



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

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सत्यमेव जयते

96

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No	मूल आदेश सं / O.I.O. No	दिनांक / Date
	V2/262 to 264 /RAJ/2016	35/ADC/PV/2016-17	30.09.2016

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

RAJ-EXCUS-000-APP-196-TO-198-2017-18

आदेश का दिनांक / 24.01.2018 जारी करने की तारीख / 25.01.2018
Date of Order: Date of issue:

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

ग जन्म आयुक्त संयुक्त आयुक्त उपायुक्त सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गान्धीधाम द्वारा उपरि उल्लिखित जारी मूल आदेश से उत्पन्न।
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. Euro Auto Industries, 154/1/2, Jetty Road, Village: Sachana, Dist. Jamnagar-361230
2. M/s Aarbee Power Engineering Ltd., 213, Cheappa Gounder Street, Kattor, Coimbatore-641009
3. Kiritbhai Kimjibhai Korat, Partner M/s Axis Alloys Industries, Plot No. 4708, Road No. 02, Phase-III, Dared , Jamnagar

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

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के 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) दक्षिण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, पुरम, नई दिल्ली, जहाँ की जानी चाहिए।
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठ, , दक्षिण तल, बहामली भवन असावा अहमदाबाद- 380016 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) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 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, जहाँ उत्पाद शुल्क की सीमा, ध्याज की सीमा और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम में किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निट बैंक ड्रफ्ट द्वारा किया जाना चाहिए। संबंधित ड्रफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टै ऑर्डर) के लिए अवेरेंस-पर के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमावली, 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 हो, उसकी प्रति साथ में संलग्न की जायेगी (जहाँ से एक प्रति प्रमाणित हुयी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की सीमा, ध्याज की सीमा और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम में किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निट बैंक ड्रफ्ट द्वारा किया जाना चाहिए। संबंधित ड्रफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टै ऑर्डर) के लिए अवेरेंस-पर 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) विलत अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत टॉर्न की नयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा संश्लेषक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन टॉर्न 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 (सेन्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विलीय 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित देय राशि टॉर्न करी गई तथा वे अधिक न हों।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मात्र किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेन्टेट जमा की गई राशि
- (iii) सेन्टेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्राधान विलीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के द्वारा विचारधीन स्थिति अर्थात् अपील को लागू 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 Central Credit taken;
- (iii) amount payable under Rule 6 of the Central Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परन्तक के अंतर्गत अथवा सर्विस, भारत सरकार, पुनरीक्षण आवेदन ईकाई, विलत मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन टीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.

(i) यदि मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने में भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह में या भंडारण में मात्र के परस्पर के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र 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 मात्र के विनिर्माण में प्रयुक्त कच्चे मात्र पर अर्थात् केन्द्रीय उत्पाद शुल्क के छूट (पिबेट) 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इवूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत प्रत्यक्ष की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विलत अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा जित्त की गई तारीख अथवा समावधि पर या बाद में पारित किए गये 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषक 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 अदागरी के अक्षय 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 अदागरी की जानी चाहिए। /

जहाँ 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 दम से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न परी कराई से बचने के लिए सहाय्यिता अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। /

In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) सहाय्यिता न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसूचित मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /

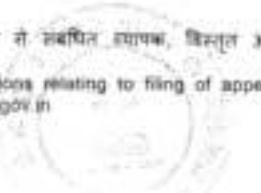
One copy of application or O.I.O as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सर्वो विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित 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 अपीलीय प्राधिकारी को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता 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



3
:: ORDER IN APPEAL ::

