NATION TAX MARKET

[illegible]

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

[illegible]

Race Course Ring Road,

Rajkot – 360 001

Tele Fax No. [illegible] Email: [illegible]@gmail.com

[illegible]

क [illegible] [illegible] [illegible]

ख [illegible] (Order-In-Appeal No.):

BHV-EXCUS-000-APP-106-TO-118-2018-19

आदेश का दिनांक / Date of Order:	06.06.2018	जारी करने की तारीख / Date of issue:	07.06.2018

[illegible]

Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

[illegible]

[illegible]

घ [illegible] & [illegible] (Name & Address of the Appellants & Respondent) :-

M/s. M/s Greenply Industries Ltd., Plot No. 910 to 913, GIDC Estate Jhamanbarr(?), Taluka : Chotila, Dist - Surendranagar 363000

[illegible]

(A) [illegible]

Appeal to Customs, Excise & Service Tax Appellate Tribunal [illegible]

(i) [illegible]

The special bench of Customs, Excise & Service Tax Appellate Tribunal [illegible]

(ii) [illegible]

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) [illegible]

(iii) [illegible]

The appeal to the Appellate Tribunal [illegible]

(B) [illegible]

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed [illegible]

(1) [illegible] Central Excise / Service Tax [illegible] the Appellate Tribunal.

(2) [illegible]

(i) [illegible]

(ii) [illegible]

(iii) [illegible]

[illegible] before the CESTAT [illegible] Section 35F of the Central Excise Act, 1944 [illegible] appeal against this order [illegible] before the Tribunal [illegible] duty demanded [illegible] penalty [illegible]

(i) [illegible]

(ii) [illegible]

(iii) [illegible]

[illegible]

(3) [illegible]

[illegible] Government of India [illegible]

[illegible]

(4) [illegible]

In case of [illegible] goods [illegible] warehouse [illegible]

(5) [illegible]

In case of [illegible] goods exported to any country or territory outside India [illegible]

(6) [illegible]

In case of goods exported outside India [illegible] without payment of duty.

(7) [illegible]

[illegible] under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after [illegible]

(8) [illegible]

The above application shall be made [illegible] Central Excise (Appeals) Rules, 2001 [illegible]

(9) [illegible]

[illegible]

(10) [illegible]

[illegible]

(11) [illegible]

[illegible] Rs. 200/- [illegible]

(12) [illegible]

Attention [illegible] Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(13) [illegible]

[illegible]

:: ORDER IN APPEAL ::

M/s. Greenply Industries Limited, Plot No. 810 to 813, G.I.D.C. Estate, Bamanbore, Tal. Chotila, Dist: Surendranagar (hereinafter referred to as 'appellant') has filed the below mentioned 13 (thirteen) appeals, against the respective Orders in Original (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, GST Division Surendranagar (hereinafter referred to as 'lower adjudicating authority').

Sr. No.	Order-In-Original No.	Date of Order In Original	Appeal No.	Assessment period	Central Excise duty confirmed (Rs.)	Central Excise duty appropriated (Rs.)	Interest appropriated (Rs.)
1	24/Demand/2017-18	10.07.17	V.2/454/BVR/2017	Feb-2012	14,26,360	6,70,150	68,030
2	25/Demand/2017-18	10.07.17	V.2/455/BVR/2017	Dec-2011	5,19,642	4,26,446	40,085
3	34/Demand/2017-18	10.07.17	V.2/456/BVR/2017	Sept 2012	36,42,753	4,10,575	35,725
4	35/Demand/2017-18	10.07.17	V.2/457/BVR/2017	Oct 2012	24,06,026		
5	29/Demand/2017-18	10.07.17	V.2/458/BVR/2017	March-2012	15,77,140	6,00,300	–
6	37/Demand/2017-18	10.07.17	V.2/459/BVR/2017	Dec 2012	41,04,243	6,09,497	52,626
7	31/Demand/2017-18	10.07.17	V.2/460/BVR/2017	June 2012	[illegible]	9,04,005	86,992
8	36/Demand/2017-18	10.07.17	V.2/461/BVR/2017	Nov-2012	21,45,683	1,91,433	26,137
9	32/Demand/2017-18	10.07.17	V.2/462/BVR/2017	July-2012	25,83,920	10,11,398	1,05,241
10	30/Demand/2017-18	10.07.17	V.2/463/BVR/2017	May 2012	16,47,002	1,60,270	16,556
11	28/Demand/2017-18	10.07.17	V.2/464/BVR/2017	April 2012	17,70,[illegible]	5,40,991	40,238
12	33/Demand/2017-18	10.07.17	V.2/465/BVR/2017	August-2012	29,38,820	8,53,687	70,091
13	26/Demand/2017-18	10.07.17	V.2/466/BVR/2017	Jan-2012	14,91,628	11,87,561	1,21,424

