायाधिकरण को अर्द्धक दायों वाले का निर्देश देने वाले अर्द्धक की प्रति जो साथ में संलग्न करनी होती। / 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 अपीलार्थ न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस अर्द्धक के प्रति अपीलार्थ 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 जमा वाली अपेक्षित टैक्स टैक्स टैक्स काउंट क्लॉक से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' से निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेल्वेट जमा की ली गई राशि
 - (iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत टैक्स रकम
- बशर्त यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलार्थ न्यायाधिकरण के द्वारा विचारार्थीन स्थिति अर्द्धक एवं अपील की 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 Cervat Credit taken;
 - (iii) amount payable under Rule 6 of the Cervat 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 अर्द्धक की पुनरीक्षण प्रक्रिया निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारुक्त के अंतर्गत अर्द्धक संपिष्ट, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त संवत्सय, राजस्व विभाग, चौथी मंजिल, जीवन्त दीप भवन, मंसद 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 मांग के किसी नुकसान के मामले में, जहां नुकसान किसी मांग को किसी कारखाने से अर्द्धक गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अर्द्धक गृह से दूसरे अर्द्धक गृह पारगमन के दौरान, या किसी अर्द्धक गृह से या अर्द्धक गृह में मांग के पारगमन के दौरान, किसी कारखाने या किसी अर्द्धक गृह में मांग 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 मांग के विनिर्माण में प्रयुक्त कच्चे मांग 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 मांग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सन्निहित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा केन्द्रित इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मांग की गई है और ऐसे अर्द्धक जो अनुसूच (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लागू अध्याय समावर्धित पर या बाट में परिसर 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस अर्द्धक के संवेक्षण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल अर्द्धक व अपील अर्द्धक की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदावती के साथ के जो 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 O/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। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस अर्द्धक में कई मूल अर्द्धक का समावेश है तो प्रत्येक मूल अर्द्धक के लिए शुल्क का भुगतान, उपरोक्त धारा में किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा चर्ची करने से बाधों के लिए कार्यालय अपीलार्थ न्यायाधिकरण को एक अपील का केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- an 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) न्यायाधिकरण न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल अर्द्धक एवं स्थगन अर्द्धक की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट तैयार 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 अपीलार्थ न्यायाधिकरण (सर्व विधि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान अवधान 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) उपर्युक्त अपीलार्थी को अपील टाइम 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 ::

The below mentioned appeals have been filed by M/s Shri Ram Polyplast, 8-B, National Highway, At: Dumiyani, Taluka: Upleta, Dist.: Rajkot (hereinafter referred to as 'appellant No. 1') and Shri Chintan Dipakbhai Sapariya, an employee and Authorised person of appellant No. 1 (hereinafter referred to as 'appellant No. 2') against the Order-In-Original No. 13/D/2016-17 dated 27.09.2016 (hereinafter referred to as 'the impugned order'), passed by the Assistant Commissioner, Central Excise Divison-II, Rajkot (hereinafter referred to as "the lower adjudicating authority"):

Sr. No.	Name of appellant (M/s.)	Appeal No.
1	Shri Ram Polyplast, 8-B, National Highway, At: Dumiyani, Taluka: Upleta, Dist.: Rajkot	V2/279/RAJ/2016
2	Shri Chintan Dipakbhai Sapariya, Authorised person of Shri Ram Polyplast, 8-B, National Highway, At: Dumiyani, Taluka: Upleta, Dist.: Rajkot	V2/280/RAJ/2016

2. Briefly stated facts of the case are that appellant No. 1 engaged in manufacturing excisable goods i.e. PVC (commercial and non-sprinkler) Pipes without obtaining Central Excise registration, clearing without payment of appropriate Central Excise duty even after crossing the exemption limit of Rs. 1.50 Crores, as prescribed under Notification No. 8/2003-C.E., as amended. The finished unaccounted excisable goods i.e. PVC Pipes totally valued at Rs. 11,41,043/- were placed under seizure vide Panchnama dated 23.03.2015 by the Central Excise officers, under reasonable belief that the same were manufactured in contravention of the provisions of Central Excise law and would have been also removed clandestinely without payment of appropriate Central Excise duty after crossing the value based exemption limit of Rs. 1.50 Crores. The said seized goods valued at Rs. 11,41,043/- were subsequently handed over to the appellant No. 2 for safe custody under Supratnama dated 23.03.2015. During the course of Panchnama dated 23.03.2015, various incriminating documents relating to evasion of Central Excise duty were resumed for further investigation. The appellant No. 2 in his statement dated 23.03.2015 categorically deposed that details of such unaccounted clearances is maintained in a red coloured diary recovered during the course of search operation carried out on 23.03.2015 at the factory premises of the appellant No. 1. The appellant no. 2 admitted that they had exceeded the threshold limit of Rs. 1.50 crores of the sales clearances of their finished excisable goods.

