

(ii) यदि अपीलियम, 1994 की धारा 86, की उप धारा 2 (2) एवं (2A) के अन्तर्गत दायरे की गयी अपील, सेवाकर नियमवाची, 1994, के नियम 9(2) एवं 9(2A) के अन्तर्गत निर्धारित प्रथम S.T. 7 में की जायेगी एवं अन्य माय अन्तर्गत, केन्द्रीय उत्पाद शुल्क अध्याय अधिनियम (अपील), केन्द्रीय उत्पाद शुल्क द्वारा प्रेषित आदेश की प्रतियों मन्त्रालय के प्रमुख को प्रेषित प्रमाणित होनी चाहिये। और आवृत्त द्वारा मन्त्रालय अन्तर्गत प्रेषित अपील, केन्द्रीय उत्पाद शुल्क, सेवाकर की अपीलियम-व्यापारिकरण को आश्रय देते हैं एवं का निर्देश देने वाले आदेश की प्रतियाँ माय मन्त्रालय को प्रेषित होनी चाहिये।
 The appeal under sub-section (2) and (2A) of the Section 86 of 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.

(iii) माय शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलियम प्राधिकरण (सेक्टर) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अपीलियम 1994 की धारा 85 एवं के अन्तर्गत, जो की अन्तर्गत अपीलियम, 1994 की धारा 83 के अन्तर्गत सेवाकर की भी लागू की गई है, इस आदेश के प्रति अपीलियम प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर माय के 10 प्रतिशत (10%), अथवा माय एवं कुम्भाना विवर्धित है, या कुम्भाना, अथवा कुम्भाना विवर्धित है, का अनुमान किया जाय, अर्थात् कि (म) धारा के अन्तर्गत जमा कि जाने वाली अपीलियम देश गणित इस कमीट्टे रूप में प्रेषित होना।
 केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अन्तर्गत माय विवर्धित माय शुल्क के निम्न अपीलियम है।
 (i) धारा 11 के अन्तर्गत स्वयं
 (ii) गन्तव्य जमा की जाती है नकल योज
 (iii) गन्तव्य जमा नियमावली के अन्तर्गत अपीलियम नियम
 (iv) अर्थात् कृ. वि. (म) धारा के अन्तर्गत विवर्धित (म) (2) अपीलियम 2014 के अन्तर्गत प्रेषित किया अपीलियम प्राधिकरण के माय विवर्धित माय शुल्क एवं अपील की लागू नही होगा।

For an appeal to be filed before the CBETA, 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

भारत सरकार को पूनर्निर्माण आवेदन :
Revision application to Government of India:
 इस आदेश की पूर्णतः प्रतियों को निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अपीलियम 1994 की धारा 35(F) के प्रथम प्रकरण के अन्तर्गत माय, भारत सरकार, पूर्णतः प्रतियों आवेदन (वि. वि. मन्त्रालय, राजस्व विभाग, चौथी मंजिल, जेवन् दीप नरन, मन्त्र माय, नई दिल्ली-110001), को प्रेषित करना चाहिये।

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 35F of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (i) of Section 35B ibid.

(ii) यदि माय के किसी नुकसान के मामले में, जहां नुकसान किसी मानवोपयोगी कारखाने में नदारत या परिवहन या किसी अन्य कारखाने या फिर किसी अन्य नदारत नुकसान में नदारत नुकसान के दौरान, या किसी नदारत नुकसान में या नदारत में मानवोपयोगी कारखाने के दौरान, किसी कारखाने या किसी नदारत नुकसान 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.

(iii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रत मान के विनिर्माण में प्रयुक्त वस्तु मान पर जहां गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, इस प्रकार 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.

(iv) यदि उत्पाद शुल्क का अनुदान निर्यात क्रिया भारत के बाहर, नेपाल या भूटान की मानव निर्यात किया गया है।
 In case of goods exported outside India to Nepal or Bhutan, without payment of duty.