2. The facts of the case are that the appellant is manufacturer of Plywood, Block Board, Compressed Plywood falling under Chapter 44 of the Central Excise Tariff was issued SCN No. IV/16-04/MP/2013-14/T.I dated 10.03.2017 alleging undervaluation by the appellant on removal of their finished excisable goods to their sales depots located all over India from where goods were sold to Dealers/Distributors offering various discounts to their dealers/distributors. It was alleged by the department that the sale of finished goods did not take place at the time of removal from the factory and hence, the appellant was required to ascertain assessable value of their finished goods under Section 4(1)(b) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') read with Rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as 'Valuation Rules') duly notified vide Notification No.45/2000-Central Excise

(NT) dated 30.06.2000 as amended to deal with such removals. The appellant requested jurisdictional Deputy/Assistant Commissioner of Central Excise to allow them provisional assessment for the goods cleared by them which was allowed vide Order F.No. IV/18-05/MP/2011-12 dated 22.06.2011.

2.1 The appellant vide their various letters submitted copies of invoices issued by their sales depots under which similar goods had been sold, statement showing differential duty payable / paid in excess during the relevant period i.e. from December, 2011 to December, 2012 and claimed deductions of various discounts, namely turnover discount, quantity discount, cash / special discount, extra discount, cash discount, project discount and these discounts were passed on various sales bills and/or through various credit notes. The differential duty payable, as worked out by them, was paid along with interest in most of the cases. However, the jurisdictional Assistant Commissioner vide various Assessment Orders disallowed deduction of 'extra discount' from assessable value on the grounds that extra discount was offered to certain dealers depending upon their relationship with the appellant by issuance of credit notes or by mentioning in the invoice shall not be deductible from the assessable value and deduction of 'scheme discount HO' was disallowed on the ground that the same has not been mentioned in the invoices but passed on through Credit Notes and confirmed recovery of differential Central Excise duty, at appropriate rates, from the appellant under Section 11A of Central Excise Act, 1944 along with interest under Rule 7(4) of Central Excise Rules, 2002 read with Section 11AA ibid after appropriating Central Excise duty and interest amount paid by appellant. The appellant preferred appeals before the then Commissioner (Appeals) who vide Orders-in-Appeal No. BHV-EXCUS-000-APP-009 to 020-16-17 dated 15.04.2016 remanded the matter back to the jurisdictional Assistant Commissioner with direction to consider submissions of the appellant and decide the matter as per law after granting them opportunity of personal hearing. Relevant Paras of Commissioner (Appeals) order dated 15.04.2016 are reproduced as under:-

> *10. The appellant has assailed the impugned order(s) arguing that they were eligible for deductions and the impugned orders were issued without following principles of natural justice. I find force in the plea of the appellant. On perusal of impugned orders, I observe that the lower adjudicating authority has decided all the cases on the basis of various letters under which they had furnished the details of all types of discounts without granting any opportunity for submission of their defence reply. No opportunity of personal hearing was also given to the appellant before finalizing the provisional assessment cases and confirmation of demand of differential duty ……*
>
> *From the above it can be construed that in case the Department is*

not in agreement with the views of the assessee, a speaking order should be issued after following principles of natural justice. Similar stands have been taken by the Department and judicial / appellate forums from time to time while dealing with situations where there is no consent between the Department and assessee with regard to assessment / classification etc., as the case may be.

