::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST &CENTRAL EXCISE
द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/15 & 16/GDM/2018-19	**23/DC/Anjar-Bhachau/2017-18** **22/DC/Anjar-Bhachau/2017-18**	**21-02-2018**

164 to 168
10/05/19
S.P

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

KCH-EXCUS-000-APP-054-TO-055-2019

आदेश का दिनांक / Date of Order: **03.05.2019**

जारी करने की तारीख / Date of issue: **06.05.2019**

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by **Shri Kumar Santosh**, Principal 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 **Appellant** & Respondent :-

M/s Sumilon Industries Limited, Plot No.43 P, NH 8A, Village Varsana, Anjar(Kutch).
M/s Sumilon Polyster Ltd, Plot no. 43P, NH 8A, Village-Varsana, Talukar: Anjar, District-Kutch

इस आदश(अपील) स व्याथत काइ व्याक्त निम्नालाखत तराक म 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 एव सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अतगत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 माँग ,ब्याज 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/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 नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक 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 नियमवाली, 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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing 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 (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

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

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट 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 स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का 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 भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers variousnumbers 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.

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

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (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.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER-IN-APPEAL ::

The appeals listed below have been filed by the Appellants (*hereinafter referred to as* "Appellant No.1 & Appellant No. 2") against Orders-in-Original (hereinafter referred to as "*impugned orders*") passed by the Dy. Commissioner, CGST Division Anjar-Bhachau, Gandhidham Commissionerate (hereinafter referred to as "lower adjudicating authority").

Sl. No.	Appeal No.	Name of Appellant	Order-in-Original No. & Date
1.	V2/15/GDM/2018-19	M/s. Sumilon Industries Ltd., Gandhidham ("Appellant No. 1")	23/DC/Anjar-Bhachau/ 2017-18 dated 21.02.2018
2.	V2/16/GDM/2018-19	M/s Sumilon Polyester Ltd., Gandhidham ("Appellant No. 2")	22/DC/Anjar-Bhachau/ 2017-18 dated 21.02.2018

1.1 Since issue involved in both the above appeals is common, both appeals are taken up together for decision vide this common order.

2. The brief facts of the case are that Appellant No. 1 i.e. M/s. Sumilon Industries Ltd having Central Excise Registration No. AADCS3567LXM004 was engaged in manufacture of excisable goods namely Polyester Film-plain and Polyester Film-Metallized falling under CETH 39206931,39206911 of the Central Excise Tariff Act, 1985 respectively. Appellant No. 2 i.e. M/s Sumilon Polyester Ltd having Central Excise Registration No. AAFCM5528FEM001 was also engaged in manufacture of Polyester Film-plain and Polyester Film-Metallized.

2.1 During Audit of the records of Appellants No. 1 & 2, it was found by CERA that they had cleared Polyester Film-Plain to their sister concerned unit i.e. M/s Sumilon Polyester Ltd., Surat for their further captive use during the years 2013-14 and 2015-16 respectively and hence, Appellants No. 1 & 2 were required to pay Central Excise duty on Polyester Film-Plain on assessable value calculated as one hundred and ten percent of cost of production in terms of Rule 8 and Rule 9 of the Central Excise (Valuation) Rules,2000 (hereinafter referred to as "Rules"). However, Appellants No. 1 & 2 had not considered 10 per cent value addition in cost price of Polyester Film-plain, which was Rs. 99.5/kg and Rs. 67.88/kg respectively, as per their CAS-4 Returns, which resulted in short payment of Central Excise duty.

2.2 Show Cause Notice No. C.Ex./GIM/SCN/SUMILON IND/LAR-1708/P-6/17-18 dated 13.10.2017 was issued to M/s. Sumilon Industries Ltd calling them to show cause as to why Central Excise duty of Rs. 6,72,867/- should not be demanded

and recovered from them under Rule 8 of the Rules read with Section 11A of the Central Excise Act,1944 (hereinafter referred to as "Act") along with interest under Section 11AA of the Act and why penalty under Section 11AC of the Act should not be imposed on them.