(v) सीमांत उत्पाद के उत्पादन शुल्क के अनुदान के लिए जो क्यूटी क्रेडिट इस अधिनियम एवं इसके निम्नलिखित प्रावधानों के अन्तर्गत मान्य की गई है और जहां आदेश की आवृत्त (अपील) के अन्तर्गत अपीलियम (म) 1998 की धारा 109 के द्वारा निर्यात की गई गयीय प्रत्येक मामलों-निम्न पर या नदारत माय विवर्धित माय 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.

(vi) माय अपीलियम की या प्रतियों प्रथम मुख्य EA 8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अन्तर्गत निर्धारित है, इस आदेश के अधिनियम के अन्तर्गत अपीलियम की जाती होगी। अर्थात् आवेदन के साथ माय आदेश के प्रत्येक प्रतियों को प्रेषित अपीलियम अपीलियम माय को केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35(F) के अन्तर्गत निर्यात शुल्क की अदायगी के माय के लिए पर TR 6 की प्रतियाँ माय की जाती होगी।
 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(F) of CEA, 1944, under Major Head of Account.

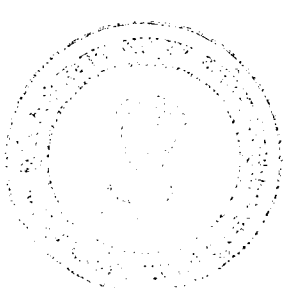
(vii) अपीलियम आवेदन के साथ अपीलियम आवेदन शुल्क की अदायगी की जाती होगी।
 जहां मन्त्रालय स्वयं माय आवृत्त रूप में या इसमें जहां प्रतियाँ रूप में 200/- का अनुदान किया जाय और यदि मन्त्रालय स्वयं माय आवृत्त रूप में ज्यादा प्रतियाँ रूप में 1000/- का अनुदान किया जाय।
 The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is more than Rupees One Lakh or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(viii) यदि इस आदेश में कोई मूल आदेशों का समावेश है या अथवा मूल आदेश के लिए शुल्क का अनुदान, उपरोक्त दृश्य में किया जाना चाहिये। इस नकल के दोने दृश्य की प्रतियाँ प्रत्येक प्रतियों में अथवा के लिए यथास्थिति अपीलियम प्राधिकरण को एक प्रतियाँ या केन्द्रीय सरकार को एक आवेदन किया जाना है। In case of 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(ix) न्यायाधीश न्यायालय शुल्क अधिनियम, 1975, के अनुसूची 1 के अनुसार मूल आदेश एवं स्वयं आदेश की प्रतियाँ पर निर्धारित 6.50 रुपये का न्यायालय शुल्क निर्धारित जमा होना चाहिये।
 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.

(x) माय शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलियम व्यापारिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य मन्त्रालय मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान अपीलियम किया जाना है।
 Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(xi) अधिकृत अपीलियम प्राधिकरण को अपीलियम आवेदन करने में स्वयंसेवक व्यय, निर्यात और न्यायालय प्रावधानों के लिए, अपीलियम प्राधिकरण वेबसाइट www.cbet.gov.in की रूप में है।
 For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbet.gov.in

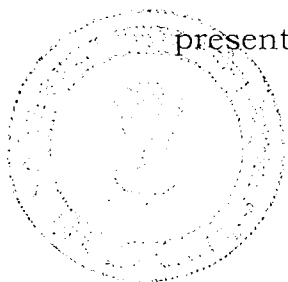


:: ORDER-IN-APPEAL ::

M/s Rototon Polypack Pvt. Ltd., (hereinafter refer to as the "**Appellant**") Sakhiyanagar Industry, Opp. Dharmajivan Ind. Area, B/h S.T. Workshop, Swami Narayan Gurukul, Rajkot filed the present Appeal No. V2/121/RAJ/2019 against Order-in-Original No. 10/D/AC/2019-20 dated 28.06.2019 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST & Central Excise, Division, Rajkot-I (*hereinafter referred to as the 'adjudicating authority'*).