7.2 It is also observed that the appellant has also pleaded that due to finalization of the provisional assessment cases without hearing them, they could not produce all the relevant documents to substantiate their plea regarding deduction of discounts from assessable value. I further observe that on the basis of records available with this office, the issue cannot be decided on merits as the principles of natural justice is not followed by the lower adjudicating authority and hence, all the cases deserve to be remanded back to the lower authority. Therefore, in light of the decision of the CESTAT delivered by Hon'ble Justice Ajit Bharihoke, President in the case of CCE, Meerut vs. Singh Alloys (P) Ltd. reported 2012(284) ELT 97 (Tri-Del), I find it not proper to decide the instant case on merits at this juncture. Accordingly, in light of the aforesaid decision as recorded at para 10 & 11, the case needs to be remanded to the original adjudicating authority without going into merits of the case at this stage.

.... 8. Therefore, in interest of justice, I find it appropriate to remand all the cases back to the lower adjudicating authority with direction to consider the above submission of the appellant who shall submit all relevant documents in support of their claim within 30 days from the receipt of this order. ......

(Emphasis supplied)

2.2 However, the lower adjudicating authority disallowed discounts as stated in Para 39, 40 & 48 of the impugned orders.

3. Being aggrieved with the impugned orders, the appellant again filed the present appeals on the following grounds:-

(i) Para 9 of CBEC Circular No. 354/81/2000-TRU dated 30.06.2000 clarified that as regards discounts, the definition of transaction value does not make any direct reference and that duty is chargeable on net price paid or payable; that the differential discounts extended as per commercial considerations on different transactions to unrelated buyers if extended cannot be objected to and different actual prices paid or payable for various transactions are to be accepted for working assessable value. When the discount is passed at the time of sale of goods, the same shall be allowed. It is not necessary that such discount shall be offered to all customers and may be offered only to some customers as

per commercial considerations. In the present cases, extra discount was offered to certain dealers depending upon their relationship with appellant and considering commercial aspects and extra discount was offered as a reduction from the sale price. Similarly, project discount is offered by appellant to its customers for sale of goods to specified projects which is made known to the customers and offered as a reduction from the sale price. Price difference discount is offered by appellant to their customers where prices have been revised and the goods are agreed to be sold at the old rate during a specified period. This discount is passed on to the dealers either by reduction of sale price in the invoice itself or by issuance of credit notes and discount is made known to the customers before removal of goods from the factory. Thus, price difference discount, project discount and extra discount are eligible for deduction from the assessable value.

(ii) The CBEC Circular dated 30.06.2000 further clarifies that where an assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently, the assessment for such transactions may be made on a provisional basis in accordance with Rule 7 of Valuation Rules. However, the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment. CBEC Circular No. 643/34/2002-CX. Dated 1.7.2002 clarifies that since valuation is now based on transaction value, the cash discount, if actually passed on to the buyers, will be allowed as deduction, the transaction being on principal to principal basis. Appellant relied on decision in the case of Arvind Mills Limited reported as 2006 (204) ELT 570 (Tri. – LB) wherein the Hon'ble CESTAT has overruled that part of Circular dated 1.7.2002 wherein it was clarified that cash discount is deductible only if it was passed on to the buyers. Credit notes issued to buyers is proof of fact that discounts have actually passed on to the buyers. It is also a part of the standard business practice of appellant to give extra discount, price difference discount, project discount, etc. which is supported by discounts policies of the appellant for the relevant period. Appellant relied on decision of the Hon'ble Supreme Court in the case of Purolator India Ltd. reported as 2015 (323) ELT 227 (SC) in this regard.