2.3 The above Show Cause Notice was adjudicated vide the impugned order mentioned at Sl. No. (i) of the table above, which confirmed Central Excise duty of Rs. 6,72,867/- and ordered for its recovery under Section 11A of the Act read with Rule 8 of the Rules, along with interest under Section 11AA of the Act and imposed penalty of Rs. 6,72,867/- under Section 11AC of the Act.

2.4 Show Cause Notice No. C.Ex./GIM/SCN/SUMILON IND/LAR-1708/P-5/17-18 dated 13.10.2017 was issued to M/s Sumilon Polyester Ltd calling them to show cause as to why Central Excise duty of Rs. 14,30,003/- should not be demanded and recovered from them under Section 11A of the Act read with Rule 8 of the Rules, along with interest under Section 11AA of the Act and why penalty under Section 11AC of the Act should not be imposed on them.

2.5 The above Show Cause Notice was adjudicated vide the impugned order mentioned at Sl. No. (ii) of the table above, which confirmed Central Excise duty of Rs. 14,30,003/- and ordered for its recovery under Section 11A of the Act read with Rule 8 of the Rules, along with interest under Section 11AA of the Act and imposed penalty of Rs. 14,30,003/- under Section 11AC of the Act.

3. Being aggrieved with the impugned orders, the Appellants No. 1 & 2 have preferred appeals on various grounds, *inter alia*, as below :-

(i) The adjudicating authority has passed the impugned order without taking submissions made by them into consideration.

(ii) The cost of Polyester Film Plain is based on Polyester Chips, which is raw material purchased from outside and whose rate varies from month to month. The cost of Polyester Film-Plain is arrived at by considering average for the whole year as per CAS-4. In the same way, sale price to related person should also be considered average for whole year;

(iii) The cost of Polyester Film-Plain as per CAS-4 in respect of Appellant No. 1 was Rs. 99.5/kg and after adding 10% in cost of production, assessable value comes to Rs. 109.45/kg; that against required assessable value of Rs. 109.45/kg, their average sale price to related person during the year 2013-14 was Rs. 111.99/kg, which was much higher than required under Rule 8 of the Rules.

(iv) The cost of Polyester Film-Plain as per CAS-4 in respect of Appellant No. 2 was Rs. 67.88/kg and after adding 10% in cost of production, assessable value comes to Rs. 74.67/kg; that against assessable value of Rs. 74.67/kg, their average sale price to related person during the year 2015-16 was Rs. 74.75/kg, which was much higher than required under Rule 8 of the Rules.

(v) The adjudicating authority has erred in invoking extended period of limitation and imposing penalty under Section 11AC of the Act on the grounds of suppression of facts. The Department carried out audit and agreed to the procedure adopted based on CAS-4 and hence, the demand is barred by limitation and relied upon case law of SDL Auto (P) Ltd-2013 (394) ELT 577 (Tri.Del).

4. In Personal Hearing, Shri Navin Gheewala, Consultant appeared on behalf of both the Appellants and reiterated the grounds of appeals and also submitted written submission stating that they have already added value more than 10% on yearly basis as is evident from CAS-4; that they will submit copy of CAS-4 within 10 days; that demand is time barred; that appeals need to be allowed.

4.1 The Appellants No. 1 & 2 vide their letter dated 1.4.2019 submitted copy of CAS-4 - Statement of cost of production of Polyester Film-plain during the years 2013-14 and 2015-16 respectively.

Findings:

5. I find that Appellant No. 1 has complied with the provisions of Section 35F of the Act by depositing Rs. 50,465/- @7.5% of Rs. 6,72,867/- vide Challan No. 00014 dated 27.4.2018, as submitted by them in Appeal Memorandum. The Appellant No. 2 has also complied with the provisions of Section 35F of the Act by depositing Rs. 1,07,250/- @7.5% of Rs. 14,30,003/- vide Challan No. 00015 dated 27.4.2018, as submitted by them in Appeal Memorandum.

6. I have carefully gone through the facts of the cases, the impugned orders, oral as well as written submissions made by Appellants No. 1 & 2. The issue to be decided in the present appeals is whether the Appellants have complied with the provisions of Rule 8 and Rule 9 of the Rules in respect of goods supplied to their sister concerned unit or not.

