



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

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रजिस्टर्ड डाक ए. डी. द्वारा :- 7138-7120

क अपील / फाइल संख्या /
Appeal / File No.
V2/88/RAJ/2017

मूल आदेश सं /
O.I.O. No.
21/D/2016-17

दिनांक /
Date
06.01.2017

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

RAJ-EXCUS-000-APP-205-2017-18

आदेश का दिनांक /
Date of Order: 31.01.2018

जारी करने की तारीख /
Date of issue:

02.02.2018

Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८९, केन्द्रीय उत्पाद शुल्क अधिनियम १९५४ की धारा ३५ के अंतर्गत दर्ज की गई अपील के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-

M/s Parajiya Engineering Works, Parajiya Estate, Vaid Vadi, Gondal Road, Near Railway Fatak Rajkot-360004

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। /

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय 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 बताए गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा 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) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग 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 से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

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

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग 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 से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

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

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

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

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है।
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है।
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए।
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भगतान 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 भगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी कार्य से बचने के लिए यथास्थिति 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, notwithstanding 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) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित 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.

:: ORDER IN APPEAL ::

M/s. Parajiya Engineering Works, Parajiya Estate, Vaid Wadi, Gondal Road, Ner Railway Fatak, Rajkot, Gujarat (hereinafter referred to as **the Appellant**), have filed appeal against the Order-in-Original No. 21/D/2016-17 Dated 6.1.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, Division-II, Rajkot. The appeal is filed along with the respective pre-deposit compliances by these Appellant.

2. Briefly stated facts of the case are as under:

2.1 Based upon intelligence, search and seizure operations were carried out at the unit of the Appellant on 9.4.2012 by the Anti Evasion Section of Central Excise, Rajkot.

2.2 It is the case of the Department that appellant were engaged in the manufacture of "Gears & Gearing" (hereinafter referred to as "impugned goods") falling under the Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as "CETA, 1985").

2.3 Subsequent investigation/scrutiny of records revealed that the appellant were not registered with the Central Excise Department; did not pay Central Excise duty on their excisable finished product "Gears & Gearing" by classifying their finished goods under Chapter Heading No. 84329090 as Parts of Rotary Tiller instead of CETH 84834000.

2.4 Show Cause Notices No. V.84/AR-II/DIV-I/ADC/BKS/13/2016-17 dated 19.4.2016 were issued by the Additional Commissioner, Central Excise Rajkot to the Appellant, which after issuance of a corrigendum dated 23.11.2016 in pursuance of CBEC Circular dated 29.9.2016 under which monetary limits for adjudication were revised and as a result, the case fell under the competence to be adjudicated by the Assistant Commissioner of Central Excise, Division-II, Rajkot.

2.5 After grant of personal hearing on 5.1.2017, and after considering the further submissions dated 5.1.2017, the Assistant Commissioner vide the impugned order dated 6.1.2017, upheld the impugned Show Cause Notice dated 19.4.2016, whereby, the impugned goods were held to be classified under Chapter Heading No. 8483 of CETA, 1985. As a result, the Assistant Commissioner confirmed the demand of Central Excise Duty for the period 2011-12 of Rs. 12,28,657/- under Section 11A(4) of Central Excise Act, 1944 by invoking the extended period and further ordered for its recovery along with interest under Section 11AA of CEA, 1944; imposed penalty of Rs. 12,28,657/- under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central excise Act, 1944 on the Appellant.

3. Being aggrieved by the impugned Order-in-Original, the Appellant have filed appeal, inter alia, mainly on the following grounds.

3.1 Grounds of Appeal

- i. The Appellant were engaged in manufacturing of parts of "Rotavator" or "Rotary Tiller";
- ii. The order passed by the Adjudicating Authority and the observation made is improper and unjustified on the basis of decision referred which are not applicable;
- iii. The classification confirmed under S.H. No. 84834000 is bad in law and is liable to be set aside. The product, being the part of Rotavator or Rotary Tiller is properly classifiable under S.H. No. 84329090 or 84329010.
- iv. Observation of Adjudicating Authority that the product cannot be classified under S.H. No. 84329090 is improper and without any

base when the department had accepted classification under S.H. No.84329090 of the identical goods for another manufacturer registered with the department; impugned order is liable to be set aside.