(iii) The deductions made from the assessable value are in consonance with CBEC Circular No. 354/81/2000-TRU dated 30.06.2000 read with CBEC Circular No. 643/34/2002-CX dated 1.7.2002. It is well settled legal position that Circulars issued by CBEC are binding on the department and any demand contrary to the Circulars is without jurisdiction. The appellant relied on following decisions in this regard.

- Ranadey Micronutrients – 1996 (87) ELT 19 (SC)
- UCO Bank – 1999 (111) ELT 573 (SC)
- Dhiren Chemical Industries – 2002 (139) ELT 3 (SC)
- Ambuja Cements Ltd – 2009 (14) STR 3 (P&H)

(iv) The SCN alleged that appellant vide letter dated 19.12.2013 have submitted an opinion of their legal advisors wherein it is their view that the said discounts shall not be deductible from the assessable value. Appellant submitted that the said opinion stands amended and revoked by clarification dated 10.3.2014. Thus, reliance placed on letter dated 19.12.2013 is incorrect and not sustainable. It is settled law that assessee cannot be precluded from taking a stance which is correct in law merely due to prior contrary stance of the assessee.

(v) The SCN alleged that since the price of the greatest aggregate quantity sold is obtained under Rule 7 of Valuation Rules, no such deduction from the specific price is admissible from the assessable value. The appellant submitted that such an allegation is contrary to the law. In terms of Rule 7 of Valuation Rules, duty is payable on the 'normal transaction value' (and not normal price) and thus duty is payable on the price at which the greatest aggregate quantity of identical goods are sold in a particular day, irrespective of the buyer. Para 9 of CBEC Circular Dated 1.7.2010 clarifies that since the valuation is based on transaction value, discounts if actually passed on to the buyers, will be allowed as deduction, the transaction being on principal to principal basis. Therefore, deduction of discount passed on to the buyers would not be contrary to Rule 7 of Valuation Rules.

(vi) The lower adjudicating authority at Para 36 of the impugned order has held that discount should be passed on to the 'ultimate buyer'. Appellant submitted that nowhere in the Act/Rules/Circulars has it been mentioned that the discount should be passed on to the ultimate buyer of the goods. Appellant has passed on the discount to the dealers of the goods who are buyers of the appellant. Law is well settled that nothing can be added to or inferred which is not in the statute. Appellant relies on the decision of Hon'ble High Court of Rajasthan in the case of Procter & Gamble Pvt. Ltd. reported as 2004 (175) ELT 32 (Raj.) wherein it was held that there is no other scope for any intendment nor equity in taxing statute, that in a taxing statute nothing can be read into nor anything can be deleted, while construing the same, that the taxing statute should be interpreted and construed as per the words which the legislature has chosen to employ in the Act and that in a taxing statute there is no room for assumption or presumption has held that the eligibility of any deposit upon the language of the fiscal statute. The judgments referred to by the lower adjudicating authority in Para 4.7 and Para 4.8 of the impugned order are regarding unjust enrichment and not relating to discounts. In para 36 of the impugned order, the lower adjudicating authority has held that extra discounts were not known to the dealers at the time of removal of goods from the factory. Appellant submitted that sales are through dealers and not at the factory gate. The discounts were known to the dealers at the time of removal from the depots and discount policy was even submitted to the lower adjudicating authority which has been conveniently ignored. It is never a case of the department that after giving credit notes, extra consideration in any manner or form has been received from

the dealers to whom credit notes have been issued. In absence of any evidence to the effect, denial of discounts is erroneous and against settled principles of law.

