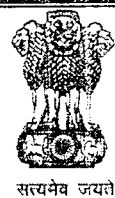




आयुक्त (अपील) का कार्यालय, राजकोट एवं सेवा कार्यालय केन्द्रीय उत्पाद शुल्कः  
O/O THE COMMISSIONER (APPEAL) SJ, GST & CENTRAL EXCISE,



राजकीय कार्यालय क्षेत्र संख्य 12<sup>थ</sup> Floor, GST Bhavan.

रेस कोर्स रिंग रोड, / Race Course Ring Road.

राजकोट / Rajkot - 360 001

Tele/Fax No. 0781 - 247793-2-2441142 Email: cexappeairsajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN-20200864SX00004RAEF2

क अपील क्रमांक/No.

दिनांक/

V2/88/RAJ/2019

05.08.2020

Date

30-04-2019

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

RAG-EYCL/S-019-APP-088-2020

आदेश का दिनांक

05.08.2020

आदेश का दिनांक

05.08.2020

Date of Order

Date of Issue

श्री गोपी नाथ, आयुक्त (अपील), राजकोट क्षेत्र

Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अगर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महासह आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / आयुक्त / अधिकारी का कार्यालय/ कार्यालय मूल क्षेत्र में स्थित:

Arising out of above mentioned Order issued by the Commissioner (Appeals)/ Joint / Deputy Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhinagar

घ अपीलकर्ता के प्रोपियर की सूची/ Respondent :-

M/s Rototon Polypack Pvt Ltd, Sahaibnagar Industrial Area, Gop Dharmajivan Ind. Area, B/h S T Workshop, Rajkot.

(अ) आदेश/अपील में व्यक्त कोई व्यक्ति को अपीलकर्ता/अपीलकर्ता/अपीलकर्ता/अपीलकर्ता के समक्ष अपने दायर कर सकता है। / Any person aggrieved by this order may appeal to the appropriate authority in the following way.

(A) मीम्बर ऑफ द इंडियन कानूनर्स असोसिएशन ऑफ इंडिया, ए.पी.सी.ए.ओ. अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1999 की धारा 86 के अंतर्गत अपील करने के लिए उचित प्राधिकारों को अपीलकर्ता के नाम पर सूचना देना चाहिए। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal Under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1999 in the form of EA-3

(B) अपीलकर्ता को अपनी अपील में अपीलकर्ता के नाम पर अपील करने के लिए उचित प्राधिकारों को अपीलकर्ता के नाम पर सूचना देनी चाहिए। / The special bench of the Appellate Tribunal is situated at West Block No. 2, R.K. Puram, New Delhi in all matters relating to Customs, Excise & Service Tax.

(ii) उपरोक्त परिच्छेद (B) में उल्लेखित प्राधिकारों को अपील करने के लिए उचित प्राधिकारों को अपीलकर्ता के नाम पर सूचना देनी चाहिए। / To the West regional bench of the Appellate Tribunal, Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhau Mali Bazar, Ashwa Manchana, Ahmednagar and elsewhere as appears other than as mentioned in para- 1(a) above

(iii) अपीलकर्ता को अपनी अपील में अपील करने के लिए उचित प्राधिकारों को अपीलकर्ता के नाम पर सूचना देनी चाहिए। / The appeal to the Appellate Tribunal shall be made in the form of EA-3 / as prescribed under Rule 6 of Central Excise (Appeals) Rules, 1994 and shall be accompanied against one which at least should be Rs.10,300/- where amount of duty/demand/interest/penalty/sum payable is more than 50 Lac or more in any one of the place where the bench of the Appellate Tribunal is situated. Applicant shall be accompanied by a fee of Rs. 500/-.

(b) अपीलकर्ता को अपनी अपील में अपील करने के लिए उचित प्राधिकारों को अपीलकर्ता के नाम पर सूचना देनी चाहिए। / The appeal under sub-section (a) shall be made in the form of EA-3 and shall be accompanied by a fee of Rs. 500/- (where the amount of duty & interest demanded & penalty levied is more than five lakhs but not more than Rs. 10,300/-) where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not more than Rs. 10,300/- in the form of crossed bank draft in favour of the Assistant Registrar of the Appellate Tribunal of the Sector Bank of the place where the bench of Tribunal is situated. / Applicant shall be accompanied by a fee of Rs.500/-.

(b) अपीलकर्ता को अपनी अपील में अपील करने के लिए उचित प्राधिकारों को अपीलकर्ता के नाम पर सूचना देनी चाहिए। / The appeal under sub-section (a) shall be made in the form of EA-3 and shall be accompanied by a fee of Rs. 500/- (where the amount of duty & interest demanded & penalty levied is more than five lakhs but not more than Rs. 10,300/-) where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not more than Rs. 10,300/- in the form of crossed bank draft in favour of the Assistant Registrar of the Appellate Tribunal of the Sector Bank of the place where the bench of Tribunal is situated. / Applicant shall be accompanied by a fee of Rs.500/-.