M/s. Euro Auto Industries, Plot No. 3369, GIDC, Phase-III, Dared, Dist: Jamnagar (*hereinafter referred to as 'Appellant No. 1' or 'M/s. Euro'*); M/s Aarbee Power Engineering Pvt. Ltd., Coimbatore (*hereinafter referred to as 'Appellant No. 2'*) and Shri. Kiritbhai Khimjibhai Korat, Partner of M/s Axis Alloys Industries, Jamnagar (*hereinafter referred to as 'Appellant No. 3'*) filed appeals against Order-in-Original No. 35/ADC/PV/2016-17 dated 30.09.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Additional Commissioner, Central Excise & Customs, Rajkot (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The brief facts of the case are that Appellant No. 1 was not registered with Central Excise Department even if was engaged in manufacturing batteries and clearing under two brands names, namely (1) "Euro Plus" and (2) "estore"; that Shri. Shaileshbhai Bhanderi, proprietor of M/s Euro clarified that "Euro plus" brand belonged to their firm and another brand "estore" was registered brand of M/s Aarbee Power Engineering Pvt. Ltd., Coimbatore and they were selling batteries after affixing their brand; that during search operations on 26.03.2013, Screen Plates meant for affixing "estore" brand on the batteries were found from the factory premises of Appellant No. 1; that they cleared "estore" brand battery during 2012-13 and 2013-14; that they did not obtain Central Excise registration and did not pay Central Excise duty on the clearance of batteries of 'estore' brand also because they were under SSI exemption limit. Since Appellant No. 1 was hit by the provisions of brand name and was not entitled to the benefit of value based exemption limit they were issued Show Cause Notice dated 22.01.2016, which was adjudicated upon by the lower adjudicating authority, as stated above confirming Central Excise duty of Rs. 18,68,989/- along with payment of interest and imposed penalty of Rs. 18,68,989/- under Rule 26 of Central Excise Rules, 2002 (*hereinafter referred to as "Rules"*). The impugned order also imposed penalty of Rs.18,68,989/- each on Appellant No. 1 and Appellant No. 2 and Appellant No. 3 respectively.

3. Being aggrieved with the impugned order, Appellant No. 1 preferred appeal, inter alia, contending that the lower adjudicating authority has not considered that their factory is situated in rural area and therefore, the benefit of value based exemption limit was available to them as per Notification No. 08/2003-CE dated 01.03.2003 (*hereinafter referred to as "the*

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 said Notification"); that the adjudicating authority findings that M/s. Euro are situated in urban area as defined vide Section 2(xxix) of Gujarat Town planning and Urban Development Act, 1976, is incorrect, inasmuch as Section 2(xxix) defines "Urban development area" and not "urban area" and they relied upon the decision of the Hon'ble CESTAT, Bangalore in the case of M/s. BTM Beverages Pvt. Ltd. reported as 2016 (337) E.L.T. 383 (Tri. - Bang.).

3.1 The Appellant No. 1 also submitted that the brand name "estore" was assigned to them by the brand name owner, M/s Arbee Power Engineering Pvt. Ltd., Coimbatore in their favour vide Assignment Deed dated 24.12.2012 and therefore, the said brand name cannot be said to be usage of other's brand; that their factory is situated in a village, Dared hence, rural area and not under municipal limits of Jamnagar city. Thus, as per the said Notification, they were not hit by the provisions of brand name and were eligible for the benefit of the value based exemption under the said notification, as per the following case laws :-

- | | |
|---|---------------------------------------|
| (i) Excel Controlinkage Pvt. Ltd. | 2016 (332) E.L.T. 185 (Tri. Mumbai); |
| (ii) Devilal Kutir Shop | 2015 (329) E.L.T. 367 (Tri.-Del.); |
| (iii) Plasto Containers (India) P. Ltd. | 2011 (268) E.L.T. 509 (Tri.-Mumbai); |
| (iv) Gujarat Engineering Works | 2010(249) E.L.T. 86 (Tri.-Ahmd.); and |
| (v) Leo Engineering | 2009 (241) E.L.T. 533 (Tri.-Ahmd.). |

3.2 The Appellant No. 2, M/s Aarbee Power Engineering Pvt. Ltd., Coimbatore contended that they are a registered company and Rule 26 of the Central Excise Rules, 2002 (*hereinafter referred to as "the said Rules"*) permits imposition of penalty on a person and not on a firm or a company and relied on (i) Woodmen Industries reported as 2004(164) E.L.T. 339 (Tri.- Kolkata),; (ii) Aditya Steel Industries reported as 1996 (84) E.L.T 229 (Tribunal) and (iii) Ponneri Steel Industries reported as 2008(221) E.L.T. 290 (Tr.- Chennai).