4. Personal hearing in the matter was attended to by Shri R.K. Hasija, Advocate, who reiterated grounds of appeal and submitted vakalatnama and written submissions to submit that discounts were given at the year-end through credit notes and hence were admissible as discount; that the findings of impugned order at Para 59 were factually wrong as discounts were known to their dealers in the beginning of the year; that for the year 2011-12, the discount credit of turnover was decided vide their discount policy 2011-12 dated 5.6.2011; on query whether these discounts were known to their dealers, he requested for 2 weeks' time to submit evidences of emails etc. to the dealers; that the Hon'ble Supreme Court in the case of Southern Motors [2017 (358) E.L.T. 3 (SC)] and Maya Appliances (P) Ltd. [2018 (10) GSTL 6 (SC)] has already held in their favour as submitted by them in Para 2 & Para 3 of their written submission; that there is no condition of passing on discount to ultimate buyers as held in the impugned order as it is not a case of refund but of passing on discounts as admissible deductions.

4.1 The appellant has submitted additional written submissions stating that their discount policy was known prior to sale of the goods through depots/branches and submitted copies of acknowledgement of the discount policy from some of the dealers/buyers and contended that deduction of discounts are required to be allowed.

FINDINGS: -

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made during the personal hearing. The issue to be decided is whether the impugned order, in the facts of this case, confirming demand of central excise duty along with interest is correct or not.

6. It is part of record that appellant was clearing their finished goods through their depots from where goods were sold to their dealers/distributors and therefore, goods could not be assessed finally for payment of central excise duty as there was no sale of goods at the time of removal of goods from the factory gate and transaction value of the goods was not available. In such a situation, central excise duty would be payable in terms of Rule 7 of the Valuation Rules read with Section 4(1)(b) of the Act. Accordingly, Appellant has resorted to provisional assessment which was allowed by the jurisdictional Deputy/Assistant Commissioner of Central Excise. It is also a fact that appellant offered various discounts to their dealers as per discount policy issued by them. The dispute arose when the appellant submitted the details and documents for finalization of provisional assessment and claimed deductions of extra discount and scheme discount from the assessable value of goods sold to their dealers. The lower adjudicating authority has

denied deductions of such discounts from the assessable value and finalized the assessments and confirmed demand of differential central excise duty from the appellant.

7. Appellant, inter alia, relied on CBEC Circular No. 354/81/2000-TRU dated 30.06.2000 and strongly contended that, if any discount is passed on at the time of sale of goods, the same should be allowed to be deducted from assessable value. I would like to reproduce Para 9 of the said Circular, which reads as under:

> 9. *As regards discounts, the definition of transaction value does not make any direct reference. In fact, this is not needed by virtue of the fact that the duty is chargeable on the net price paid or payable. Thus if in any transaction a discount is allowed on declared price of any goods and actually passed on to the buyer of goods as per common practice, the question of including the amount of discount in the transaction value does not arise. Discount of any type or description given on any normal price payable for any transaction will, therefore, not form part of the transaction value for the goods, e.g. quantity discount for goods purchased or cash discount for the prompt payment etc. will therefore not form part of the transaction value. What is important is that it must be established that the discount for a given transaction has actually been passed on to the buyer of the goods. The differential discounts extended as per commercial considerations on different transactions to unrelated buyers if otherwise cannot be objected to and different actual prices paid or payable for various transactions are to be accepted for working assessable value. Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently – as for example, year-end discount – the assessment for such transactions may be made on a provisional basis. However, the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment.*

7.1 From the above clarification of CBEC, it is clear that discount is allowed on declared price of any goods and actually passed on to the buyer of goods as per common practice the question of including the amount of discount in the transaction value does not arise and that any type of discounts given on any normal price payable for any transaction cannot form part of the transaction value for the goods. I find that passing of discounts by the appellant to their dealers has not been disputed by the department. Hence, denial of deductions on account of various discounts as claimed by the appellant is improper and incorrect.

7.2 The lower adjudicating authority has observed that Extra Discount and Scheme Discount were not known to the buyers, which is incorrect. I find that appellant has submitted copy of discount policy of 2011-12 issued by them on 6.6.2011. I find that appellant had clearly spelt out various discounts offered to their dealers and distributors and had also passed on the incidence of discounts to their buyers accordingly. I would like to reproduce the relevant part of their policy dated 6.6.2011 as under:-

Dated: 6th June 2011

Sub: Discount Policy 2011-12

....