2. The brief facts of the case are that during the course of audit and scrutiny of sales invoice, ER-1 returns, for the audit period, it was observed that the appellant was receiving Central Excise invoices of Cylinder (for designing of packaging materials) raised in the name of the Customers along with the work order for design of packing material. As the appellant was not bearing the cost of such Cylinders, the cost of such Cylinders was not included in their accounts and hence, the cost was not apportioned in the dutiable clearances of final product. These cylinders over a period of time required reworking/repairing which were subject to charge and these charges were required to be added to the value of the final product of the appellant by way of appropriation of cost. As the appellant had cleared the final product without appropriation of the Value of Service charge incurred on the same, the portion of tax suffered on the service charge was required to be recovered treating it at par with the Central Excise duty on the enhanced value of the final product. Therefore, a Show Cause Notice dated 19.06.2018 was issued to the appellant to recover the Central Excise duty on the value of the cylinder to the extent of Rs. 15,93,534/- and Rs. 91,341/- being the amount of Central Excise duty on the charges incurred on repairing expense on the cylinders supplied by the customers. The adjudicating authority vide the impugned order confirmed the demand along with interest and equal penalty under Section 11AC (1)(c) of the Central Excise Act, 1944 (*hereinafter referred as the 'CEA'*) and imposed Rs. 5,000/- penalty under Rule 27 of the Central Excise Rules, 2002 (*hereinafter referred to as the 'CER'*).

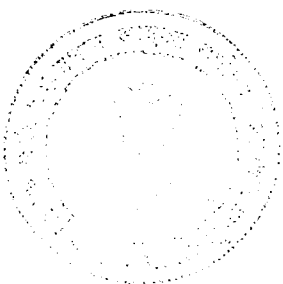
3. Being aggrieved by the impugned order, the appellant preferred the present appeal on the grounds as under:-



3.1 That the value of the cylinder cannot be charged in the year it is procured in as much as the value of the cylinder has to be apportioned between the number of product manufactured by using such cylinder and is to be spread over a period of years for which such cylinders are used; it means the life of the cylinder has to be worked out and thereafter only the value can be apportioned and charged to duty in the respective years.

3.2 That the department has arrived at hypothetical value of the product which is illegal and without base; that the appellant is neither manufacturer of cylinder nor has charged any value of cylinder from the supplier, therefore the duty demanded is bad in law; that they relied upon the CBEC Circular No. 170/4/96 whereby it is clarified that the value of die supplied free of cost is to be apportioned in the value of final product by ascertaining the life of the said die; that the said principle is clearly applicable to the present case; that unless the value of the so called cylinder stated to have been supplied by the customer is worked out or determined with the life of such cylinder no part of value can be included and no part of duty can be recovered; that the cost of die/cylinder has to be apportioned and then only duty can be demanded; that the cylinders supplied by the customers were being used for number of pieces or no. of pouches to be supplied and that can be used for number of years, hence the duty demanded is bad in law; that they relied on the following decisions in support to their claim:

- Exotech Plastics Pvt. Ltd. Vs Commissioner of C.Ex., Pune-III 2018 (364) E.L.T 658 (Tri.- Mumbai)
- Tetra Pak India Pvt. Ltd. Vs Commissioner of Central Excise, Pune 2017 (354) E.L.T. 272 (Tri. -Mumbai)
- Bhavna Industrial Corporation Vs Commissioner of C.Ex., Rajkot 2009 (248) E.L.T. 660 (Tri.-Ahmd.)
- Before the Authority for Advance Ruling under GST, Karnataka, Re: Nash Industires (I) Pvt. Ltd. 2018 (19) G.S.T.L. 162 (A.A.R. – GST)
- GESTAMP Automotive India P. Ltd. Vs Commissioner of C.Ex., Pune-II 2017 (7) G.S.T.L 337 (Tri.-Mumbai)

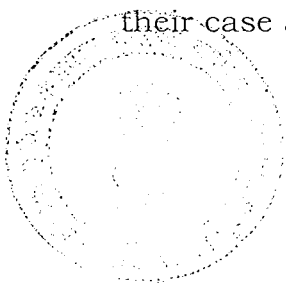


3.3 That the duty demanded is on hypothetical value of the cylinders without considering the life of such cylinders or without considering the apportioned value of such cylinder, the demand of duty is bad in law; that no part of the demand can be confirmed as the value of the cylinders is worked out on presumption and assumption.