3.2.1 They also submitted that imposition of penalty under Rule 26 of the Rules requires that any person who acquires possession of, or is in any way concerned in transporting, keeping, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or rules, however, in the Show Cause Notice it is not alleged that Appellant No. 2 knew or had reason to believe the said goods were liable to confiscation under the Act and therefore, imposition of penalty under Rule 26 *ibid* on this is not correct relying on the following cases (i) Shiel Ice & Chemicals Pvt. Ltd. reported as 2004 (176) E.L.T. 897 (Tri.- Mumbai), (ii) Elango Ravi reported as 2006 (198) E.L.T. 47 (Tri.- Bangalore)

3.2.2 Appellant No. 2 contended that they are owner of the brand name "estore", and they were not engaged in manufacturing but engaged in trading of battery only; that they entered in agreement with M/s Euro for manufacture of batteries having brand name "estore" under Assignment deed dated 24.12.2012 with specific condition - Not to sale this battery with "estore" brand in the open market and therefore, the manufacturer had not taken any benefits of their (i.e. appellant No. 2's) brand value / goodwill, thus the benefit of value based exemption was available to the manufacturer and consequently no penalty is imposable on the them. 92

3.3 The Appellant No. 3, Shri. Kiritbhai Khimjibhai Korat submitted that he had no connection with the transactions of M/s. Euro as he did not manage or administer the working of M/s Euro; that M/s. Euro was owned by Shri Shaileshbhai Keshavbhai Bhanderi and Appellant No. 3 was not concerned with its working; that he was not involved in clearances of goods by M/s Euro and hence he had not abetted any duty evasion by M/s Euro and all allegations made against him are baseless and without any merit.

3.3.1 He submitted that the contents of the statements recorded by the officers of Central Excise are not known to him and he was not allowed to read these statements; that he came to know contents of statements only after the receipt of the Show Cause Notice; that for imposition of penalty under Rule 26 of the Rules it is a pre-requisite that any person who acquires possession of, or is in any way concerned in transporting, keeping, or in any other manner deals with, any excisable goods which he knew or had reason to believe that they were liable to confiscation under the Act or the Rules, however, in the instance case it is nowhere alleged or proposed in the Show Cause Notice that goods purchased/sold by him were liable for confiscation and hence penalty cannot be imposed on him under Rule 26 ibid; that as per provisions of Rule 26 ibid, penalty cannot be more than duty on such goods, however, no duty on goods bought/ sold by them is quantified and therefore, no penalty can be imposed under Rule 26 of the Rules. 93

4. Personal hearing in the matter was attended by Shri. Rahul Gajera, Advocate who reiterated grounds of appeal and submitted that the factory premises of Appellant No. 1 actually fall in village - Kansumra; that Jamnagar Municipal Corporation, which is meant for urban area, does not cover this village - Kansumra; that since their factory is situated in village area, the

benefit of SSI exemption notification was available to them, even if they had manufactured branded goods; that since the Show Cause Notice is not sustainable, penalty on them and on other appellants cannot survive; that they as purchasers can't be held responsible; that penalty under Rule 26 of the Rules is also not applicable to a private limited company. No one appeared from Department even though Personal Hearing notices were sent to the jurisdictional Commissionerate.

FINDINGS:-

5. I have carefully gone through the facts of the case, the impugned order, all Appeal memoranda, as well as oral and written submissions made by the appellants. The issue to be decided in the present appeals is as to whether M/s. Euro affixing other's brand name is eligible for the benefit of value based SSI exemption Notification or not and if not then whether penalty imposed on Appellant No. 2 and Appellant No. 3 is correct or not.

6. M/s. Euro have contended that their factory is situated at GIDC Dared, Phase 3 in Village - Kansumra which is notified rural area and therefore, as per the said Notification, the benefit of the value based SSI exemption notification is available to them and no Central Excise duty is payable by them even on manufacture of goods under brand name owned by others. To support their claim of location of their factory in rural area, Appellant No. 1 submitted a copy of Certificate dated 03.10.2013 from Talati-cum-Mantri of Gram Panchayat of Kansumra village and Certificate dated 29.10.2013 from Mamlatdar of Jamnagar(Rural). I find that this contention was also raised before the lower adjudicating authority, however the same has been controverted based upon the findings at Para 35.6 of the impugned order that village, Kansumra is falling within the limits of Jamnagar Area Development Authority, which is urban area developmental authority for development of urban areas as defined under Section 2(xxix) of Gujarat Town Planning and Urban Development Act, 1976 and therefore, the factory has to be considered to have been situated in urban area. This findings at Para 35.6 are reproduced as under :-