....

We have decided to implement the following Ply division Discount Policy effective new rate billing i.e. 15.05.2011

1. *Trade Discount: Abolishing the previous structures we are introducing a consolidated discount in one head @ 31% flat and this shall be uniformly applicable for all the products of Ply & Board division (except Film Face Shuttering), on the basic price effective 15.05.2011.*

2. *QTD: Quarterly Target Discount: This shall be based on target achievement, which shall be done in consultation with the dealers at the beginning of each quarter and the slabs shall be as below:*

   On achievement of 75% of the target @ 2%
   On achievement of 100% of the target @ 3%
   On achievement of 115% of the target @ 4%
   (Quarterly discount shall be auto generated by SAP vide credit note at the end of each quarter after receipt of full payment against the bills raised during the period)

3. *ATD: Annual Turnover Discount – This shall be based on category of the dealer pertaining to the respective branch and the deciding factor shall be contribution to the total sales of the branch:*

   Category A: > 10% contributing dealers - @ 2%
   Category B: > 5% contributing dealers - @ 1.5%
   Category C: < 5% contributing dealers - @ 1%
   (Annual Turnover Discount shall also be given vide credit note at the end of the financial year after receipt of full payment without adjusting any pending claims)

1. *Payment Discount: The payment based discount shall be allowed on the amount before tax in line with full payment of the invoice as per the following terms.*

   a) *APD: Advance Payment Discount @ 6% - for advance payment made against Proforma invoice of the material dispatched from factory.*

   OR

   b) *PPD: Prompt Payment Discount @ 5% – for payment made within 2 days from date of invoice.*

   OR

   c) *CD: Cash Discount @ 3% – for payment made within 20 days from date of invoice.*

   d) *ECD: Extra Credit Discount @ 1.5% - for the payment made within 38 days from the date of invoice.*

……… …

Discounts 2012-13

…… …

… ……

Extra Discount: It is allowed on case to case basis to capture any competitive business.

Scheme Discount: To capture higher volume at times, company launches scheme to boost up volume or sustain in sluggish market.

…… …

… … …

(Emphasis supplied)

7.3 I find that the Hon'ble CESTAT, New Delhi in the case of Havells India Limited reported as 2017 (357) E.L.T. 430 (Tri. - Del.) has held as under :-

"7. The circumstances in which the goods are duly sold at the factory gate, but stock transferred to the depot from where the same is sold to various customers, Section 4(1)(a) of the Central Excise Act is not applicable because at the time of transit clearance of goods from the factory to the Depot there is no sale involved. Such cases would come under Rule 7 of the Valuation Rules. Rule 7 is reproduced below for ready reference :

'Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to Depot, premises of a consignment agent or any other place or premises, from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at about the same time and,

where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.'

8. The normal transaction value has been defined as the transaction value at which the greatest aggregate quantity of goods are sold. The learned Commissioner in the impugned order has interpreted these provisions to mean that the appellants were required to pay duty on the goods cleared from their factory to their depot on normal transaction value referred above. Since at the time of initial clearance of goods from their depot, the appellants had not given any discount to their buyers, the deduction on account of various discounts is not applicable. The stand taken by the 1st appellate authority is clearly erroneous. The benefit of deduction of all types of discounts from the value will be available as long as the types and the discounts are known before clearance of goods from the factory. In the present case there is no dispute that the fact that various types of discounts are being allowed is very well-known. The fact that the discounts are being given is known but the quantum is not determinable at the time of clearance of goods from the factory. This is the main reason why provisional assessments have been resorted to. We also see that this issue is fairly well settled through various decisions of the Tribunal, Hon'ble High Courts and even the Apex Court. The Apex Court in the Purolator case (supra) has held that duty needs to be charged at the transaction value which was the agreed contractual price. Any discounts which are part of the agreement of sale will need to be granted even if such discounts are not passed on. The various other decisions cited by the appellant in their favour have clearly held that the discounts are allowable on the normal transaction value from the place of removal. In the present case the place of removal is not the factory gate but the depot of the appellant. Under such circumstances the discounts allowed in the price contracted for sale from the depot would be allowable as a deduction from such price."

