

# ्रा अपने का का जिल्ला के जिल्ला के

हानीय नवासी एन की भवन (25 Hees, GST Bhavan,

रेस रोमी जिंद ोड, / Race Course Ring Road. सामग्रीहर / Raikot – 360 001

Tele Fas No. 0281 MT7952c24c1142Email: cexappeaisrajkot@gmail.com

δ, ( . . .).



## रजिस्टर्ड डाक ए.डी.द्वारा :-

क अर्थाम कार्यसंदर्भ Appeal diffe No.

V2/88/RAJ/2019

DIN-20200864SX00004RAEF2

दिनांक/

Date

66, DAC(2019-20

30-04-2019

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

## RAU-EMCL S-096-APP-088-2020

आदेश का विष्यंत्र Date of Order:

Secretary States

Date of issue:

ار چرچین بعد بنیا داده

05.08.2020

श्री गोपी नाथ, आयुक्त (अक्तिक्त), याजीत इतर यातिय.

Passed by Shri Gopi Nata, Councissiones (AppendagRajket

ग अपर आयुक्त / संयुक्त आयुक्त / उपायुक्त / सहारश्य आजात्त , केकिय उत्थाय शुरक / से**बाकर /वस्तु एवंसेवाकर,** राजकोट / जामनकर / कांशीकाम। द्वारा उपनोदित्य जारी मुख कांश्य से सुविकः ।

Arising out of above mentioned O(3) is seed as a diagonal/plan/Papety. Assistant Commissioner, Central Excise/ST / GST, Rajkos / Jammagar / Gonde - it. 1 = :

त्र अभीवकर्ता के प्रतिवर्ध के कान्यमा राज्य है। अने कार्या कार्या के Respondent :-

M/s Rototon Polypack for Life, Sakaka nagar lesara na, Gog Dharmajiyan Ind. Area, B/h S T Workshop, Rajket.

्म आवेश(अपीका में क्रांधित बीर्ड क्रांकि कि क्रिपेट क्रांपेट ने उपायन धार्निकारों / विधिवरण के समक्ष अपीज दायर कर सकता है।/ Any person ageneral (१९ १) के किस के किस के अधिकार के Bay on the appropriate authority in the following way.

(Δ) मीमा शुरुष केंद्रीय एक ६०, १८०० वटा ०० वटी वे ४०,०० वि २००० वटी १ अजी केंद्रीक इत्याद शुरुष **अधिनयम,1944 की धारा 35B के अंतर्गत** एवं विक्त अधिनियम, १५५० की यह २००० विकास हमार्थ्योग नामाल्य में का स्थान के ए

Appeal to Cussoms, excise as Sease of the function of the English Station 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 in temporal life to

() अपिकृष्ण गुल्यावस्य ने सम्बोधिस्यापन, एका जीका जाता विकास को विशेष पीठ, वेस्ट ब्लॉक ने 2, भार का पुरस, को जिल्ला, को कि अधिकार्यकार

The special beautiest character of the line is the line of the line in the Block No. 2, R.K. Puram, New Dellu in all the relation, and the second of the sec

(ii) जुपरोक्त परिच्छेर १(६) में राज्याचा १००० ००० ००० ००० ००० १०० ००० छैदीय प्रस्त **शृत्य एवं सेवाकर अपीलीय त्यायाधिकरण** (मिस्टेट)की पश्चिम क्षेत्रिय पश्चिम, हिर्देश १००० ००० १०० ००० १००० ००० ६०० **००० १०० की की जानी चाहिए**।/

To the West regulari benefit of flooty the Classest Service Tax Expellete Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhashar, Asarwa all members add the service of appears other than as mentioned in para-1(a) above

The appeal to the Appeal as the second of Central Access (Appeal as a second against one which at least should be accompanied in the second against one which at least should be accompanied in the second access of the place where the seach of the place where the seach of the place where the seach of the Tribunal is squared. Applying that the second access of the place where the bench of the Tribunal is squared. Applying the second access of the se

अर्थानीय न्यायाधिकरण व सहार कर कर की विकास के विकास किया किया मिलाइन वियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्राप्त 5 % हमें कर भी कि किया कि किया कि किया कि किया की मिलाइ की हों, उसकी प्रति साथ में संलंध करें (उनमें से एक प्रति प्रमाणित होता के कि किया कि किया कि किया की अपने की किया निर्माण की लिए की की साथ में संलंध कर की की लाख या उससे कार के किया कि किया कि किया की की की अपने 10,000 /- राज के किया कि किया की शाखा के सहायक रोजस्वार के निर्माण की किया की अपने की की अस्ति की

The appeal to der substituted in the substitute of the substitute

- वित्त अधिनियम, 1994की धारा 86 किया ।
  9(2A) के तहत निर्धारित प्रपन्न 8,7 वर्ष की ।
  पारित आदेश की प्रतियाँ मंलग्न करें एक के । वर्ष की ।
  मेवाकर, को अपीलीय न्यायाधिकरण को अपोल्य की ।
  The appeal under sub section (2) का ।
  prescribed under Rule 9 (2) (89(2A) of commissioner Central Encise के Commissioner Central Encise के Commissioner of Central Excise / Section Commissioner of Central Excise / Section (2) की । ा एक अन्य निवस विवस्तान विवस्तानी, 1994, के नियम 9(2) एवं र स्थान के अपने आयुम् र जीति । कन्द्रीय उत्पाद शृक्क द्वारा र स्थान कि अपने कार्य अस्ति । अस्ति कि अस्ति कि अस्ति । अस्ति कि अस्ति । shall be filed in For ST.7 as the same lead of accompanied by a copy of order two same lead of accompanied by a copy of order two same lead of one of which shall be a certified to correct the Assistant Commissioner or Deputy and tope the Assistant Fribunal. (i)
- हारा कर कार्योक के कर्यात उत्पाद शुरूक अधिनियम 1944 की धारा को राजिक है जिसे, उस आदेश के प्रति अपीलीय प्राधिकरण में ताल को कि को को के पर हुस्ति।, कह येखल जुर्माना विवादित है, का कि को के प्रति के कार्योक संक्षित में हो। (ii)