3.4 That the Department had full knowledge of the fact that the appellant is manufacturing various types of pouches with the help of cylinders being supplied and therefore the allegation of suppression of fact cannot be sustained; that they have also followed all the procedure prescribed under the law and are also submitting their return from time to time; that the department has also audited their books of accounts and have never objected the procedure followed and therefore the allegation cannot be sustained; they further submitted that they have not suppressed any fact from the department and the opinion arrived is just change of opinion, therefore the duty demanded is clearly barred by limitation; that the duty demand is bad in law and is liable to be set aside; that the department had full knowledge of the fact, hence the allegation of suppression of fact cannot be sustained and consequently the proceedings are not sustainable. In this connection, they relied upon the following judgments.

- (1) Commissioner of Central Excise, Mumbai-III Vs Essel Propack Ltd. 2015 (323) E.L.T. 248 (S.C.)
- (2) Shreeji Colourchem Industries Vs Commr. Of C,Ex., & Cus., Vadodara 2013 (294) E.L.T 615 (Tri.-Ahmd.)
- (3) SDL Auto Pvt. Ltd., Vs Commissioner of Central Excise, Delhi-IV 2013 (294) E.L.T/. 577 (tri.-Del.)
- (4) Uniworth Textiles Ltd., Vs Commissioner of Central Excise, Raipur 2013 (228) E.I.T. 161 (S.C.)

3.5 That they never had the intention to suppress any fact or evade payment of tax and therefore the allegation of suppression of fact cannot be sustained. The Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills had settled the law that if the intention of the assessee is not to evade duty then the penalty under the provisions of Section 11 AC is not imposable. The ratio laid down is clearly applicable in their case and therefore the penalty proceedings are liable to be set aside.



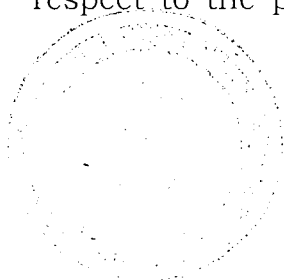
4. In Hearing, Shri Paresh Sheth, authorized representative of the appellant appeared on behalf of the appellant for the personal hearing. He reiterated the submissions already made and requested 10 days time to file additional submissions.

4.1 The appellant vide their additional submissions dated 19.03.2020 submitted that they are manufacturers of Flexible Laminated Printed Rolls and also Flexible Laminated Printed Pouches suitable for packing of Food articles but not for bulk packaging suitable for transportation; that they are not manufacturers of cylinders and therefore no duty can be demanded on the value of the cylinder; that the demand has been confirmed relying on Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and had clarified that the rule as such allows addition of value to the extent apportioned, that whenever the Capital goods are supplied by the customer on free of charge basis, for manufacture of Excisable Goods then the value has to be apportioned looking to the life of the said Capital goods, in other words, whenever the capital goods are supplied by the customer for free then the value can be apportioned but duty cannot be demanded, therefore the duty demanded on the value of the cylinders is highly illegal; that the appellant are registered with the department since so many years and are following all the procedures prescribed under the law, therefore allegation of suppression of fact cannot be sustained and demand raised invoking extended period of limitation is liable to be set aside.

5. I have carefully gone through the facts of the case, the impugned orders, appeal memorandums and submissions made by the Appellant. I find that the issues to be decided in the present appeals are:

- (i) whether the cylinders received free of cost from the customers are required to be appropriated in the final cost of the finished goods or otherwise and
- (ii) whether the cost of reworking/repairing of the cylinders (supplied free of cost by the customers) is required to be appropriated in the final cost of the finished goods or not.