**:: ORDER IN APPEAL ::**

**M/s Rototon Polypack Pvt Ltd**, Sakhiyanagar Industry, Opp. Dharmajivan Ind. Area, B/H S.T. Workshop, Rajkot (hereinafter referred to as "**appellant**") filed the present appeals against Order-In-Original No. 03/D/AC/2019-20 dated 30.04.2019/ 10.05.2019 (hereinafter referred to as "**impugned order**") passed by the Assistant Commissioner, Central GST Division-Rajkot-I (hereinafter referred to as "**the adjudicating authority**").

2. The brief facts of the case are that during the course of Audit, it was found that the principal raw material used by the appellant is printing Inks, Polyester film, Adhesive & additives, CPP film, Polythene film (LD), BOPP film and various chemicals. On further scrutiny of the sales invoices, ER-1 returns, it was observed that the appellant was mainly engaged in manufacture of 'Flexible Laminated Packaging', 'Flexible packaging material' & 'Waste and Scrap of plastic'. The appellant was classifying both the products viz. 'Flexible Plain' and 'Packaging Material of plastic' under CETH 39201092 and discharging central excise duty @ 12.5%. It was observed that the articles of conveyance or packaging of goods of plastic of Polymers of ethylene were classifiable under CETH 39232100 under Chapter 39 of the Section VII of Central Excise Tariff Act, 1985 and by virtue of Notification No. 12/2016 dated 01.03.2016, it was made chargeable to 15% of central excise duty. It is transpired that the Laminated Flexible Packaging Material classifiable under CETH 39232100 was attracting 12.5% rate of central excise duty for clearing to Industrial Customers upto 28.02.2016 and later rate of duty was increased by 2.5% by the virtue of Notification No. 12/2016 dated 01.03.2016 and thus started attracting 15% rate of central excise duty w.e.f. March-2016. Thus, the product namely Flexible Packaging Material of Plastic (pouch) manufactured by the appellant, was to be classified under CETH 39232100 of central excise tariff and appropriate duty of excise leviable thereon is 15% w.e.f. 01.03.2016 by virtue of Notification No. 12/2016 dated 01.03.2016. Therefore, Show Cause Notice dated 18.04.2018 demanding central excise duty of Rs. 11,28,678/- for the period from 01.03.2016 to 30.06.2017 alongwith interest and penalty under Section 11AC(1)(c) was issued. The said Notice was adjudicated vide impugned order. The demand alongwith interest and penalty had been confirmed vide impugned order.

3. Being aggrieved, appellant preferred the present appeal, *inter-alia*, on the various grounds as under:



(i) that the findings of the adjudicating authority, without considering the submission of appellant and samples produced during the course of proceedings, is bad in law and is liable to be set aside.

(ii) that the adjudicating authority has erred in confirming demand ignoring the fact that the product being manufactured by the appellant was being classified and approved by the Department from so many years and while proposing change in classification, no documentary evidence is either produced by the Department or Audit party. Hence the impugned order is liable to be set aside.

(iii) that adjudicating authority has erred in confirming the demand ignoring the fact that the statutory record of the appellant were audited by various audit party prior to the audit by concerned party and none of the officers had ever raised any objection on the classification.

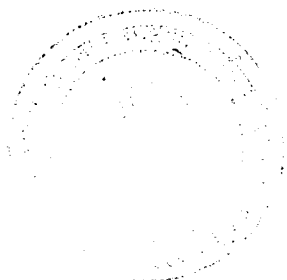
(iv) that adjudicating authority has erred in confirming duty by invoking extended period of limitation ignoring the fact that their statutory record/documents were scrutinized by the Department time to time and Department had full knowledge of the fact of the case, hence allegation of suppression of fact with intention to evade payment of duty cannot be sustained and consequently demand beyond the period of normal limitation is bad in law and liable to be set aside.

(v) that adjudicating authority has erred in overlooking the samples produced as also the fact that the product being manufactured cannot be classified as bags or sacks and hence Notification referred is not applicable.

(vi) that adjudicating erred in imposing penalty of Rs. 11,28,678/- on the grounds mentioned supra. The ground raised for setting aside the demand may also be treated as part of the ground for setting aside the penalty imposed. The adjudicating authority has also erred in imposing the penalty under Section 11AC by invoking extended period of limitation in as much as the provisions of Section 11AC are not attracted in their case.

(vii) that adjudicating authority erred in confirming the interest on the grounds mentioned herein above. The ground raised for setting aside the demand may also be treated as part of the ground for setting aside the interest confirmed.

*Ar*



4. The appellant was given 4 (four) opportunities of personal hearing on 05.11.2019, 17.12.2019, 03.01.2020 & 14.01.2020 but neither appellant nor his representative appear for the same. Hence, I proceed to decide the case ex-parte on the basis of the available records.