- v. The Adjudicating Authority have ignored the certificate dated 2.12.2016 issued by the Chartered Engineer as well as the statement given by their buyers as their buyer had certified that the product manufactured by the applicant were used as part of Rotavator or Rotary Tiller and in commercial terms also was classifiable under CETSH No. 84329090 and hence classification confirmed by the adjudicating authority is improper and liable to be set aside.
- vi. They had reasonable ground to believe that the product under consideration was classifiable under S.H. No. 84329090 and was consequently exempt from payment of duty and hence the allegation of Mis-statement or Suppression of fact cannot be sustained and hence demand raised is clearly barred by limitation and liable to be set aside.
- vii. Adjudicating Authority ignored their submission to allow the Credit available to them for the input and input service used in or in relation to manufacture of their final product as also the relevant decisions referred by the applicant No.1.
- viii. Their value should have been treated as cum duty price; the duty payable was ought to have been deducted from the assessable value
- ix. Issue under consideration is that of interpretation of relevant entry and hence no penalty is liable to be imposed.
- x. As demand is not liable to be confirmed interest under the provisions of section 11AA is not imposable.

4. Hearing were held on 27.12.2017, which was attended by Shri Paresh V. Seth, Advocate, who reiterated the submission of appeal memo and requested that the issue is similar to that of appeal no. 89 & 90/RAJ/2017 ;decide the matter accordingly.

4.1 In their Additional written submission of Dated 30.12.2017, Shri Paresh V. Seth, Advocate, the Ld Advocate has mainly submitted that ;

- i. The issue involved in regard to classification of the goods manufactured by the appellant, which were duly accounted/recorded in their books of account, hence was not a case of clandestine removal.
- ii. Findings on the issue of classification is not sustainable as adjudicating authority has overlooked the sub heading no. 84329090.
- iii. Drew attention to the statement of there buyers in the form of letter, who had clarified that product under consideration is known as parts of Rotavator only and submitted that in terms of the relevant section note as well as heading and understanding of their customers the product is appropriately classifiable under S.H. NO. 84329090.
- iv. Referring to invoices issued by their competitor; manufacturing identical and were registered under Central Excise, they were under bonafied belief that the goods under consideration were properly classifiable under CETSH No. 84329090 and were eligible for exemption



- v. As per the decision in case of Indian Plastic Industries reported at 2007(210) ELT(534),(CESTAT, Ahmedabad), it is settled that in the case where there is dispute on classification then the assessee should be allowed to avail Cenvat Credit.
- vi. The appellant had bonafied belief that the impugned goods were appropriately classifiable under S.H. No. 84329090 and hence the allegation of suppression of fact can not be sustained and extended period of limitation can not be invoked and penalty can not be imposed.
- vii. Drew attention to the following decisions.
- i. Dresser Rand (India) Pvt. Ltd. Vs Commissioner of C.Ex. 2012-285-ELT-438(Tri.Ahmd);
 - ii. Cosmo Ferrutes Ltd. Vs Commissioner of C.Ex. 2014-308-ELT-633(Tri.Delhi) Confirmed by Supreme Court 2015-318-ELT-A157;
 - iii. Quippo Energy Pvt. Ltd. Vs Commissioner of C.Ex. 2016-331-ELT-617(Tri.Ahmd);
 - iv. Venkatesh Yedidha Vs Commissioner of C.Ex. 2016-332-ELT-860(Tri.Mumbai).
- viii. Submitted that their submission filed with the Adjudicating authority and the decision referred there in may also be treated as part of their submission.
- ix. Since the issue involved in regard to classification and all the transactions were duly accounted for the allegation contained in the SCN is not sustainable and the amount is also liable to be considered as Cum Duty Price and consequently the duty payable is liable to be deducted from the value worked out
- x. Prayed that the proceedings initiated may be dropped

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and submissions made by the Appellant at the time of hearing.

5.1 Following issues arises for consideration:

- i) Whether, Appellants were manufacturing goods described by them as Parts of Rotavator or Rotary Tiller classifiable under CET84329090 or the goods were classifiable under CETH 8483 40 00 as Gears as held by the adjudicating authority.
- ii) Whether, the Central Excise duty demanded under Section 11A(4) of Central Excise Act, 1944 is sustainable or barred by limitation ?
- iii) Whether, the Appellant is liable for a penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944

5.2 I find that the Appellant is a manufacturer of different types of gears and parts which are mainly used as Oil Engine Parts and gears used in Rotary Tiller. The Appellants sell these to actual/end users and are used by M/s Sonalika Agro, Hoshiyarpur, M/s Ganesh Agro, Mehsana, M/s Kirloskar Oil Engine Limited and M/s International Tractors Limited, as gears and parts. From the Appeal memorandum, I find that these gears and parts are solely and principally used in the manufacture of agricultural machines and these parts cannot be used for any other purpose. All these buyers have during investigations and in response to the departmental summons have confirmed that the item purchased by them were suitable for use in the item manufactured by them viz 'Rotavator'. There is thus no dispute that final

product is the agricultural equipment and all these gears and parts are specifically designed for manufacture/assembly of agricultural equipment, therefore it merit classification as part of agricultural machinery. Thus, I find that the Appellant had manufactured gears and parts meant for solely and principally for use in Rotavator and Rotary Tillers.