During the course of investigation, the sales figures of computerized generated invoices were not tallying with their official sales account maintained in their books of accounts.

3. The above investigation culminated into issuance of Show Cause Notice No. IV/03-05/D/2015-16 dated 05.08.2015 proposing to confiscate the excisable goods valued at Rs. 11,41,043/- seized under Panchnama dated 23.03.2015 under Rule 25 of the Central Excise Rules, 2002 and proposed to impose penalty under Rule 25 of the Central Excise Rules, 2002 upon appellant No. 1. It was also proposed to impose penalty upon appellant No. 2 under Rule 26 of the Central Excise Rules, 2002 (hereinafter referred to as "the Rules").

4. The lower adjudicating authority vide impugned order has ordered to confiscate the seized goods valued at Rs. 11,41,043/- seized at the premises of appellant No. 1, under Rule 25 of the Rules with an option to redeem the same on payment of redemption fine of Rs. 2,85,250/- under Section 34 of the Central Excise Act, 1944 (hereinafter referred to as "the Act"). He imposed penalty of Rs. 71,300/- on the appellant No. 1 under Rule 25 of the Rules and penalty of Rs. 36,000/- on the appellant No. 2 under the provisions of Rule 26(1) of the Rules.

5. Being aggrieved with the impugned order, appellant No. 1 preferred the present appeal mainly on the following grounds:

1. The order passed by the lower adjudicating authority is contrary to the provisions of law, facts and evidence on record of the case and liable to be quashed.
2. The lower adjudicating authority has observed that the goods were not entered in statutory records and could have cleared in clandestine manner. They submitted that they are following the practice of accounting of the goods as and when goods are to be dispatched. The goods not removed from the factory even though the goods has not been accounted for can not be seized for confiscation.
3. Mere admittance during investigation is not only sufficient evidence to prove clandestine removal as the investigating authority failed to adduced proof regarding clearance of goods i.e. transport receipt etc. Therefore, the allegation of clandestine removal cannot be upheld.
4. To prove suppression of production, the investigation should have verified the purchase of inputs without payment of duty. No evidence of

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inputs purchased by the appellant without payment of duty has been adduced.

5. The lower adjudicating authority has imposed penalty on partnership firm as well as separate penalty on partner which is not legal, proper and sustainable. The judgment relied upon by the lower adjudicating authority pertains to the personal penalty imposed on Director, who is separate legal entity whereas partner is not separate legal entity and hence imposition of penalty on partner i.e. Appellant No. 2 is not proper.
6. Being aggrieved with the impugned order, appellant No. 2 also preferred appeal wherein he stated that no separate penalty on the partner can be imposed once firm is proposed for imposition of penalty as under the law of partnership, the firm having no legal existence apart from its partners; that once firm has already been penalized, separate penalty cannot be imposed upon the partner because a partner is not a separate legal entity and cannot be equated with employee of a firm. He relied upon the judgment in the case of S. R. Lites reported as 2013 (296) ELT 498 (Tri.-Del.), Arihant Synthetics reported as 2013 (298) ELT 278 (Tri.-Ahmd.), Pravin N. Shah reported as 2014 (305) ELT 480 (Guj.). He further submitted that when main Noticee admitted duty liability and also made payment of duty, there was no requirement of issuance of Show Cause Notice and proceedings initiated is deemed to be concluded against the co Noticee also.
7. Shri Vikas Mehta, Consultant appeared for personal hearing and reiterated the grounds of appeals and requested to decide the appeals on merits and allow the appeal.

FINDINGS:

8. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during personal hearing.
9. The issues to be decided in the present appeal is as to whether the goods are liable for confiscation and appellant No. 1 is liable to pay redemption fine and penalty under Rule 25 of the Rules and whether appellant No. 2 is liable to penalty under Rule 26(1) of the Rules or not.

10. I find that the appellants had contended that the seized goods had not been removed from the factory premises and therefore the same cannot be seized and confiscated. Consequently, no redemption fine, in lieu of confiscation of the goods could be imposed.

10.1 The facts of the case, as detailed in the impugned order establish that they had been clearing finished goods clandestinely and the excess stock of the finished goods was on account of such un-accounted removals. The partner has admitted that they maintained unaccounted finished goods details for clearing the same clandestinely to monitor their cash transactions, in a red coloured diary, resumed during the course of investigation under Panchnama dated 23.03.2015. It was also admitted that Central Excise duty liability on account of clandestine clearances without invoices even after crossing the value based exemption limit under Notification No. 8/2003-C.E. dated 01.03.2003 would be paid and it was paid. The stock of finished goods were counted in presence of Panchas and appellant No. 2 in which unaccounted PVC pipes weighing 25356.000 kgs. valued at Rs.11,41,043/- was found in the factory premises of appellant No. 1, which was placed under seizure. During the course of Panchnama, on comparison of sales figures of computerized generated invoices with sales account maintained in their books of account, the same were found not tallying with each other. It was, therefore, established that that the seized goods were not accounted for properly by Appellant No. 1 in their statutory records with intent to evade payment of duty and would have been cleared clandestinely had the Departmental officers not visited the factory premises.

