



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



द्वितीय तल, जी एम टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
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रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक/ Date:
	V2/117, 118/BVR/2018-19	1 & 2/Excise/Demand/17-18	25.4.2018
	V2/157/BVR/2018-19	R-31/Refund/18-19	31.5.2018
	V2/115, 116/BVR/2018-19	61 & 62/Excise/Demand/17-18	28.3.2018
	V2/156/BVR/2018-19	6/Excise/Demand/17-18	25.5.2018

ख अपीलआदेशनं./Order-In-Appeal No.:

BHV-EXCUS-000-APP-121-TO-126-2019

आदेश का दिनांक /
Date of Order: **24.05.2019**

जारी करने की तारीख /
Date of issue: **27.05.2019**

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

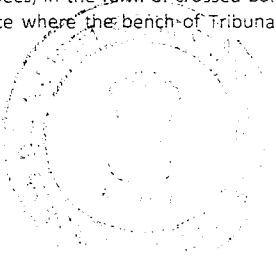
ग अपर आयुक्त/ मंयुक्त आयुक्त/ उपायुक्त/ महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से मृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot/Jamnagar/Gandhidham :

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

M/s Beyond Fabchem Plot No. 126/1, GIDC, Chitra Bhavnagar, Gujarat Parsival Para, Mahuva, Dist- Bhavnagar.

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

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क 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 मुद्दों के संबंध में मध्य प्रदेश सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, बन्ट ब्लाक नं. 2, आर.के.पुरम, नई दिल्ली, को जाननी 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 वर्णित सग अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को जाननी 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) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। उनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के महायुक्त रजिस्टार के नाम में किमी भी मार्बजिन क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय 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) अपील 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 सकती 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, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के महायुक्त रजिस्टार के नाम में किमी भी मार्बजिन क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय 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) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, मेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा प्राप्ति आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति सुनिश्चित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/मेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय प्राधिकरण (सेन्ट्रल) के प्राप्ति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की विन अधिनियम, 1994 की धारा 83 के अंतर्गत मेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/मेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि. जाने वाली अपेक्षित देय राशि दम् कराउ रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं मेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) मेनवेद जमा की ली गई गलत राशि
(iii) मेनवेद जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विनियम (नं. 2) अधिनियम 2014 के आरंभ से पूर्व किन्ही अपीलीय प्राधिकरण के समक्ष विचाराधीन स्थान अर्थात् अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत धरम मुखिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, मन्द 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 किन्ही नुकसान के कारणों में, जहां नुकसान किन्ही माल को किन्ही कारखाने में भंडार गृह के पारगमन के दौरान या किन्ही अन्य कारखाने या फिर किन्ही एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किन्ही भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किन्ही कारखाने या किन्ही भंडार गृह में माल के नुकसान के कारणों 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 किन्ही राष्ट्र या क्षेत्र को निर्यात कर रहे माल के त्रिनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किन्ही 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 माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं. 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 मसौपण 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 साथ केंद्र 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। / पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होने हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। / 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा जाना 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 मेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकषित किया जाना 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 प्राधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और त्वरितम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in का दृष्ट नकत है। / 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 ::

M/s. Beyond Fabchem, Plot No. 126/1, GIDC, Chitra, Bhavnagar (hereinafter referred to as "the appellant") have filed following six appeals against the Orders-in-Originals (hereinafter referred to as "the impugned orders"), passed by the respective adjudicating authorities (hereinafter referred to as "the lower adjudicating authority") :