(Emphasis supplied)

7.4 The Hon'ble High Court of Calcutta in the case of Shyam Steel Industries reported 2016 (339) E.L.T. 508 (Cal.) has held as under:-

"19. It will be seen from what has been stated hereinabove that the petitioner company allows discounts to its buyers. However, since the quantity/turnover discounts are based on and linked to achievement of the target and are allowed on varying rates depending upon the slab which a particular dealer attains in terms of the relevant scheme, it is not possible to quantify the discount at the time of clearance of a particular consignment from the factory or the place of removal. Consequently, the petitioner company is unable to determine the correct transaction value of the concerned excisable goods at the time of and place of removal thereof, which in turn makes it impossible to assess actual excisable duty payable. Hence, it appears to be a fit case where Rule 7 of the Central Excise Rules, 2002 should be invoked and brought into play.

20. In my opinion, the Commissioner of Central Excise in his order dated 21st May, 2014 rightly held that the value of the goods cannot be determined at the time of removal of such goods from the factory. This is for the reason that the normal transaction value is not available for such removals at that time as the assessee at that time cannot determine the quantity of discount being extended to the buyers. This can be done only at a later stage, precisely at the end of discount scheme period offered to the dealers which is usually after four months. As per Paragraph 5 of the Central Board of Excise and Customs circular dated 30th June, 2000 referred to above, discount at

any type, fairly known prior to the clearance of the goods but quantified/ ascertained afterwards and passed on to the customers, is an admissible deduction from the transaction value and as such the assessment for such clearances may be made on a provisional basis. The said circular is binding on the department and in this connection the decision of the various courts including the Hon'ble Supreme Court discussed above may be referred to.

21. I am of the clear opinion that no legitimate ground exists for the department to disallow the petitioner company to pay excise duty on provisional basis on the concerned goods as per Rule 7 of the Central Excise Rules, 2002 since the actual transaction value cannot be determined at the time of removal of the goods from the factory. Denying such permission to the petitioner company would result in forcing the petitioner company to pay more excise duty than it is actually liable to pay. In fact, as submitted by ld. Counsel for the petitioners, for the period August 1, 2012 to November 20, 2013 the petitioner company was compelled to obtain clearance of the goods upon paying excise duty on the basis of full value of the goods without taking into account the trade discounts extended by the petitioner to the dealers. This is, in my opinion, is grossly unfair and is causing undue injustice and prejudice to the petitioners. Since the petitioners are agreeable to execute the requisite bond as per Rule 7(2) of the Central Excise Rules, 2002, the interest of the department would be fully protected even if the petitioner is allowed to pay duty on a provisional basis.

22. The power conferred on a public authority by a statute or Rules framed thereunder is coupled with a duty on the authority to exercise such power in fit and appropriate cases. Refusal to exercise such power in a situation which warrants exercise of the power, would amount to an act of unreasonableness and arbitrariness on the part of the authority and such act/omission is not legally sustainable. If the Court finds that an authority has arbitrarily or unreasonably refused to exercise the power which is causing undue prejudice to a party, the courts must interfere and direct the authority to exercise such power."