10.2 I find that Rule 25(1) of the Rules expressly provides that if any manufacturer of excisable goods has not accounted for any excisable goods manufactured by him, then all such un-accounted goods shall be liable to confiscation. It is a fact that incriminating documents and details of clandestine removals of the excisable goods were found in the premises of appellant No. 1. Appellant No. 2 and partner of Appellant No. 1 has clearly admitted in his statement recorded on 23.03.2015 that they were suppressing actual production of the finished goods and clandestine clearances thereof for which they maintained red coloured diary (ledger) which was found and seized during the course of Panchnama dated 23.03.2015. The said red coloured diary was maintained in which transactions of clandestine clearances through

computerized invoices were recorded, which means that seized goods were meant to be cleared without payment of duty. 76

10.3 The contention of Appellant No. 1 that the seized goods were not liable to confiscation, in absence of evidences of clandestine removal and any evidence in form of procurement of raw material on cash payment is not correct due to admission of facts by Appellant No. 2. The grounds taken in appeal memorandum on the part of the appellants, are afterthought and the case-laws cited by the appellants are not applicable due to admission of facts in the statements given by Appellant No. 2 and partner of Appellant No. 1.

10.4 I also find that Appellant No. 2 in his statement admitted clandestine manufacture of final products and clearance thereof and has not retracted and therefore, sanctity of his statement cannot be undermined, especially when there is corroboration in form of un-accountal of the goods. It is settled law that admitted facts need not be proved as has been held by the Hon'ble Apex Court in the cases of Systems & Components Private Limited reported as 2004 (165) ELT 136 (SC). The Hon'ble CESTAT in the case of Alex Industries reported as 2008 (230) ELT 0073 (Tri-Mumbai) and M/s. Divine Solutions reported as 2006 (206) E.L.T. 1005 (Tri. (Chennai) has consistently held that confessional statements would hold the field. Hon'ble CESTAT in the case of M/s. Karori Engg. Works reported as 2004 (166) E.L.T. 373 (Tri. Del.) has also held that "confessional statement is a substantial piece of evidence, which can be used against the maker."

10.5 It is well settled position of law that the case of un-authorized clearance and non - accountal of goods owing to clandestine clearances, is not to be proved with mathematical precision, especially when the appellants have categorically admitted their guilt. I, therefore, uphold the confiscation of the finished goods ordered in the impugned order. I also find imposition of redemption fine of Rs. 2,85,250/- in lieu of confiscation of goods valued at Rs. 11,41,043/- is correct, legal and proper. R. S. S.

11. I find that imposition of penalty on Appellant No. 1 under Rule 25 of the Rules is correct as Appellant No. 2 as well as partner of Appellant No. 1 both have admitted guilt of clandestine manufacture of final products and clearance thereof. I find that imposition of penalty of Rs 71,300/- under Rule 25 of the Rules read with Section 11 AC of the Act is legal and proper and hence is required to be upheld.

11.1 As regards, imposition of penalty of Rs. 36,000/- on Appellant No. 2 under Rule 26 of the Rules, I find that Appellant No. 2 was an employee of Appellant No. 1 and he had to act as ordered by partners of Appellant No. 1. However, the show cause notice did not propose imposition of penalty on partner but proposed imposition of penalty under Rule 26 of Central Excise Rules, 2002 on an employee. Under such circumstances, imposing penalty on Appellant No. 2 is not justified. Accordingly, I set aside penalty imposed on Appellant No. 2.

12. In view of above, I reject appeal of Appellant No. 1 but allow appeal filed by Appellant No. 2.

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

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

(कुमार संतोष)
21/12/2016
आयुक्त (अपील्स)

By R.P.A.D.

To,

Shri Ram Polyplast, 8-B, National Highway, At: Dumiyani, Taluka: Upleta, Dist.: Rajkot	मे. श्री राम पोलीपलास्ट, ८-बी राष्ट्रीय धोरीमार्ग, एट: दुमियाणी, तहसील: उपलेटा, जिल्ला: राजकोट.
Shri Chintan Dipakbhai Sapariya, Authorised person of Shri Ram Polyplast, 8-B, National Highway, At: Dumiyani, Taluka: Upleta, Dist.: Rajkot	श्री चिंतन दीपकभाई सापरिया, अधिकृत व्यक्ति, मे. श्री राम पोलीपलास्ट, ८-बी राष्ट्रीय धोरीमार्ग, एट: दुमियाणी, तहसील: उपलेटा, जिल्ला: राजकोट.

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise, Division-II, Rajkot.
- 4) The Superintendent, GST & Central Excise, Range, Gondal.
- 5) F. No. V2/280/RAJ/2016
- 6) Guard File.