"35.6 I find that Government of Gujarat has enacted Gujarat Town Planning and Urban Development Act, 1976 with an view to consolidate and amend the law relating to the making and development plans and town planning schemes in the State of Gujarat w.e.f. 21.06.1976. Section 22 of the said act provides that the Government of Gujarat can constitute an authority to be called the

urban area development authority for proper development or any urban area with such adjacent areas. Therefore, in exercise of such power the Government of Gujarat has constituted an authority by the name of Jamnagar Area Development Authority on 01-02-1978 with the prime objective of prime objective to carry out the sustained planned development of the area falling outside the periphery of Jamnagar Municipal Corporation and its Jurisdiction consists of 26 Villages Nagsim and the Jamnagar City. Name of village are as under :-

1. Samrat	13. Theba	25. Harshadpur
2. Ravalsar	14. Hapa	26. Naranpur
3. Naghedi	15. Khimarana	27. Vasai
4. Kansumra	16. Morkanda	28. Aamra
5. Chela	17. Dhunvav	29. Lakha-baval
6. Dared	18. Juna Nagna	30. Masitiya
7. Dadiya	19. Vibhapar	31. Jivapar
8. Mokhana	20. Nava Nagna	32. Dodhiya
9. Naghuna	21. Rozi - bet	33. Balambhadi
10. Konza	22. Dhinchada	34. Champa Beraza
11. Lavadiya	23. khara Beraja	35. Vav Beraza
12. Khimaliya	24. Gordhanpar	36. Gaduka

I find that the Village: Kansumra is appearing at Sr. No. 4 of the said table and it is falling within the limits of Jamnagar Area Development Authority which is urban area development authority for proper development or any urban areas with such adjacent areas. Therefore, the Village: Kansumra is not a rural area as claimed by M/s. Euro but it is urban areas as defined at Section 2(xxix) of Gujarat Town Planning and Urban Development Act, 1976. The Certificate of Gram Panchayat and mamlatdar are with respect to the revenue survey in which the said unit is located. Just the name of name Taluka : Jamnagar (Rural) cannot be a basis for extending benefit value based clearance as claimed by M/s Euro as the Jamnagar (Rural) Taluka has been constituted under Gujarat Land Revenue Code, 1879 which empowers Gujarat Government to constitute a Taluka."

6.1 I would like to examine provisions of the brand name contained in the said Notification, which is reproduced as under :-

"4. The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases :-

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 :-

Provided that manufacturers, whose aggregate value of clearances of the specified goods for use as original equipment does not exceed rupees one hundred lakhs in the financial year 2002-2003 as calculated in the manner specified in paragraph 1, may submit a declaration regarding such use instead of following the procedure laid down in the said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;

- (b) where the specified goods bear a brand name or trade name of -
- (i) the Khadi and Village Industries Commission; or
 - (ii) a State Khadi and Village Industry Board; or
 - (iii) the National Small Industries Corporation; or
 - (iv) a State Small Industries Development Corporation; or
 - (v) a State Small Industries Corporation;
- (c) where the specified goods are manufactured in a factory located in a rural area."

[Emphasis supplied]

6.2 The term 'rural area' has been defined under the said Notification which reads as under :-

- "H) "rural area" means the area comprised in a village as defined in the land revenue records, excluding -
- (i) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee, on
 - (ii) any area that may be notified as an urban area by the Central Government or a State Government."

[Emphasis supplied]

6.3 On examining the relevant provisions of the said Notification, I find that the words used therein are very categorical, unequivocal and unambiguous. What is required to be examined is location of the factory, and limits of urban area developmental authority, which the lower adjudicating authority has discussed in order to decide eligibility of the said Notification. The lower adjudicating authority has correctly denied the claimed benefit on the ground that place of the factory is covered by notification issued by Jamnagar Area Development Authority and therefore, the place of factory cannot be considered as rural area. I agree with his reasoning, more so when the appellant has failed to substantiate their claim by furnishing anything contrary to it.



