



: : 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 / 2<sup>nd</sup> Floor. GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए-डी-द्वारा :-

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date:
	V2/44/BVR/2017	AC/JND/02/2017	13-01-2017

ख अपीलआदेशसंख्या(Order-In-Appeal No.):

**BHV-EXCUS-000-APP-244-2019**

आदेश का दिनांक/ Date of Order:	10.12.2019	जारी करने की तारीख / Date of issue:	10.12.2019
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by **Shri Gopi Nath**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,  
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/ST / GST, Rajkot/Jamnagar/Gandhidham :

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

**M/s. G H C L Limited, Sutrapada, Veraval Kodinar Highway, Taluka Veraval, Dist : Junagadh**

इस आदेश (अपील) में व्याप्त कोई व्याक्त निम्नलिखित तरीक में उपयुक्त प्राधिकारी / प्राधिकरण क 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 में 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 अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्ट्रेट) 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, 2<sup>nd</sup> Floor, Bhumali 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 गए प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, व्याज की माँग 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 रजिस्ट्रार 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.5,000/-, 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/-.

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, व्याज की माँग 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 रजिस्ट्रार 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.5,000/-, 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/-.

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, व्याज की माँग 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 रजिस्ट्रार 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.5,000/-, 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/-.

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, व्याज की माँग 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 रजिस्ट्रार 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.5,000/-, 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 क समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) क अंतर्गत सेवाकर नियमावली, 1994, क नियम 9(1) क 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 माँग, व्याज की माँग 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 रजिस्ट्रार 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/-.



- (i) 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 प्रतियाँ 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 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 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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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
  - सेन्टेट जमा की ली गई गलत राशि
  - सेन्टेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजन्व 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:
- 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
  - 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 छूट (रिवेट) 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.
  - 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.
  - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान 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 (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा ममायाविधि 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.
  - 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 साध्य 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.
  - 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 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.
  - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग में किया जाना चाहिये। इस तथ्य के होने हुए भी की लिखा पट्टी 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, 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
  - 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-I in terms of the Court Fee Act, 1975, as amended.
  - 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 ओर 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.
  - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in)

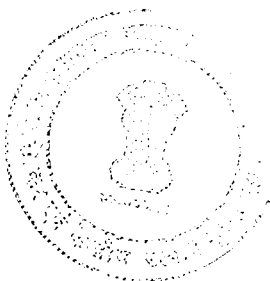


**:: ORDER IN APPEAL ::**

M/s. GHCL Limited, Sutrapada Veraval Kodinar Highway, Taluka: Veraval, Dist. Junagadh (hereinafter referred to as 'Appellant') has filed the present appeal against Order-In-Original No AC/JND/02/2017 dated 13.01.2017 (hereinafter referred to as 'the impugned order'), passed by the Assistant Commissioner, Central Excise Division, Junagadh (hereinafter referred to as "the adjudicating authority").

2. The appellant engaged in manufacture of Soda Ash and Sodium Bi-Carbonate falling under Chapter Sub-heading Nos. 28362010 / 20 and 28363000 respectively of the First Schedule to the Central Excise Tariff Act, 1985; appellant were availing Cenvat Credit in respect of inputs, capital goods and input services used in or in relation to the manufacture of their final products and utilized the same for payment of duty on final products cleared from their factory. The appellant was using coal / lignite-based boilers for generation of steam which were used for manufacturing of their final products and also availed the Cenvat Credit of duty paid on Coal / Lignite. The Fly Ash is excisable goods; attracted Central Excise duty of 5% ad valorem in terms of Notification No. 02/2011-CE dated 01.03.2011 and w.e.f. from 17.03.2012 the rate of duty on Fly Ash was enhanced to 6% ad valorem. Jurisdictional Central Excise division alleged that the appellant was liable to pay Central Excise duty on Fly Ash so generated and further appellant was to maintain daily stock account of Fly Ash in terms of Rule 8 and Rule 10 of the Central Excise Rules, 2002 and also appellant have to declare the same in their monthly ER-1 returns filed in terms of Rule 12 of the Central Excise Rules, 2002. Appellant did not agree with the contention of the department, show cause notice dated 12.04.2016 was issued proposing to demand excise duty of Rs. 7,47,763/- on 100831 MT of Fly Ash generated and cleared by the appellant during the period April 2015 to September 2015. The above-mentioned Show Cause Notice was adjudicated vide impugned order wherein the adjudicating authority confirmed the total demand of excise duty of Rs. 7,47,763/- for the period April 2015 to September 2015 under Section 11A(1) of the Central Excise Act, 1944 along with interest and also imposed penalty of an equivalent amount under Rule 25 of the Central Excise Rules, 2002 and penalty of Rs. 5000/- under Rule 27 of the Central Excise Rule, 2002.

