



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::

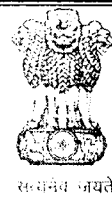
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

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

Tele Fax No. 0281 2477952/241142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील फाइल संख्या Appeal File No	मूल आदेश सं / OIO No	दिनांक / Date
	V2/223/GDM/2017	16/Asst. Commr./2017	30-10-2017

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

**KCH-EXCUS-000-APP-224-2018-19**

आदेश का दिनांक / Date of Order:	<b>12.12.2018</b>	जारी करने की तारीख / Date of issue:	<b>14.12.2018</b>
------------------------------------	-------------------	--	-------------------

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

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 Appellant & Respondent :-**

**Sanghi Industries Ltd. (Cement Division- Grinding Unit), Sanghipuram,, Taluka:  
Abdasa,Dist : Kachchh-370511 (Kutch).**

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 मामलों सीमा शुल्क, केन्द्रीय उत्पाद 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 (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 2<sup>nd</sup> 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, व्याज 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 सतर्ज 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। स्थगत 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 नियमवाले, 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, उनकी 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, 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 सतर्ज 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। स्थगत 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 धारा (2) एवं (2A) के अंतर्गत आदेश की जयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकने वाले सभी अर्थों में, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (जन्में से एक पत्र परागतित होनी चाहिए), और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, जो अपीलीय न्यायाधिकरण को आदेश दर्ज करने पर निर्दिष्ट 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 अधिवेद्य आयातक (सर्वेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 93 के अंतर्गत सेवाकर की भी लागू की गई है, इस आदेश के प्रति अपीलीय पाधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर जमा के 10 प्रतिशत (10%), जब जमा एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जमा वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत जमा किए गए शुल्क में निम्न शामिल है
  - (ii) धारा 11 की के अंतर्गत रकम
  - (iii) सर्वेट जमा की की गई जमान प्रति
  - (iv) सर्वेट जमा नियमावली के नियम 6 के अंतर्गत देय जमान
- बशर्ते यह कि इस धारा के प्राधान्य विभाग (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील की लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

- Under Central Excise and Service Tax, "Duty Demanded" shall include :
- (i) amount determined under Section 11 D
  - (ii) amount of erroneous Denial Credit taken;
  - (iii) amount payable under Rule 6 of the Central Credit Rules

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
 इस आदेश की पुनरीक्षण याचिका निम्नलिखित मातलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त विभाग, राजस्व विभाग, एपीजी मजिल, 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 provision to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी अकाल के मामले में, जहां नुकसान किसी अवर 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 से या भंडारण में माल के पसस्करण 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 की 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 जाती 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के अभाव के लिए जो प्रत्येक केन्द्र इस अधिनियम एवं इसके विभिन्न प्राधान्यों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 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 पत्र संख्या EA-8 में, जो 37 अक्टूबर 2001 के अधिनियम (अपील) नियमवाली, 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 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 जाती होगी। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो अपर 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 टंग से किया जाना चाहिये। इस तथ्य के होते 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, notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excluding Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के प्राधान्यों के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगाना होगा। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधिवेद्य आयातक (सर्वेट) नियमवाली, 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.

(G) उच्च अपीलीय प्राधिकरण को अपील दाखिल करने से संबंधित विवरण, प्रक्रिया और अतीतन प्राधान्यों 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 Sanghi Industries Ltd (Grinding Unit), Sanghipuram, Taluka-Abdasa, District-Kutch has filed Appeal No. V2/223/GDM/2017 (*hereinafter referred to as "Appellant"*) against Order-in-Original No. 16/AC/2017 dated 30.10.2017 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, Central GST Division, Bhuj (*hereinafter referred to as 'lower adjudicating authority'*).

2. The facts of the case are that the Appellant was engaged in the manufacture of Cement falling under CETH 25232910 of the Central Excise Tariff Act, 1985 and was registered with Central Excise having registration No. AAEC55510KQXM004 and was availing benefit of concessional rate of duty by clearing Cement on payment of duty @ Rs. 230 PMT or 8% ad valorem whichever is higher or Rs. 290 PMT or @10% ad valorem whichever is higher, in terms of Notification No. 4/2006-CE dated 1.3.2006, as amended.