(Emphasis supplied)

7.5 The discounts passed on to the customers through credit notes are admissible as deduction from assessable value as held by the Hon'ble CESTAT, New Delhi in the case of Insecticides (India) Ltd. reported as 2015 (317) E.L.T. 787 (Tri. - Del.) wherein it has been held as under -

"6. The first point of dispute is the duty demand of Rs. 35,82,585/- by denial of the deduction of trade discount and turnover discount which has been passed on to the customers through credit notes. The fact that these discounts were known prior to the clearance of the goods is not in dispute. The Commissioner, in fact, has allowed the deduction of these discounts wherever these discounts had been passed on to the customers in the invoices. He has disallowed the discounts only in those cases where the discounts were not mentioned on in the invoices but were passed on by the way of credit notes. However, in para 22 of the impugned order he has also given a finding that the genuineness of the credit notes through which they have given the sales discounts has been established. The only ground on

which the deductions of these discounts has been disallowed is that the appellant has not intimated to the Department about the discount which they intended to passed on through credit notes after the sales through depot and they have not requested provisional assessment. In our view, the <u>grounds on which the deduction of the discounts passed on through credit notes has been disallowed</u> are clearly wrong. In terms of the Apex Court's judgment in the case of *Bombay Tyre International* reported in 1983 (14) E.L.T. 1896 (S.C.) the trade discount would be admissible for deduction if it is known prior to clearance of the goods and for permitting the deduction of trade discount, it is not material that it must be given at the time of sale and the deduction <u>would be permissible even if the trade discount is quantified after the sale and is given subsequently.</u> It is seen that the Tribunal in the case of *Spice Industries (India) Pvt. Ltd. v. CCE & Cus., Vapi* (supra), *CCE, Coimbatore v. Texmo Industries* (supra) and *Gujarat Borosil Ltd. v. CCE, Surat-II* (supra) has taken same view holding that the discounts passed on by credit notes <u>and not shown in the invoices would be admissible.</u> In view of this, the impugned order confirming the duty demand of Rs. 35,32,555/- along with interest and imposing penalty of equivalent amount on the appellant under Section 11AC is not sustainable and is set aside.

(Emphasis supplied)

7.1 The another strange ground for denial of deductions as observed by the lower adjudicating authority is that discounts were not passed on to the ultimate buyers i.e. the end users. I find that this ground for denial of deduction of discounts from the sale price at which goods sold to dealers/distributors is not sustainable at all in view of the fact that the appellant was selling their final products from their depots and were not selling the goods directly to end users and therefore, appellant cannot pass on the benefit of discounts directly to the ultimate customers i.e. end users. It is a fact that discounts were offered as per discount policies which were known to their dealers at the time of removal of goods from the factory and were passed on to them through credit notes and therefore, such discounts are permissible deductions and would not form part of the transaction value as clarified by CBEC vide Circular dated 30.6.2000 as referred above.

8. In view of the above, I find that the appellant is entitled for deduction of extra discount and scheme discount offered by them to their dealers as per discount policy of 2011-12, which was known to the dealers/distributors in 2011 whereas demand is for the period from December 2011 to December 2012 and the discounts have been passed on to their customers through credit notes. Therefore, Central Excise duty already paid along with interest, which have also been appropriated is correct and no further differential

central excise duty is required to be paid by the appellant and hence, the impugned orders confirming demand of differential central excise duty are liable to be set aside.

9. In view of above facts and legal position, I allow all these appeals filed by the appellant to the extent of over and above Central Excise duty already paid by the appellant and set aside the impugned orders demanding the differential duty of Central Excise and interest thereon.

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

9.1. The appeals filed by the Appellant stand disposed off in above terms.

सत्यापित,

अधीक्षक

(कुमार संतोष)

आयुक्त (अपील्स)

By RPAD

To,

1	M/s. Greenply Industries Limited, Plot No. 510 to 513, G.I.D.C. Estate, Bamanbore, Tal: Chotila, Dist: Surendranagar	मे. ग्रीनप्लाइ इंडस्ट्रीज लिमिटेड प्लाट नं. 510 से 513 जी आइ डी सी एस्टेट, बामनबोर, ता. चोटिला, जिल्ला सुरेन्द्रनगर

Copy for information and necessary action to:

1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
2) The Commissioner, CGST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
3) The Assistant Commissioner, GST Division, Surendranagar.
4) Appeal Files/Guard File.