3. Being aggrieved with the impugned order, appellant have preferred this appeal on the various grounds as under:



- (i) The impugned order is not proper and legal as same has been passed by gross violation of provisions of the Central Excise Rules read with Central Excise Tariff Act, as Fly Ash arising out of the burning of coal in boilers by the appellant does not amount to manufacture. Appellant relied on the following decisions:
1. Moti Laminates V/s. CCE – 1995(76) ELT 241 (SC)
  2. Indian Aluminum reported at 1980 (6) ELT 146 (Bom)
  3. 1995 (77) ELT 268 (SC)
  4. CCE Patna V/s. Tata Iron & Steel Co. Ltd. – 2004 (165) ELT 386 (SC)
- (ii) Further, appellant submitted that similar to the case of zinc dross and aluminium dross and skimmings as per above decisions, the Fly Ash generated by the Appellant is merely a residue arising out of coal burnt to run boilers used in the course of manufacture of final products i.e. Soda Ash and Sodium Bi-Carbonate. By no stretch of imagination can it be assumed that the appellant is manufacturing Fly Ash; their issue in question stands settled in their favour in view of the decision of the Hon'ble Supreme Court in UOI V/s. Ahmedabad Electricity Co. – 2003 (158) ELT 3 (SC). In support of their contention whether coal ash / fly ash arising out of burning coal is excisable or not, the Appellant quoted the following citations:
1. Shri Vithal SSK Ltd V/s. CCE 2014 (300) ELT 516 (Tri.Mum)
  2. Shaw Wallace Gelatines Ltd V/s. CCE 2001 (131) ELT 397 (Tri.Del)
  3. Ballarpur Industries V/s. CCE 2002 (146) ELT 623 (Tri.Mum)
  4. Perfect Stoneware Pipes V/s. CCE 2002 (146) ELT 222 (Tri.Del)
  5. NRC Ltd V/s. CCE 2002 (149) ELT 376 (Tri.Mum)
  6. Kusum Products Ltd V/s. CCE 2003 (160) ELT 900 (Tri.Kolkata)
  7. Rexpm Strips Ltd V/s. CCE 2003 (160) ELT 918 (Tri.Kolkata)
  8. Gujarat Heavy Chemicals Ltd V/s CCE 2003 (161) ELT 878 (Tri.Mum).
- (iii) Further, Section 2(d) and Section 2(f) need to be satisfied cumulatively for levying excise duty under Section 3 of the Act; Central Excise duty under Section 3 of the Act can be levied only when the goods in

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question satisfy the definition of excisable goods under Section 2(d) of the Act and are manufactured goods in terms of Section 2(f) of the Act; it is settled law that Fly Ash generated residue during the burning of coal used as fuel in boilers cannot be considered as "manufactured" in terms of Section 2(f) of the Central Excise Act, 1944; since Fly Ash cannot be considered as manufactured goods, there is no question of demanding duty under Section 3 of the CEA, 1944; provisions for concessional rate of duty under Notification No. 02/2011-CE dated 01.03.2011 cannot be a ground to demand duty on non-manufactured goods, the Appellant quoted the following citations:

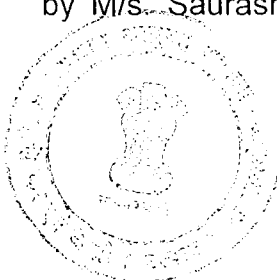
1. Kiran Spinning Mills V/s. CCE 1984 (17) ELT 396 (T)
2. Metro Tyres V/s. CCE 1995 (80) ELT 79 (T)
3. Salco Extrusions V/s. CCE 1984 (16) ELT 356 (T)

(iv) Further, explanation to Section 2(d) inserted w.e.f. 10.05.2008 enacts the test of marketability as an essential test for dutiability of goods, the appellant quoted following decisions:

1. Bhor Industries V/s. CCE 1989 (40) ELT 280 (SC)
2. Ambalal Sarabhai V/s. CCE 1989 (43) ELT 214 (SC)
3. Indian Cable Co. V/s. CCE 1994 (74) ELT 22 (SC)

(v) Further, Fly Ash was not sold and therefore, there was no assessable value available to pay Central Excise duty on the same; the department has relied on the valuation of Fly Ash made by M/s. Aditya Birla Nuvo, Indian Rayon, Veraval to assess the value of and determine the duty payable upon the Fly Ash generated at the appellant's premises during April – 2015 to September – 2015 and same is contrary to provisions of Section 4 of the Central Excise Act, 1944 as amended w.e.f. 01.07.2000. Prior to amendment 'Normal Price' was the basis for determining the value; after amendment value of goods is transaction value i.e. value has to be determined for each transaction or removal.