2.1 Based upon intelligence that the Appellant was evading Central Excise duty by resorting to undervaluation of their goods, the Officers of Belapur Central Excise Commissionerate intercepted four trucks loaded with consignment of Cement on 2.8.2010. Scrutiny of documents recovered from Truck drivers indicated that the goods were purportedly being transported from Vapi Depot to Panvel Depot of the Appellant under cover of Depot Transfer Documents but goods were meant to be unloaded at M/s Lafrage Aggregates and Concrete Ltd situated at Navi Mumbai, as deposed by the Truck drivers. Detailed Investigation carried out by the Officers of Rajkot Central Excise Commissionerate revealed that the Appellant was transferring goods from factory to depot showing assessable value less than Rs. 2901/PMT in Tax invoices on which concessional rate of duty @Rs. 230 PMT/ Rs. 290 PMT was paid by availing benefit of Notification No. 4/2006-CE dated 1.3.2006. However, goods were cleared from depot to end customers on F.O.R. basis raising commercial invoices showing actual transaction value which was more than Rs. 2900/- PMT on which they were required to discharge duty @10% ad valorem. It was alleged that the Appellant failed to follow Rule 7 of the Central Excise



Valuation (Determination of Price of Excisable Goods) Rules, 2000 (*hereinafter referred to as 'Rules'*) while discharging duty liability in respect of stock transfer from factory to depots which resulted in short payment of Central Excise duty to the tune of Rs. 27,12,692/- during the period from September, 2009 to March, 2011.

2.2 Show Cause Notice No. V.25/AR-GDM/ADC/04/2014-15 dated 1.4.2014 was issued to the Appellant calling them to show cause as to why benefit of concessional rate of duty claimed by the Appellant should not be denied and duty should not be charged on ad valorem basis as provided at Sl. No. 1C of Notification No. 4/2006-CE dated 1.3.2006, as amended and why Central Excise duty of Rs. 27,12,692/- should not be demanded and recovered from them under proviso to Section 11A(1) of the Act along with interest under Section 11AA and also proposing imposition of penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Act.

2.3 The above Show Cause Notice was adjudicated vide the impugned order which denied the benefit of concessional rate of duty @Rs. 290 PMT/Rs. 230 PMT claimed by the Appellant and ordered to pay duty at ad valorem rate of 10% as per Sl. No. 1C of Notification No. 4/2006-CE dated 1.3.2006, as amended and confirmed demand of Central Excise duty of Rs. 27,12,692/- under Section 11A of the Act along with interest under Section 11AA and imposed penalty of Rs. 27,12,692/- under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal on various grounds, *inter alia*, as below :-

(i) The impugned order is erroneous on facts as well as in law and is liable to be set aside.

(ii) The Appellant was using SAP as their accounting software for the purpose of generating invoices based on multiple conditions entered in the database like rate of duty, value for assessment etc. Once the conditions are fed into SAP, invoices are automatically generated based upon pre-set conditions applicable to particular dispatch of goods from factory to depot. However, due to error in feeding conditions in SAP, the Appellant

was unable to determine assessable value of the goods based on the price prevalent at the depot for industrial/institutional consumers and adopted the value for stock transfer of goods from factory to depot which was lower than the value at which goods were sold from depot commercially. Thus, there was no intention to evade payment of duty but error occurred due to *bona fide* error in feeding conditions in SAP.

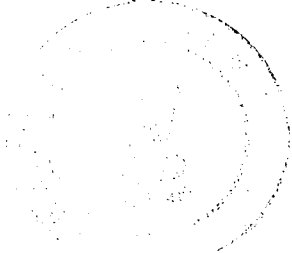
(iii) The above mentioned *bona fide* error in SAP has also caused excess payment of duty in some cases. Since the duty determination and rate of duty was calculated by SAP based on the value at the time of clearance from factory to depot instead of value of clearance from depot to customer in terms of Central Excise Rules, 2000, there have also been sales transactions where the Appellant had paid duty from factory to depot at a value which was higher than the value at which goods were actually sold from depot to buyer. Therefore, allegation cannot be made for intention to evade payment of duty by way of such error in SAP.

(iv) The demand for the period from September, 2009 to March, 2011 was raised vide Show Cause Notice dated 1.4.2014 by invoking extended period of limitation under proviso to Section 11A(1) of the Act. That none of the ingredients required for invoking extended period of limitation like fraud, collusion, wilful mis-statement, suppression of facts etc. with intent to evade payment of duty was present in this case and hence extended period of limitation of five years cannot be invoked and the demand in the impugned order is liable to be set aside. Relied upon on the following case laws:

- (a) Chemphar Drugs & Liniments-1989 (40) ELT 276
- (b) Pushpam Pharmaceuticals Co- 1995 (78) ELT 401
- (c) Anand Nishkawa Co. Ltd- 2005(188) ELT 149
- (d) Unitworth Textiles Ltd-2013(288) ELT 161
- (e) Cosmic Dye Chemical-1995 (75) ELT 721

(v) No penalty is imposable under Section 11AC of the Act as there was no element of fraud, suppression or mis-statement of facts etc with an intention to evade payment of duty involved. Relied upon case law of Saurashtra Cement Ltd-2010 (260) ELT 71.