5.3 Now I come to the classification of such Rotary Tillers. I find that the Assistant Commissioner have discussed the issue at Para 18. On going through the Heading 84.32, I find that the Sub heading 843290 covers Parts as a separate heading with a "-". I find that while entry 8432 90 10 covers , parts of agricultural machinery falling within heading 8432 10, 8432 21, 8432 29, 8432 30 and 8432 40 while 8432 90 90 pertains to parts of agricultural machinery other than the said sub headings, which , in the present case, I find that the item in question are undoubtedly parts of agricultural machinery and hence the parts of Rotary Tiller would be germane to sub heading 8432 90 90 as heading 84328020 gets excluded in 8432 90 10. This being the case, as there is a specific entry as far as parts of agricultural machinery is concerned , the findings of the Assistant Commissioner that the impugned items were in the nature of gears and not parts of rotary tillers is incorrect both on facts and the Tariff Entry 8432 as discussed herein. Thus, the alternative classification held by the Assistant Commissioner under CETH 8483 40 00 on the grounds that the Rotary Tillers are falling under CETH 8432 80 20 cannot be upheld as the subject parts being manufactured by the Appellants are being used solely and principally in power tillers which is not disputed.

5.4 Thus, the reliance placed upon the scope of Section 2(b) of Sec. XVI is more appropriate than Section 2(a) of Sec. XVI of CER, 1944 as the parts are suitable for use only in the Rotavator or Rotary Tiller and also in the light of the Chartered Engineer Certificate (**in short CE**) dated 2.12.2016. In the said Certificate, the CE has clearly certified that the parts manufactured were not capable of use with more than one machine and hence , the findings of the Assistant Commissioner after application of Rule 3(a) is not in consonance with the decision rendered by the Hon'ble CESTAT in the case of Canara Auto Products ((2006(206)ELT 920 (Tri)) as cited by the Appellants in the Appeal. Thus, the classification of the parts are covered fully and clearly under note 2(b) of Section XVI and Section 2(a) does not apply at all.

5.5 Thus, the parts are not for general use but have specific use and are intended to be used solely and principally in Rotary tillers. Therefore, they fall outside the heading 8483 40 40 , since rotary tiller is agricultural machinery falling under 84.32 and there is separate entry for parts of 84.32 under CETH 8432 90 90. Thus the parts would fall under Heading 8432 90 90.

5.6 On limitation too, I find sufficient force in the submission of the appellant, that the demand confirmed by the Assistant Commissioner is patently barred by time. I find that there are instances cited by the Appellants that other manufactures of identical goods were classifying the said gears under CETH 84329090 as seen from Para 15 of the Order. Thus, it can be inferred that the Appellant all along held a bonafide belief that likewise too the gears attracted nil rate of duty by virtue of its classification under CETH 84329090. This fact also gets further bolstered by the fact that the Department had also lifted the seizure of the goods unconditionally in an another case of M/s Parajia Industries. Thus, the issue is one of plain classification of goods manufactured by the appellant and not a case of evasion of duty as held by the Assistant Commissioner. The present matter is one of interpretation of the taxing entry in the Central Excise Tariff. As such, I find that no malafides can be attributed to their conduct involving any suppression of facts to evade payment of duty. Therefore, the ratio of the decision cited in the case of M/s Dresser Rand (India)Pvt. Ltd. Vs Commissioner of C.Ex. Ahmedabad 2012(285) ELT 438(Tri.Ahmd.) is squarely applicable to this case. Therefore I hold that the entire demand raised beyond the normal limitation period is not sustainable and is liable to be dropped *in-toto*. Also, since the allegation of suppression is not maintainable, and since there is no case of confiscation of the goods, the question of upholding the penalty imposed under Rule 25 of Central Excise Rules,2002



read with Section 11AC of Central Excise Act, 1944 does not survive and accordingly recovery of interest at appropriate rates under Section 11AA of Central Excise Act, 1944 also does not survive.

6. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
7. The appeal filed by the appellant stands disposed off in above terms.

Handwritten signature
31/1/2018
(गोपी नाथ)
आयुक्त (अपील्स)

M/s. Parajiya Engineering Works,
Parajiya Estate, Vaid Wadi,
Near Railway Fatak,
Gondal Raod,
Rajkot.

By Regd. Post A.D. /Speed Post
F.No. V2/88/RAJ/2017

Dated.31.1.2018

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner (Appeals), Central Taxes, Rajkot.
- 3) The Commissioner, GST & Central Excise, Rajkot Commissionerate.
- 4) The Assistant Commissioner, GST & Central Excise Division-II, Rajkot.
- 5) Guard File for O/o the Additional Director General(Audit),Ahmedabad Zonal Unit, Ahmedabad.
- 6) Guard File.