6. I find that the main contention raised in the present appeal with respect to the present issue is that demand of duty on the hypothetical



value of the cylinders without considering the life of the cylinders or the apportioned value of the cylinder. I find that the appellant received Central Excise invoices of cylinders raised in the name of the customers along with the work order for design of packaging material. I also note that as the cost of the cylinders were borne by the customers, the said cost was not included in the final cost of the finished product. Further, the cost of the repairing charges incurred on these cylinders was also not included in the dutiable clearance of the final product.

6.1 In this regard, I find it pertinent to reproduce Rule 6 of the Central Excise Valuation (Determination of price of excisable of goods) Rules, 2000-

“RULE 6. - *Where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.*

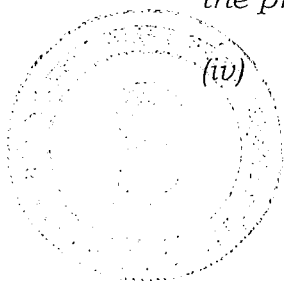
Explanation 1 - For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely :-

(i) *value of materials, components, parts and similar items relatable to such goods;*

(ii) *value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;*

(iii) *value of material consumed, including packaging materials, in the production of such goods;*

(iv) *value of engineering, development, art work, design work and*



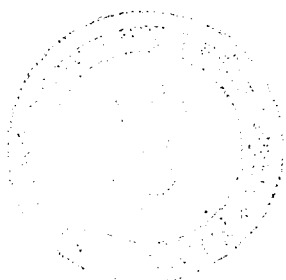
plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

6.2 From the above Rule, it is explicitly clear that any goods supplied directly or indirectly by the buyer free of charge for use in connection with the production and sale of such goods to the extent that such value has not been included in the price actually paid or payable shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the appellant in relation to sale of the goods being value. As per this Rule, from 01.07.2000, the value of free supplied goods by the buyer which is used in connection with the production of the goods, to be sold to the buyer is includible in the assessable value. Therefore the landed cost of free supplied goods should be taken for inclusion in the assessable value, accordingly no deduction on account of excise duty of free supplied goods is permitted.

6.3 In this regard, I find that the **Hon'ble Tribunal, Mumbai in the case of Jemcon Industries Vs Commissioner of Central Excise, Kolhapur 2018 (17) G.S.T.L. 264 (Tri. - Mumbai) vide Final Order No. A/91016/2017-WZB, dated 30-11-2017 in Appeal No. E/585/2008-EX(DB)** had held that free of charge supplies made along with excisable goods forms a part of additional consideration in sale price thereof and accordingly value of such free supplies was includible in assessable value. The said case has been affirmed by the **Hon'ble Supreme Court in 2018 (17) G.S.T.L. J50 (S.C.)**.

6.4 Further, I place reliance in the case of **CCE, Jamshedpur Vs Tata Motors and Others [2009(237)E.L.T.147(Tr.Kolk.)]**, wherein the Hon'ble CESTAT, Kolkata vide its decision dated 16.12.2008 has categorically held that the cost of design and drawings is to be included in the assessable value. The Hon'ble Tribunal while ruling this, has cited the provisions of Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The relevant portion of the Order is as under:

".....The brief facts of the case are that M/s. Tata Motors (earlier known as M/s. TELCO) have got various components of chassis and motor vehicles manufactured by a number of vendors who are the Respondents in this case. The vendors have paid the duty on the components and these have been sold to M/s. Tata Motors who have taken credit of the duty paid on the components. While placing orders