(vi) Further, the price of Fly Ash sold by M/s. Saurashtra Chemicals during January 2012 and February 2012 was Rs. 1/- per MT but department had counted the value of the Fly Ash generated by the Appellant during same period at Rs. 315/- per MT based on price of Fly Ash generated by M/s. Saurashtra Chemicals during some other months. Further,



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from December 2014 onwards, M/s. Saurashtra Chemicals, Porbandar had sold the Fly Ash at a price of Rs. 1/- per MT. However, in the show cause notice dated 12.04.2016 proposed demand on identical grounds for the period April 2015 to September 2015 had shifted its reliance upon the price adopted by M/s. Aditya Birla Nuvo, Veraval viz. Rs. 120/- per MT. Variation in value adopted by the department in ranging from Rs. 615/- per MT to Rs. 1/- per MT for the same goods is incoherent and inconsistent with Rule 11 of the Valuation Rules, 2002; valuation is unreasonable and unfair; hence the impugned order confirming the same is liable to set aside; as in their case Valuation Rules, 2000 would be inapplicable as the Fly Ash is waste and refuse generated out of burning of coal used in boilers, it has zero cost of production; the cost of production of Fly Ash is zero, the assessable value is also zero and no duty is payable on the Fly Ash.

- (vii) Quantification of demand of Education Cess & Secondary Higher Education Cess is erroneous as the same had been exempted on the excisable goods w.e.f. 01.03.2015 vide Notification No. 14/2015-CE dated 01.03.2015 and 15/2015-CE dated 01.03.2015. The demand of such EC & SHEC being wrongly confirmed is liable to be dropped.
- (viii) Further, there is no question of confiscation of goods as the appellant did not cleared any dutiable goods without payment of appropriate duty; the impugned order also does not hold the goods liable for confiscation; the penalty under Rule 25 does not arise.
- (ix) Further, since the penalty under Section 11AC of the Act is not imposable, there is no question of imposing any penalty under Rule 25 of the Central Excise Rules, 2002. The Rule 25 of Central Excise Rules, 2002 is similar to Rule 173Q of the erstwhile Central Excise Rules, 1944. Appellant relied on case of Star Paper Mills Ltd. V/s. CCE 2003 (151) ELT 607 (T), same was held by the Hon'ble Tribunal that penalty under Rule 173Q is incidental to confiscation under that Rule; hence, when there is no confiscation there cannot be a penalty. None of the clauses of Rule 25(1) can be invoked in the facts of the present case so as to invoke penalty. There is no contravention of any of the provision of Central Excise Rules and therefore no penalty is imposable under Rule 25 of Central Excise Rules, 2002.



- (x) Since no provision of Central Excise Rules, 2002 is violated by the appellant, the question of penalty under Rule 27 also does not arise; as no duty is payable, the question of payment of interest also does not arise and requested to set aside the impugned order in original dated 13.01.2017 passed by the adjudicating authority and allow the appeal.

4 Personal hearing in the matter was attended to by Shri Deepak Singhal and Shri Manish Depala, who reiterated Grounds of Appeal and submission made by them on dated 18.12.2017 and also submitted that their appeal may be decided on the basis of above facts and legal position.

5 I have carefully gone through the facts of the case, impugned order, grounds of appeals and submissions made by the appellant. The issue to be decided in the present appeal is that whether the impugned order confirming the proposed demand of Central Excise duty alongwith interest and imposing penalty equal to the confirmed demand with regard to the subjected goods viz. Fly Ash, classifying under Chapter Heading No. 26.21, in terms of Notification No. 2/2011-CE dated 01.03.2011 is proper or otherwise.

6 The adjudicating authority has confirmed the demand of Central Excise duty on the Fly Ash holding to be excisable goods, classifiable under Ch. Heading No. 26.21 and leviable to the duty in terms of the said notification dated 01.03.2011. However, the appellant contended that the disputed goods i.e. Fly Ash, being a residue having no value, were non-excisable goods and hence could not be levied to Central Excise Duty since the process thereof was neither amount to manufacture nor the goods were marketable, for which they placed reliance of various case laws.

7 The appellant was engaged in manufacturing of final products viz. Soda Ash, Sodium Bio-Carbonate etc., and using coal / lignite-based boilers for generation of steam / electricity, which was used further for manufacture of the said final products. They were also availing Cenvat Credit of duty paid on coal / lignite.

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8. Further, conjunctive reading of provisions of Sections 2(d), 2(f) and 3 of the Central Excise Act, 1944 implies that in order to be an excisable goods, it should be manufactured or produced, specified in the Central Excise Tariff Act, 1985 and capable of being bought and sold for a consideration.