TABLE

Sr No	Appeal No.	OIO No.	Adjudicating Authority	Period involved	Amt .Involved (Rs.)
	2	3	4	5	6
1	V2/117/BV R/2018-19	1& 2/ Excise/ Demand/ 17-18 Dated 25.4.2018 (Refund)	A.C., CGST Division Bhavnagar-1, Bhavnagar	Aug, 2014	64,987/-
2.	V2/118/BV R/2018-19	1 & 2/ Excise/ Demand/ 17-18 Dated 25.4.2018 (Refund)	A.C., CGST Division Bhavnagar-1, Bhavnagar	Sep, 2014 to May, 2015	6,89,605/-
3	V2/157/BV R/2018-19	R-31/Refund/18- 19 Dated 31.5.2018	A.C., CGST Division Bhavnagar-1, Bhavnagar	Dec,2016 to June,2017	8,63,128/-
4	V2/115/BV R/2018-19 (Vacation of Protest)	61 & 62/ Excise/ Demand/ 17-18 Dated 28.3.2018	A.C., CGST Division Bhavnagar-1, Bhavnagar	March,16 to Nov,2016	8,33,500/-
5	V2/116/BV R/2018-19 (Vacation of Protest)	61 & 62/ Excise/ Demand/ 17-18 Dated 28.3.2018	A.C., CGST Division Bhavnagar-1, Bhavnagar	Dec,16 to Mar,2017	4,94,187/-
6	V2/156/BV R/2018-19 (Vacation of Protest)	6/ Excise/ Demand/ 17-18 Dated 25.5.2018	A.C., CGST Division Bhavnagar-1, Bhavnagar	Apr,2017 to June,2017	3,69,103/-

2. The brief facts of the case are that Appeals listed at Sr. No. 1 to 3 of Table above are where ; the appellant had claimed refund of central excise duty paid by them on their finished products namely, "Rubberized Textile Fabrics" on the ground that their product was correctly classifiable under Central Excise Tariff Item 59070099 of the First Schedule to Central Excise Tariff Act,1985 (hereinafter referred to as "CETA") and not under Tariff Item 59061000 under which they had taken CE registration and paid central excise duty in terms of Notification No. 01/2011-CE dated 01.03.2011, as amended. The appellant paid 'duty under protest' by mentioning in the Remarks column of ER-1 returns filed by them from August, 2014 onwards. The appellant were served show cause notices for rejection of their refund claims. The said notices were decided by the lower adjudicating authority vide the impugned orders. For Appeals at Sr No.1 and Sr No.2, in first round of proceedings, refunds were rejected by the Jurisdiction Assistant Commissioner and the then Commissioner (Appeals), Rajkot had remanded the matter for *de novo* proceedings for speaking order with regard to classification of the product.

2.1 The Appeals listed at Sr No. 4 to 6 of Table above, are where the appellant was issued show cause notices proposing rejection of their request for change of classification of their finished product "Rubberized Textile Fabrics" under Tariff Item 39070099 and vacation of protest was lodged by them while paying CE duty on their finished goods under Tariff Item 59061000 of CETA. The show cause notices were adjudicated vide the impugned orders mentioned in the Table above appropriating CE duty paid by Appellant under protest and rejecting the change of classification of the finished product.

2.2. Since, the issue involved in both the above proceedings are in respect of same excisable goods/ finished product, namely, "Rubberized Textile Fabrics" and periodical, all six appeals are being taken up for common order.

3. Being aggrieved with the impugned orders, the appellant preferred present appeals on the grounds as under:-

(i) The adjudicating authority's observations that pending show cause notices demanding duty on account of change in classification has no connection are not correct and these could not be the basis of denial of refund claim or for not modifying the classification on the basis of evidence produced in the form of Charter Engineer's certificate and relevant judicial pronouncements.

(ii) The adjudicating authority has erred in rejecting refund on the ground that the applicant himself had claimed classification under Tariff Item 59061000; that it is settled law that there is no estoppel against change in classification and hence, the order passed on this ground is also liable to be set aside.

(iii) The admitted facts are that the product under consideration was/is not an adhesive tape but is coated fabric suitable for use only in Textile Industry and hence, is properly classifiable under Tariff Item 59070099 as claimed; that the adjudicating authority has accepted that the applicant is engaged in manufacturing of Rubberized Textile Fabrics; that once it is accepted that the applicant is manufacturing Rubberized Textile Fabrics the classification under Tariff Item 59070099 should have been accepted and refund as claimed should have been sanctioned; that they rely on the certificate issued by their customers, certificate issued by Government approved Engineers i.e. M/s. Multi Engineers, wherein their product was distinguished from Adhesive Tape but it was clarified that the product under consideration can be defined as "Textile Article" and was/is used only in printing process.