6.4 I find that Appellant No.1 has in fact cleared the excisable goods valued at Rs. 1,51,21,270/- to Appellant No. 2, whose brand name 'estore' Appellant No. 1 was using. Therefore, the appellant is required to pay Central Excise duty as confirmed in the impugned order, along with interest under Section 11AB now (Section 11AA) of the Act. Since Appellant No. 1 has violated the condition of the notification with intent to evade payment of duty they are required to be imposed penalty under Section 11AC of the Act and hence the equal mandatory penalty imposed in the impugned order on Appellant No. 1 under Section 11AC of the Act is upheld. The penalty on Appellant No. 2 also needs to be upheld and his plea that penalty could not be imposed on him under Rule 26 of the Rules, Appellant being a company is not tenable in light of the decision of the Hon'ble CESTAT in the case of M/s. Suraj Medical Agencies reported as 2015 (330) E.L.T. 240 (Tri. - Del.)

"32. As regards the other point of dispute as to whether the provisions of Rule 26 are attracted only in respect of natural persons or can be invoked for imposition of penalty on a company or firm, we find that the Tribunal in the case of Twenty First Century Wire Rods Ltd. v. CCE & Cus., Goa (supra) relying upon the Apex Court's judgment in the case of Madhumilan Syntex Ltd. v. Union of India (supra), has in para 38 of the judgment held that penalty under Rule 26 can be imposed even on companies and the word 'person' in this Rule need not be a natural person and would include a juristic person also which can be a firm, a corporate body or even a company. The Apex Court in the case of Madhumilan Syntex Ltd. v. Union of India (supra) had in para 23 of the judgment held that while it is, no doubt, true that a company is not a natural person but is a 'legal' or 'juristic' person, the 'Corporate criminal liability' is not unknown to law and that while a company cannot be ordered to suffer imprisonment, other consequences e.g. payment of fine etc. can ensue. Though Apex Court vide order reported in 2004 (170) E.L.T. A307 (S.C.) has dismissed the civil appeal filed by the Government against Tribunal's order in case of Woodmen Industries v. CCE, Patna (supra), the Apex Court's order being mere dismissal of civil appeal without giving any reasons does not lay down a binding precedent and it is only the Apex Court's judgment on this issue in case of Madhumilan Syntex Ltd. (supra) which has to be treated as a binding precedent. In view of this, notwithstanding the Tribunal's judgment in the case of Woodmen Industries v. CCE, Patna (supra), the civil appeal against which has been dismissed by the Apex Court, I am of view that the order recorded by Member (Technical) being in accordance with the Apex Court's judgment in the case of Madhumilan Syntex Ltd. v. Union of India (supra) is the correct order."

[Emphasis supplied]

7. Regarding penalty on Appellant No. 3, I find that the lower adjudicating authority has imposed personal penalty under Rule 26 on him for the reason that he used to handle unaccounted supply of raw materials, sales, payment and accounts of M/s. Euro. As discussed above, I find that Appellant No. 1 has evaded Central Excise duty with intent and hence I do not see any reason as to why personal penalty upon Appellant No. 3, who is partner of M/s. Axis Alloys


Industries, Jamnagar who had supplied raw materials to M/s. Euro, should not be imposed.

8. In view of the above, the impugned order is upheld and appeals are rejected.

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

9. The appeals filed by the appellants stand disposed of in above terms.

सहायक,
निजी, राजकोट
अपील (अपील्स)


24/1/2018
(कुमार संतोष)
आयुक्त (अपील्स)

BY R.P.A.D.

To,

1. M/s Euro Auto Industries, Plot No. 3369, GIDC Dared, Phase-III, Jamnagar- 361004.
2. M/s Aarbee power Engineering Pvt. Ltd., 213, Chellappa Gounder Street, Kattor, Coimbatore- 641009.
3. Kiritbhai Kimjibhai Korat, Partner, M/s Axis Alloys Industries, Plot No. 4708, Road No. 02, Phase- III, Dared, Jamnagar.

Copy for information and necessary action to :-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his information please.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
4. The Assistant Commissioner, GST & Central Excise City Division, Jamnagar.
5. Guard File.