9. In the present case, I find that undisputed facts of the case are that the so called disputed goods viz. Fly Ash, were emerged as a by-product and produced during the process of combustion of coal for generation of steam/electricity, which were used further for manufacturing of the said final products, and the same were classifiable under Chapter Heading No.26.21, which were attracting duty @ 5% Ad Valorem (6% Ad Valorem w.e.f. 17.03.2012) vide Notification No.2/2011-CE dated 01.03.2011 as amended.

10. I find that the issue is no more res integra and stands decided by the Hon'ble Madras High Court vide judgment passed in the case of Mettur Thermal Power Station reported as 2017 (349) E.L.T 708 (Mad) , wherein it has been held that,

"18. 'Manufacture' as defined under Section 2(f) of the Act takes within its fold any process incidental or ancillary to the completion of a manufactured product. Section 2(f) uses the term any process "incidental or ancillary to the completion". The broader meaning that can be attributed to the term "incidental" or "ancillary" is that it is happening which is subsidiary or subordinate to something more important. (See Webster's Dictionary). From the usage of the terms associated with manufacture, it would be evident that it considers any happening towards the achievement of a manufactured product as incidental or ancillary, which is an event in the manufacturing activity. There is no dispute that the respondent herein is engaged in the production / generation of electricity by burning pulverized coal. Therefore, the completed manufactured product in the present case is electricity and 'fly ash' is only a by-product, which gets formed during the said manufacturing activity. Such being the case, by no stretch of imagination, could 'fly ash' which is formed during the process of production of electricity, could be said to have been a product 'manufactured' to fall within the scope 'manufacture' as defined under Section 2(f) of the Act. For the reasons aforesaid, this court holds that the 'fly ash', which stands formed during the production of electricity

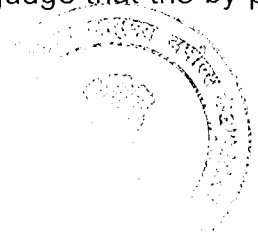




is not a product manufactured, but is only a by-product in the process of completion of a finished product.”

“24. From the above judgement of the Supreme Court, it is clear that the first test in the process of levy of excise duty is that the product has to be produced or manufactured and the second test being that the product so produced or manufactured should be a marketable commodity. Further, the Supreme Court has also categorically held that levy of excise duty is on the manufacture or production of the goods and that leviability of duty is linked to its manufacture or production. Therefore, as propounded by the Supreme Court in a catena of decisions referred to above, the twin tests of manufacture and marketability should be satisfied in order to bring the goods within the ambit of excise duty and failure of even one of the test would render the product not liable for excise duty. In the case on hand, it is clear from the averments of either party and is also not in dispute that ‘fly ash’ is a by-product during the production of electricity and is not the main manufactured item. Further, the ‘fly ash’ is not a commodity which can be used as such in the market, but it is usable only as one of the materials in the production other products. Therefore, there being no manufacture of ‘fly ash’ but ‘fly ash’ gets formed as a by-product during the production of electricity, merely because the goods ‘fly ash’ finds a place in the specific or residuary entry in the schedule it cannot be termed as an excisable commodity, since satisfies the test of marketability. The twin tests have to be satisfied in order to bring a product within the ambit of excise duty and satisfaction of solitary test alone would not be sufficient to levy excise duty on the commodity. Therefore, mere marketability of the product alone would not be sufficient to levy duty on the ‘fly ash’, there being no manufacturing process involved.”

“28: Accordingly, for the reasons stated above, this court is of the considered view that while the finding of the learned single judge with regard to the applicability of Notification No. 89/95-CE dated 18.05.1995 to the case of the respondent herein is liable to be interfered with, however, this court finds that insofar as the findings of the learned single judge that the by-product ‘fly ash’, which is formed during the production



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of electricity is not a product produced or manufactured falling within the ambit of Section 2(f) of the Central Excise Act, though the same is marketable is liable to be sustained. Accordingly, while the primary issue is answered in favour of the respondent and against the appellants, the incidental issue is answered in favour of the appellants and against the respondent."

[Emphasis supplied]

11. Further, the aforesaid order of the Hon'ble High Court of Madras of dated 21.12.2015 was challenged before the Hon'ble Supreme Court by department and same was tagged with the Special Leave Petition (C) No. 29348 of 2015 and same is dismissed by the Hon'ble Supreme Court vide order dated 08.03.2019.

12. Therefore, the issue is no more *res-integra* in view of above referred Hon'ble Madras High Court's judgment in the case of Mettur Thermal Power Station reported as 2017 (349) ELT 708 (Mad). Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant.

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

13. The appeal filed by the Appellant stand disposed off in above terms.

सत्यापित  
संजय शेट  
अधीक्षक (अपील्स)

(Gopi Nath) 10/12/19  
Commissioner (Appeals)

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- 3) The Asst. Commissioner, GST & Central Excise, Junagadh for necessary action.
- 4) Guard File.