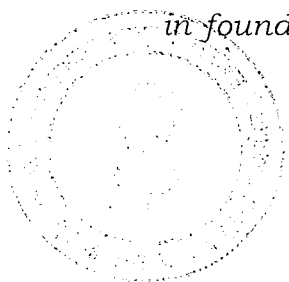


for the components, technical drawings have been supplied by M/s. Tata Motors free of cost to the vendors for manufacturing the components. Admittedly, during the impugned period, no amount has been added towards the drawings and design in the value of the components. The Department's case is that the cost of such drawings and designs involved in the manufacture of the said components, should be included in the assessable value of the components manufactured by the vendors. The case of the Department rests on the provisions of Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Explanation 1 to the said Rule 6

4. It is seen from the extract of Rule 6, Explanation 1, as extracted above, that value of drawings as specified under Clause (ii) and value of engineering, development, art work, design work etc. as specified in Clause (iv) are includible in the value of excisable goods when these are supplied either free of cost or at reduced cost by the buyer to the manufacturer.

6.5 Thus, I note that the value of the free supply has to be included in the value of the final product, if it is supplied by the customer. In the facts of the present case when the cylinder that was supplied by the customer free of cost to the appellant, the amortized value of such free goods (cylinder) must be added in the assessable value of the final goods manufactured and sold by the appellant to their customer. Further, I find that manufacture of printed pouches for each customer required different kind of cylinders i.e as per the work orders for design of packaging material. The material to be printed differs from customer to customer which means that cylinders are custom-made and cylinders made for one customer cannot be used for another customer. This means that cylinders made in a particular period or year can be used to print no. of pouches and this work may be spread over several periods or years, in other words the price of cylinders received during a given period may be used for many more years. Thus, I find that the value of cylinders must be spread over goods manufactured using the cylinders. My above view has been drawn from the decision of M/s Flex Industries Ltd., Vs Commissioner of C.Ex., Meerut as reported in 1997 (91) E.L.T. 120 (Tribunal), New Delhi. The Tribunal, New Delhi has also held that:

".....This principle is seen supported by M.F. (DR) Circular No. 17/4196-CX, dated 23-1-1996, in connection with value of patterns used in foundry industry to be added to the cost of castings for arriving at the



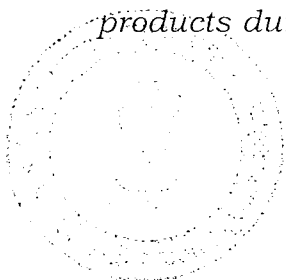
assessable value of castings. There would be difficulty as the quantity of castings to be made out of a pattern cannot be anticipated and sometimes some rectifications or **repairs** may be made in the pattern after some period of use. The Board clarified as follows :-

“The matter has been clarified and it is hereby clarified that the proportionate cost of pattern **has to be included** in the assessable value of the casting even in cases where such patterns are being supplied by the buyers of the casting or are got prepared/manufactured by the job worker at the cost of the buyer. In cases where there is difficulty in apportioning the cost of pattern, apportionment can be made depending on the expected life and capability of the pattern and the quantity of castings that can be manufactured from it and thus working the cost to be apportioned per unit. For this purpose, a certificate from a Cost Accountant may be accepted.”

(Emphasis supplied)

See page T5 of 1996 (82) E.L.T.

6. The principle underlying the Board clarification would apply to apportionment of cost of cylinder used in the manufacture of printed pouches. It may be considered that cylinder is used and consumed in the manufacture of printed pouches; but it is not used in the sense in which raw material is used in manufacture of a product; in such case, the conversion or use of raw material is done quickly and it is easy to correlate a definite quantity of raw material and its value with a definite quantity of finished product and its value. In the present case, the use of cylinders is in such a manner that it is spread over a considerable period and over a very large quantity or number of finished products. To illustrate, we assume that a set of four cylinders of the value of Rs. X can be used in manufacture of ten lakh printed pouches. Hence it is reasonable to regard that Rs. X ÷ 10 lakhs is the proportionate value of cylinder which is used in the manufacture of a single printed pouches and this fractional value has to be added to the value of printed pouches. However, during a particular period, the use of the set of cylinder may not be exhausted as only 4 lakh printed pouches are manufactured during the period. If so, it has to be regarded that Rs. (x ÷ 10 Lakhs) x 4 Lakhs is the proportionate value of cylinder utilized in the manufacture of finished products during the period and only this value can be added to the value