(iv) The product referred in website of the Appellant discussed by the lower adjudicating authority in the impugned order and the product under consideration are different and hence, the observations of the adjudicating authority relying on the website are not justified; that the Commissioner (Appeals), Rajkot vide Order-in-Appeal No. BHV-EXCUS-000-APP-194-2017-18 dated 28.3.2017 had settled the classification issue by classifying the product under Tariff Item 59070099 and hence, the lower adjudicating authority was duty bound to apply the ratio of this order in their favour, having not gone in appeal and accepted the order by the Department.

4. Personal hearing was attended by Shri Paresh V Sheth, Advocate on behalf of the Appellant, who reiterated the grounds of appeal and submitted that the classification of water proof cloth Tape is under dispute; that the matter had already been decided by the then Commissioner (Appeals) Rajkot holding classification under 59070099 vide OIA dated 9.3.2018, which has also been accepted by the department and refund granted to them; that these appeals are for subsequent OIOs; that the impugned orders have travelled beyond SCNs in as much as new grounds have been added for rejecting refund claim and for confirming demand for classification of product under Tariff Entry No.59061000; that the application of General Purpose Masking Tape has been picked up by the lower adjudicating authority from their website, which they have stopped manufacturing since 2014 onwards; that product "General Purpose Masking



Tape” was/ is not under dispute; that the application of other tape (General Purpose Masking Tape) can't be made applicable for product under dispute to settle classification issue; that they will make further submissions within 10 working days.

4.1 Appellant vide written submission dated 12.4.2019 submitted brochure of two products, namely, “General Purpose Masking tape” and “Waterproof Cotton Cloth Tape” in support of their contention that the lower adjudicating authority's observations are nothing but mis representation of facts in as much as the application of “General Purpose Masking Tape”(the product not in dispute) has been made applicable to “Waterproof Cotton Cloth Tape”, the product which is in dispute.

FINDINGS

5. I have gone through the records of the case, the impugned orders, the grounds of appeals and written submission filed by the appellant and records of personal hearing. The issue to be decided in these appeals is whether excisable goods, namely “Waterproof Cotton Cloth Tape” manufactured by the appellant is appropriately classifiable under Tariff Item 59070099 of CETA, as claimed by the appellant or under Tariff item 59061000, as declared by the Appellant at the time of registration.

7. For ease of reference, classification under Tariff Heading 5906 and Tariff Heading 5907 of CETA are reproduced as under:-

Tariff	Description
5906	<u>Rubberized textile fabric; other than those heading 5902</u>
5906 1000	- Adhesive tape of a width not exceeding 20 cm
	- Other
5906	- - Knitted or crocheted
5906 9110	- - - Of Cotton
5906 9190	- - - Of other Textile Materials
5906 99	-- Other
5906 99 10	- - -Insulating Tape, electrical of cotton
5906 99 20	-- -Rubberised cotton fabric, other than knitted or crocheted
5906 99 90	---Other

Tariff	Description
5907	<u>Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like</u>
590700	- Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like; - - - Fabrics covered partially or fully with textile flocks, or with preparation containing textile flocks;
5907 0011	- - - - On the base fabrics of cotton
5907 0012	- - - - On the base fabrics of man made textile material
5907 0019	- - - -On the base fabrics of other textile materials
	- Other:
5907 0091	- - - - Cotton fabrics coated or impregnated with oil or preparations with basis of drying oil
5907 0092	- - - - Other textile fabrics coated impregnated with oil or oil preparations
5907 0093	- - - - Other textile fabrics coated or impregnte with oil or oil preparations
5907 0099	- - - - Other

7.1 I find that the lower adjudicating authority has held that the appellant had obtained registration under Tariff Item 59061000 for "Adhesive tape of a width not exceeding 20 cm" and relied upon details of another product (not in dispute in present case) as mentioned on website of the Appellant. It is appellant's contention that the product in question is not adhesive tape and referred to their reply to SCN emphasizing certificate of Govt. approved Engineer, M/s. Multi Engineers and Report No. RPT/2331/16-17 dated 16.2.2107 of Indian Rubber Manufacturers Research Association (hereinafter referred to as "IRMRA").

7.2 I am of the view that classification of the product can be decided after considering the facts on the ground i.e. examination/ inspection of the product, its uses, its texture with reference to appellant's claim, or any other relevant points and not only declaration made at the time of registration. The impugned order though refers to IRMRA's report given in respect of the product Cotton Cloth Tape, but this report has been discarded by the lower adjudicating authority

holding that the report is for one product only and not in respect of "General Purpose Masking Tape", even if this product is not in dispute in the present case!