3.1 In Personal Hearing, Shri Ishan Bhatt, Advocate appeared on behalf of the Appellant and reiterated the grounds of appeal.



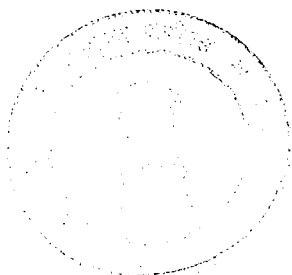
**Findings:**

4. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided is whether the Appellant has correctly availed benefit of concessional rate of duty @Rs. 290 PMT/ Rs. 230 PMT under Notification No. 4/2006-CE dated 1.3.2006, as amended, or not.

4.1 I find that the lower adjudicating authority has denied the benefit concessional rate of duty @Rs. 290 PMT/ Rs. 230 PMT availed by the Appellant under Notification No. 4/2006-CE dated 1.3.2006, as amended on the ground that the Appellant had failed to determine normal transaction value while transferring goods from factory to depots in terms of Rule 7 of Rules during the period from September, 2009 to March, 2011 which resulted in short payment of duty to the tune of Rs. 27,12,692/-. On the other hand, the Appellant has pleaded that due to error in feeding conditions in SAP, they were unable to determine correct assessable value of the goods based on the price prevalent at the depot for industrial/institutional consumers and adopted the value for stock transfer of goods from factory to depot which was lower than the value at which goods were sold from depot commercially; that there was no intention to evade payment of duty but error occurred due to *bona fide* error in feeding conditions in SAP.

4.2 I find that the Appellant has not disputed their failure to determine normal transaction value while transferring goods from factory to their depots in terms of Rule 7 of Rules and consequent duty confirmed in the impugned order. Their only defense is that this lapse occurred due to *bona fide* error in SAP software. I find it pertinent to examine findings given by the lower adjudicating authority at para 5.3.2.1, which reads as under:

“I observe that Shri C. Anantkrishnan, DGM, has deposed in his statement dated 12/10/10 that an error had occurred in April-10 in feeding duty structure in the SAP system and the said error was rectified in August-10. I also observe that the said statement of Shri Anantkrishnan stands corroborated through the statement of Shri Ketan Bhatt, Dy. Manager, recorded on 28/09/2011. The error is so said to have prevailed from April-10 till it was rectified in August-10, whereas Annexure-A to the SCN, which has been based on

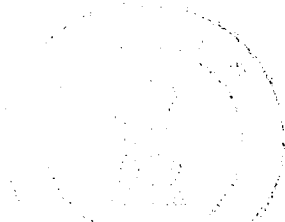


the information furnished by the noticee themselves under letter no. CEX/SCA/Misc./PI/10-11 dated 30/06/2011, indeed incorporates such erroneous transactions which had taken place even before April-10 and after August-10 as well. Such contradictory situations birth certain queries which do not get any answer from the written or oral submissions made by the noticee, The said queries are like:

- (i) What was the need of revising SAP conditions suddenly in April-2010 and why the error occurred in feeding duty structure in April- 2010 when sr. no. 1C of the Notification had remained constant without being subjected to any amendment;
- (ii) How the error could be held to be prevalent between April and August-2010 only, when the Annexure-A to the SCN, which has been based on the information furnished by the noticee themselves under letter no. CEX/SCA/Misc./PI/10-11 dated 30/06/2011, tells a different story;
- (iii) When the error is said to have been rectified in August-2010, why the system was not made foolproof so as to avoid recurrence of the error afterwards;
- (iv) If the noticee was not in a position to adopt correct valuation for NTS clearances in the status of stopgap rectification of error, why rule 7 of the Central Excise Rules, 2002 was not resorted to seeking provisional assessment for the clearances effected from August-2010 onwards.

Description of the error that has been discussed in written submission dated 27/02/2017, is also like an error in entering conditions (including rate of duty) in the SAP system. However, if it is still presumed for the sake of arguments that the error referred to by the noticee in written submission was different from the one intended to be described in the statements of the said Shri C. Anantkrishnan and Shri Ketan Bhatt, the inference that takes place is that the latest possible event when the said different error could be said to have been come to the knowledge of the noticee, is the stage when the SCN was served upon them in April, 2014. The facts regarding (a) short assessment of duty (through tax invoices) due to the said error ; and (b) resultant excess collection of duty from the buyers (through commercial invoices), can be said to have become known to the noticee immediately when the noticee realized the error. When the error was realized, the noticee was indeed working under self removal / self assessment mode and thereby was bound to self-compliance of the excise law; and therefore, had the error genuinely been bonafide, the noticee, having realized of such short-assessment and excess collection for their failure in following rule 7 of the Valuation Rules due to the said error, were but expected to demonstrate the element of law-abidance by following the provisions of section 11D of the Act which outline that any amount, which is representing duty of excise and has been collected from the buyer in excess of the duty assessed and paid, has to be paid forthwith by a manufacturer to the credit of the Central Government. ... ..”