5. I have carefully gone through the facts of the case, impugned order and the submissions of the appellant in the memorandum of appeal. The issue to be decided in the present appeals is whether manufactured product namely 'packing material of plastic' is classifiable under Chapter sub-heading No. 39201092 or 39232100 of Central Excise Tariff Act, 1985.

6. I find that in the instant case, the appellant has contended that they are classifying their final product viz. 'Flexible Plain' and 'Packaging Material of Plastics' under CETH 39201092 and discharging central excise duty @ 12.5% from the very onset and that the product should not be classified under 39232100.

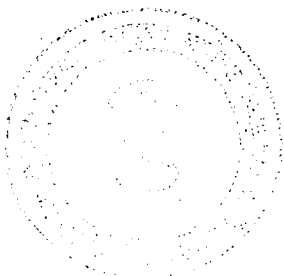
6.1 I find that under the notes to Chapter 39 'Plastics and articles thereof', it has been clarified that - in headings 3920 and 3921, the expression "plates, sheets, film, foil and strip" applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The description of the goods under the relevant chapter headings is reproduced as under:

SECTION VII

CHAPTER 39

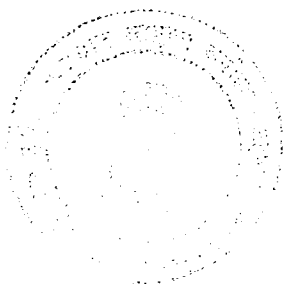
Tariff Item	Description of goods
(1)	(2)
3920	OTHER PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS, NON-CELLULAR AND NOT REINFORCED, LAMINATED, SUPPORTED OR SIMILARLY COMBINED WITH OTHER MATERIALS
3920 10	Of polymers of ethylene: Sheets of polyethylene:
3920 10 92	Flexible, plain
3923	ARTICLES FOR THE CONVEYANCE OR PACKING OF GOODS, OF PLASTICS; STOPPERS, LIDS, CAPS AND OTHER CLOSURES, OF PLASTICS



6.2 Thus, I find that, "other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials" are covered in the description of goods under the chapter heading 3920 and "Sheets of polyethylene-Flexible, plain" fall under the CETH 39201092. "Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures of plastics" are classifiable under the CETH 3923 and "Sacks and Bags (including cones)" fall under the CETH 39232100.

6.3 I find that the Flexible Packaging Material of plastic (pouch) manufactured by them as per the choice of their customers falls under the category 'Articles for packaging of goods, of plastics.' The appellant manufactured and sold their goods as 'packaging material' of specific design and size but not as films. I find that films are not capable of packaging commodities. The products manufactured by the appellant were packing materials for their buyers which they used as pouches for packing of their products. Further, I find that the flexible laminated printed pouches are suitable for packing food articles in small quantities. I further observe that the primary use of the product with motifs and pictorial representation, printed name, weight, trademark and other information of the product is primarily for packing of goods. I also find that the said pouches are not reusable and cannot carry much weight, therefore are not suitable for bulk packing. The product manufactured by the appellant are pouches or rolls which can be fitted into packing machines and used only for packing of goods but not for transportation of goods. Furthermore, I find that Sacks and bags are mainly used for packing of goods for transport, storage and sale of goods. The pouches manufactured by the appellant are not reusable and given to their customers for packing their product and sealed with the help of packing machines. I find that this basic difference in the nature of the product proves that the said product manufactured by the appellant is pouches or rolls only and merit classification under Chapter heading 3920 10 92 or 3923 10 90 and not as bags and sacks classified under CETH No. 3923 21 00 as proposed in the SCN and confirmed by the adjudicating authority. Thus, the demand of duty amounting to Rs.11,28,678/- is not sustainable.

7. In view of the above discussions, I hold that confirmation of duty of Rs. Rs.11,28,678/-and imposition of equal penalty, with respect to the instant case is



not justified. Therefore, I set aside the impugned order and allow the appeal filed by the appellant.

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

8. The appeal filed by the appellant stands disposed off accordingly.

सत्यापित

JEN

जे. एस. नागोचा  
अधीक्षक (अपील्स)

(Gopi Nath) 31/7/2020  
Commissioner (Appeals)

**By RPAD:**

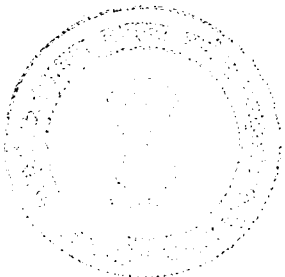
To,

M/s. **Rototon Polypack Pvt Ltd,**  
Sakhiyanagar Industry,  
Opp. Dharmajivan Ind. Area,  
B/H S.T. Workshop,  
Rajkot

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

**Copy to:**

1. The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot.
3. The Assistant Commissioner, Central GST Division, Rajkot-I.
4. Guard File.



1