7.3 It is appellant's submission that they are no longer manufacturing "General Purpose Masking Tape" since 2014 and there is no classification dispute of that product. In their written submission before the lower adjudicating authority, the appellant had produced brochure of both products only to distinguish both from each other. Thus, the act of lower adjudicating authority discarding IRMRA's report, without appreciating factual position of the product under dispute, is not correct. The report reproduced in the impugned orders reads as under:

"The fabric is coated on one side with polyvinyl alcohol (PVA) for which the comparison graphs and detailed report is attached. The other side of the fabric is coated with solvent (toluene) based natural Rubber adhesive containing hydrocarbon resin, rosin, zinc oxide...."

(Emphasis supplied)

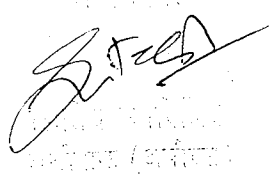
7.4 I find that this report categorically says that the Fabric is coated with PVA on one side and with natural rubber adhesive on other side. It is not in dispute that the product is primarily made of Cotton Fabric; that as per Harmonized System of Nomenclature, Tariff Heading 5609 refers to "Rubberized Textile Fabric" whereas Tariff Heading 5907 refers to "Textile Fabrics otherwise impregnated coated or covered; or the like". Thus, in my considered view, "Cotton Fabrics coated with PVA and natural rubber adhesive" is coated textile fabric and not "Rubberized Textile Fabric Adhesive Tape". It is not forthcoming from the impugned order as to how the product in dispute (i.e. water proof cotton cloth) is adhesive tape? The lower adjudicating authority has rejected certificate of Chartered Engineers and also report of IRMRA only on the ground that the appellant had obtained registration under Tariff Item 59061000, which is for adhesive tape! The lower adjudicating authority has also not recorded reason as to how the disputed product merits classification under Tariff Item 59061000 or why the certificate of chartered engineer and report of IRMRA's are not acceptable to him. I find that the lower adjudicating authority has not adduced any evidence in the impugned order for classification of the product in question under Tariff Item 59061000 and to contest the classification under Tariff Item 59070099 as claimed by the Appellant. The lower adjudicating authority has referred the content of Appellant's website to reject all three key submissions placed before him i.e. IRMR's certification, Chartered Engineer's certification and certificate obtain by the Appellant from their clients. The lower adjudicating authority has neither discussed any evidence nor any counter

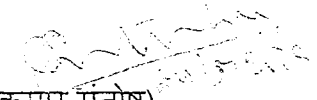
evidence to say as to how the product is adhesive tape and classifiable under Tariff Item 59061000. In view of above factual position, I have no option but to hold that the appellants' submissions can not be ignored especially in absence of any evidence to support the claim of the Department in the SCNs or the impugned orders and hence, the impugned orders do not sustain on merit.

8. Accordingly, I set aside the impugned orders and allow the appeals with consequential relief, if any.

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

9. The appeals filed by the appellant stand disposed off in above terms.


प्रधान अधिकारी (अपील्स)


(कुमार सतोष)
प्रधान आयुक्त(अपील्स)

पंजीकृत डाक द्वारा

सेवामें,

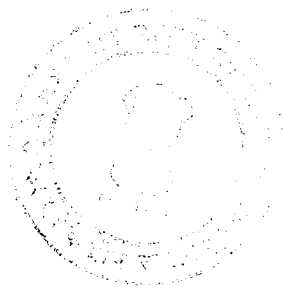
M/s. Beyond Fabchem, Plot No. 126/1, GIDC, Chitra, Bhavnagar	मेसर्स बियोण्ड फेब्लेकम प्लॉट नं १२६/१ जी आई डी. सी चित्रा भावनगर
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प्रति,

- १ प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- २ आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु ।
३. सहायक आयुक्त, केन्द्रीय वस्तु एवं सेवा कर मंडल, भावनगर -१ को तुरंत आवश्यक कार्यवाही हेतु।

४. गार्ड फाइल

५.-९. फाइल नं V2/115,116,117,118,157 /BVR/2018-19



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