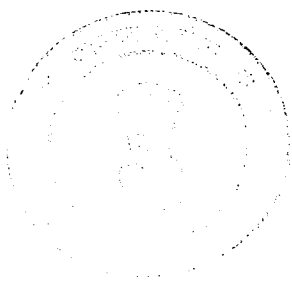
4.3 I find that there are many unexplained aspects in the argument putforth by the Appellant. The Appellant had admittedly changed



conditions in SAP like rate of duty etc. in April, 2010 whereas duty on Cement was enhanced from Rs. 230/PMT to Rs. 290/PMT as per Sl. No. 1C of Notification No. 4/2006-CE dated 1.3.2006, as amended, with effect from 27.2.2010. When there was no change in duty structure of Cement during the intervening period, there was no requirement to change the condition of SAP in April, 2010. The Appellant has not been able to justify as to what prompted them to revise condition in SAP in April, 2010 which purportedly lead to improper assessable value and short payment of duty. I further find that the Appellant admittedly rectified the said error in SAP in August, 2010 but did not follow the provisions of Rule 7 of Rules while transferring goods from factory to depots even after August, 2010. It is on record that the Appellant continued to ignore the provisions of Rule 7 till March, 2011 and discharged duty without determining normal transaction value. When error was purportedly rectified in August, 2010, there was no reason for any *bona fide* error in SAP after August, 2010 and the Appellant ought to have been able to discharge their duty liability properly. Thus, it is beyond doubt that use of SAP has nothing to do with failure to determine correct assessable value of the goods transferred from factory to depots in terms of provisions contained in Rule 7 of Rules. I, therefore, have no option but to discard this plea of the Appellant as devoid of merits.



5. The Appellant has contended that none of the ingredients like fraud, collusion, wilful mis-statement, suppression of facts etc. with an intention to evade payment of duty was present in their case and hence extended period of limitation was wrongly invoked for demanding duty and penalty under Section 11AC was not imposable. As per facts emerging from records, I find that entire proceedings were initiated against the Appellant on the basis of trucks intercepted by the Officers of Belapur Central Excise Commissionerate. Scrutiny of documents recovered from Truck drivers indicated that the goods were purportedly being transported from Vapi Depot to Panvel Depot of the Appellant under cover of Depot Transfer Documents. However, verification of the premises at Panvel revealed that no such depot existed at the given address. In fact the goods loaded from the Vapi depot were meant to be unloaded at M/s Lafrage Aggregates and Concrete Ltd, Navi Mumbai, as deposed by the Truck






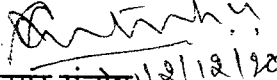
drivers during investigation. Thus, it is a clear case of mis-statement on the part of the Appellant to evade duty by resorting to under valuation of the goods. The detailed investigation uncovered the *modus operandi* adopted by the Appellant for evading Central Excise duty by resorting to under valuation of the goods. Non following the provisions contained in Rule 7 of Rules in respect of stock transfer from factory to depot came to light during investigation undertaken by the Department. Thus, the Appellant certainly suppressed the facts from the Department that they were not adopting normal transaction value while clearing goods from factory to depot. Even the reasons putforth by the Appellant for not correctly determining transaction value for stock transfer from factory to depots in terms of Rule 7 of Rules is not convincing. It is evidently clear that use of SAP has nothing to do with failure to determine correct assessable value of the goods transferred from factory to depots in terms of provisions contained in Rule 7 of Rules, as elaborated by me in para *supra*. After examining the evidences available on record, I find that ingredients required for invoking extended period of limitation and for imposing penalty under Section 11AC of the Act existed in the present case. I, therefore, hold that extended period of limitation was correctly invoked for demanding duty and penalty was correctly imposed under Section 11AC of the Act.

6. In view of above, I uphold the impugned order and reject the appeal.

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

7. The appeal filed by the Appellant is disposed off as above.

आयुक्त,  
  
 जिला कार्यालय  
 अहमदाबाद (अपील्स)

  
 (कुमार संतोष) 12/12/2018  
 आयुक्त(अपील्स)

By R.P.A.D.

To,  
 M/s Sanghi Industries Ltd (Grinding Unit),  
 Sanghipuram,  
 Taluka-Abdasa,  
 District-Kutch.

**Copy to:-**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information please.
- 2) The Commissioner, GST & Central Excise, Gandhidham Commissionerate, Gandhidham for necessary action.
- 3) The Asst. Commissioner, Central GST Division, Bhuj for necessary action in the matter.
- 4) Guard file.