of printed pouches. This rational principle of proportional value addition has been approved by the Board and we are of the opinion that Board was right in doing so. This has to be arrived at after making a realistic estimate of the expected life and capability of the cylinders and determining the appropriate proportion of the value of cylinders to be added to the value of printed pouches. The conclusion arrived at by the lower authorities that entire value of the cylinders is to be added to the value of printed pouches manufactured during the relevant period without reference to the expected life and capability of the cylinders has to be set aside and the matter has to be considered afresh by the respective adjudicating authorities.....”.

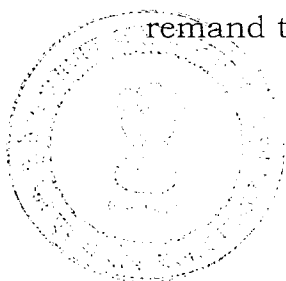
[Emphasis supplied]

6.6 In view of my discussions above, I find that the value of cylinder/repairing charges should be added/apportioned in the assessable value of the manufactured finished product as additional consideration and the question of determination of the part of value to be amortized has to be decided by the adjudicating authority.

6.7 I further note that in Mutual Industries, the Larger Bench in Mutual Industries Ltd. Vs CCE, Mumbai [2000 (117) E.L.T. 578 (T)= 2000 (37) R.L.T. 703] approved the method of amortization in Flex Industries Ltd. Vs CCE, Meerut - 1997 (91) E.L.T. 120 referred to by the DR. In Flex Industries, a regular Bench of the Tribunal had adopted the principle contained in Board's Circular No. 170/4/96-CX, dated 23.01.1996. I also note that, towards evidence of all the factors viz. life expectancy, capability etc., the Board's advice is to accept the Cost Accountant's certificate. Further, the Board's Circular is binding on the adjudicating authorities.

6.8 I note that the appellant has relied on the various case laws and the Board's Circular also on this account and agrees that the life of the cylinder has to be worked out and thereafter only the value can be apportioned and charged to duty in the respective years.

6.9 I observe that at this stage correct determination of the demand is not possible. Accordingly, I set aside the impugned order and remand the matter to the Adjudicating Authority to re-determine the quantum of demand only on the amortized cost in respect of number of pouches manufactured and sold to their customer. The appeal is allowed by way of remand to the Adjudicating Authority in the above terms.

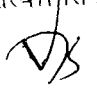



7. As regards suppression of facts, I find that the above facts were unearthed by the Department only during the course of audit, I do not find any bona fide or good faith in the conduct of the appellant in the present case and observe it as a clear suppression of material facts for evading duty and therefore, the case laws relied by the appellant is of no help to them.

8. In view of the above, I set aside the impugned order and remand the case to the adjudicating authority as discussed above.

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

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

सत्यामित,

 धिपुल शाह
 अधीक्षक (अपीलेंस)


 (Gopi Nath)
 Commissioner (Appeals)

31/7/2020

By Regd. Post AD

To,

M/s Rototon Polypack Pvt. Ltd.,
 Sakhiyanagar Industry,
 Opp. Dharmajivan Ind. Area,
 B/h S.T. Workshop, Swami Narayan
 Gurukul, Rajkot.

मै. रोटोटोन पॉलिपैक प्राइवेट लिमिटेड,
 सखियानगर इंडस्ट्री, धर्मजीवन इंडस्ट्री
 के सामने, एस टी वर्कशॉप के पीछे,
 राजकोट

Copy to:

- 1) The Principal Chief Commissioner, CGST & Central Excise,
 Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Rajkot.
- 3) The Deputy Commissioner, CGST & Central Excise, Division, Rajkot-I.
- 4) Guard file.