7. On going through the records, I find that Appellants No. 1 & 2 manufactured Polyester Film-Plain and cleared to their sister concerned unit-

M/s Sumilon Polyester Ltd., Surat. The impugned orders confirm Central Excise duty on the ground that price at which goods were cleared by the Appellants was less than 110% of cost of Polyester Film-Plain as required under Rule 8 and Rule 9 of the Rules and hence, the Appellants were required to pay duty on differential value. On going through CERA audit report showing detailed calculation as well as CAS-4 submitted by the Appellants, I find that Appellant No. 1 cleared goods to their sister concerned unit @ Rs. 100/kg during year 2013-14, whereas 110% of average cost of Polyester Film-Plain as per CAS-4 was Rs. 109.45/kg. Similarly, Appellant No. 2 cleared goods to their sister concerned unit @ Rs. 65/kg and @ Rs. 70/kg during the year 2015-16, whereas 110% of average cost of Polyester Film-Plain as per CAS-4 was Rs. 74.67/kg.

7.1 I find that the Appellants have not disputed about manufacture and clearance of Polyester Film-Plain to their sister concerned unit at Surat or their liability to pay Central Excise duty @ 110% of cost of Polyester Film-Plain, in terms of Rule 8 of the Rules. The Appellants have also not disputed about details contained in CERA audit report but pleaded that their average sale price to related person during the relevant year was much higher than 110% of cost of Polyester Film-Plain as required under Rule 8 of the Rules and consequently, they are not required to pay differential duty. However, Appellants No. 1 & 2 have not demonstrated in appeal memorandum or during personal hearing as to how they arrived upon average sale price to the related person. The Appellants have not furnished any documentary evidence in support of their claim that their average sale price to related person for the entire year was more than 110% of cost of Polyester Film-Plain. Under the circumstance, I have no other option but to reject this plea of the Appellants No. 1 & 2 as devoid of merit and consider the Statement attached with CERA report to be true and uphold confirmation of Central Excise duty demand of Rs. 6,72,867/- and Rs. 14,30,003/- upon Appellants No. 1 & 2 respectively. Since demand is confirmed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 11A(15) read with Section 11AA of the Act. I, therefore, uphold order to pay interest on confirmed demand.

8. The Appellants have contended that invocation of extended period of limitation for demanding duty is not sustainable as there was no suppression of facts with intent to evade payment of Central Excise duty. I find that non compliance of provisions of Rule 8 of the Rules and resultant short payment of Central Excise duty were revealed only during audit of the records of Appellants No. 1 & 2 by CERA. Had there been no CERA audit of THE Appellants' records,

the short payment of Central Excise duty by Appellants No. 1 & 2 would have gone unnoticed and hence, ingredients for invoking extended period under Section 11A of the Act very much exist in the present case. Accordingly, I hold that the demand is not barred by limitation. I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

> "6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.
>
> 6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."

(Emphasis supplied)

9.1 Since, suppression of facts has been made by the Appellant and held to be applicable in this case, penalty under Section 11AC of the Act is mandatory. The Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) has held that once ingredients for invoking extended period of limitation for demand of duty exist, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold the penalty of Rs. 6,72,867/- and Rs. 14,30,003/- imposed under Section 11AC of the Act upon Appellants No. 1 & 2 respectively.

10. In view of above, I uphold the impugned orders and reject appeals of both the Appellants.

11. अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है ।

11. The appeals filed by the Appellants are disposed off as above.

31/5/2019

(कुमार संतोष)

प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To, 1. M/s Sumilon Industries Ltd Plot No. 43 P, NH 8A, Village-Varsana, Talukar: Anjar, District Kutch.	सेवा मे, मे. सुमिलोन इंडस्ट्रीज़ लिमिटेड प्लॉट न./43 पी, राष्ट्रिय मार्ग8 ए, वरसाना, तालुका अंजार, जिल्ला कच्छ ।
2. M/s Sumilon Polyester Ltd Plot No. 43 P, NH 8A, Village-Varsana, Talukar: Anjar, District Kutch.	मे. सुमिलोन पॉलियस्टर लिमिटेड प्लॉट न./43 पी, राष्ट्रिय मार्ग8 ए, वरसाना, तालुका अंजार, जिल्ला कच्छ ।

प्रति:-

1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंजार भचाउ मण्डल, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।