  - रास्टर । १ . रे. १८४७ एक सिस्ट अवीसीय प्राधिकारी **के समक्ष विवासधीन**

Hilm शुल्क, केन्द्रीय उत्पाद शुल्क एवं नेवाबन आविशे पूर्व 35एफ के अंतर्गत, जो की वित्तीय अधिमियण अव अपील करते समय उत्पाद शुल्क/सेवा अधु आव आ भुगतान किया जाए, बशर्ते कि इस आप के अंतर्गत अव केन्द्रीय उत्पाद शुल्क/सेवा अधु आव आ केन्द्रीय उत्पाद शुल्क/सेवा अधु आव आ (i) धारा 11 डी के अंतर्गत न्याय (ii) सेनवेट जम्म की व्यक्ति कि इस आप के प्रावधान के प्रवाद स्थान अजी एवं अपील को नाम नम्याय नम्याय स्थान अजी एवं अपील को नाम नम्याय नम्याय For an appeal to be filed before the made applicable to Service Tax under the before the Tribunal on payment of 100 a penalty, where penalty alone is in dispute ceiling of Rs. 10 Crores, Under Central Disease and (i) amount determines and Act 1994, Related Excise Act, 1944 which is also for 1994, Relappeal against this order shall be because duty or duty and penalty are in dispute, or the of pro-deposit payable would be subject to a

ceiling of Rs. 10 Crores,

Under Central Dicuse and prove the control of the cont

भारत सरकार कोपुनरीक्षण आवेदन : Revision application to Gargenamon : इस आदेश की पुनरीक्षणयाचिका निम्निशिक्त नामक विकास सरकार, पुनरीक्षण आवेदन ईसाई विन नेवास्त्र ज्ञाना चाहिए। (C) ा १, १८८ - १८१, १८५ - ११ ०१ ३६८६ के प्रथमपरंतुक के अंतर्गतअवर सचिव, राज्यात के राज्यात के राज्यात के अवस्थात संग्रह मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Sinder term of the Consequence of india, Revision Application Unit. Ministry of Finance, Department of Kington of the Consequence of t

यदि माल के किसी नुक्सान के मामले में, जहां नुक्स व विस्तान पात के किस कर पाने के ब्रायन के विश्व या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पात्रमन के विश्व के किसी कारखाने या किसी भंडार गृह में माल के नुक्सान के मामले में।/
In case of any loss of goods, where the loss are the first of the analysis of goods where the loss are the first of the goods in a warehouse or in storage whether in a factory or in a warehouse (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को नियति कर रहे साम के लिए को एक प्रकार पान कर यो गए केन्द्रीय उत्पाद अस्क के छूट (रिवेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को नियति की गर्मा । In case of rebate of duty of excise on growing as a common muture of the growing as a common material used in the manufacture of the growing as a common material used in t (ii)

यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाह्म . नेशार एवं जाया की पान विश्वीत लिया तथा है। / In case of goods exported outside India का more of Piper on Einstean, without payment of duty. (iii)

सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए का इस्तीति । इस्ति और हिंदी का तर उत्तर प्रकार के सहस् प्रकार कि गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधितियम (नः 2), 195% ते स्त्रा ते अपीलों की का तर्पात अधिका समायाविधि पर या बाद में पारित किए गए हैं। (iv)

जी आयुक्त (अपीन) के द्वारा विच अधिनियम (स॰ 2).1608 है। या प्राथित है एक स्वर्ण है प्राप्त के अवश् सम्प्राविध पर या बाद में पारित किए एए है। (Credit of any duty allowed to be utinzed towards payment of excise ones on final products under the provisions of this Act or the Rules made there updo so the formula special to the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the formula (100 to 100 t (v)

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित असा की अस्तामा के असी कार्य । जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये १८०० वा कुम्ला किया गणा और यदि संलग्न रचम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए। The revision application shall be accompanied to a see of Rs. 2021 where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is rupees one Lac. (vi)

यदि इस आदेश में कई मूल आदेशों का समावेश हैं में उन्होंन हुए श्रीकार विकार हुए स्थान कराईन हो। में किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्मिति अधिकार उपलब्ध को एक अधिकार का एक आवदन किया जाता है। / In case, if the order covers various numbers of order in Dangage, loc for each O.F.O. should be paid in the aforesaid manner, not withstanding the fact that the sear appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to a old scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each. (D)

यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अराज्ञां के प्रार्थकार मूल आदि एवं कारण अर्थका 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 that be said the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Solvebule & leading of the Court Fee Act.1975, as amended. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं नेवाकर अधियोद रणाणी (कार्य क्षिण) किएसार्थ्या, 1982 में वर्णित एवं अन्य संविद्यत मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित दिवा लाला है। / Attention is also invited to the rules covering posse violi other related natters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) है, 1882, 1882. (F)

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित त्यादार, विस्तृत हो। वर्षात्तर प्राध्यानों के लिए, अपीलार्थी विभागीय वेचगारा www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions remains to filter of appeal to the higher appellate authority, the appellant may refer to the Departmental website staymether.com. (G)

#### :: 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 lnks, 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.





- 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

Ou

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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

() ' जे. एस. नाग्नेचा अधीक्षक(अपील्स) 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 पोलिपेक प्राइवेट लिमिटेड, सिखयानगर 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.

