



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/157/RAJ/2017	मूल आदेश सं / O.I.O. No. 123/ADC/PV/2016-17	दिनांक / Date 08.02.2017
---	--	---	--------------------------------

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

RAJ-EXCUS-000-APP-030-2018-19

आदेश का दिनांक / Date of Order:	17.04.2018	जारी करने की तारीख / Date of issue:	23.04.2018
------------------------------------	------------	--	------------

Passed by **Shri Chandrakant Valvi, Commissioner, Central GST & Excise, Bhavnagar**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री चन्द्रकान्त वलवी, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, भावनगर को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Chandrakant Valvi, Commissioner, Central GST & Excise, Bhavnagar has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-

M/s. Shruti Engineers P. Ltd. (now Merged with Rajoo Engineers Ltd.), Survey No. 210, Plot No. 1, Industrial Area,, Veraval (Shaper), Rajkot,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above



- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

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

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ों एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

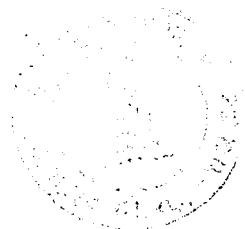
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in





:: ORDER IN APPEAL ::

M/s. Shruti Engineering Private Limited, now merged with M/s. Rajoo Engineers Limited, Survey No. 210, Plot No. 1, Industrial Area, Veraval (Shapar), Dist. Rajkot 360 024 (hereinafter referred to as "the appellant") has filed the present appeal against Order in Original No. 123/ADC/PV/2016-17 dated 07/08-02-2017 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated the facts of the case are that the appellant engaged in manufacturing of all structure / part of plastic machine falling under the Chapter Heading 761009010 & 84779000 of the Central Excise Tariff Act, 1985. The appellant carried out job work as required by M/s. Rajoo Engineers Pvt. Ltd., Shapar (Veraval). During the course of audit, it is observed that the appellant had raised invoices to M/s. Rajoo Engineers Pvt. Ltd., Shapar (Veraval) towards conversion charges for the period 2010-11 to 2012-13, as per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 instead of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, by taking 110% of Cost of Production. The said observation culminated into issuance of Show Cause Notice No. V.Ex/15-32/Audit-III/Commissioner-7/2015-16 dated 03-03-2016, which was adjudicated by the lower adjudicating authority vide this impugned order.

3. Being aggrieved, appellant has preferred the present appeal and contended that the lower adjudicating authority has not considered the fact that the scheme of amalgamation was effective from the date on which the certified copies of the order of the High Court under Sec. 391 and 394 of the Companies Act, 1956; that the relevant text of clause 1.4 of the High Court order is reproduced under :-

'Effective date' or 'coming into effect of this scheme' means the date on which the certified copies of the Orders of the High Court of Judicature at Gujarat or any of her appropriate authority under Section 391 and 394 of the Act sanctioning the Scheme are filed with the Registrar of Companies, Gujarat.

3.1 That the lower adjudicating authority has not gone through the above clause regarding effective date and concluded that they were deemed to be merged with Ms/ Rajoo Engineers Limited w.e.f. 1.4.2010; that the lower adjudicating authority has also placed reliance on the judgment in the case of M/s

- 4 -

Marshall Sons & Co. (India) Ltd. v/s ITO reported at [1996] 223 ITR 809 (SC); that if the court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer; that where the court does not prescribe any specific date but merely sanctions the scheme presented to it, as has happened in the case relied upon by the Department, it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date"; that the adjudicating authority has not considered the vital observation of the Apex Court that if the court specifies a date, such date would be the date of amalgamation/ date of transfer; that only a date had not been specified by the Court, the date of transfer is the date specified in the scheme as 'the transfer date'; that in the instant case, the High Court of Gujarat has specified the effective date, thus, the effective date would be the date as specified by the Court and not 1.4.2010 as held by the adjudicating authority; that the certified copy of the order of the High Court of Gujarat has been filed with the Registrar of Companies, Gujarat on 13.4.2013 and as such the effective date for merger would be 13.4.2013 and not 1.4.2010 as held by the adjudicating authority; that the adjudicating authority has erred in holding that they and M/s Rajoo Engineers Limited are interconnected units in terms of Section 4(3)(b)(i) of the Central Excise Act, 1944 merely by considering the date of merger as effective on 1.4.2010; that their circumstances amply demonstrates that till 12.4.2013, they and M/s Rajoo Engineers Limited were separate legal entities registered with the Registrar of Companies; that both the companies were distinct entities and both the firms were having distinct PAN; that PAN of the appellant is AAHCS1602A and the PAN of M/s Rajoo Engineers Limited is AABCR3204M; that Department has also issued two separate central excise registrations to both the firms; that they were granted Central Excise Registration bearing No. AAHCS1602AXM002, while M/s Rajoo Engineers Limited were granted Central Excise Registration bearing No. AABCR3204MXM001; that the registration of the appellant was surrendered on 2.5.2013 after the amalgamation scheme became operative; that the adjudicating authority has brushed aside their contentions on the sole ground that the deemed merger was effective from 1.4.2010 and as such concluded that the companies were interconnected; that the statement showing the share-holding pattern as per the clause 35Q of the Income Tax Act, which is incorporated in the audited report for the year 2010-11 clearly shows that the shares of our above said firm were held by the 6 individuals; that the share holding pattern clearly indicate that other than the above 6 individuals there were no share holders of their company; that not a single share of their was held by M/s Rajoo Engineers Limited; that for a body corporate to be called a holding company, at least 51% of the shares of the

subsidiary should be held by the holding company viz. M/s Rajoo Engineers Limited in the instant case; that the statutory audit report clearly indicates that M/s Rajoo Engineers Limited, is holding none of the shares of the above said company and as such the theory of holding company; that the term 'subsidiary company' has been defined under Sec. 2(87) of the Companies Act, 2013 as under:

“(87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company- controls the composition of the Board of Directors; or exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.”

3.2 That M/s Rajoo Engineers Limited neither controls the composition of Board of Directors of our above company nor does control more than one-half of the total share capital; that their company could not be termed as a subsidiary company of M/s Rajoo Engineers Limited, in terms of the above definition; that even otherwise, the provisions of Rule 8 of the valuation rules is not applicable to them as their company was a separate legal entity and have supplied the goods under consideration to M/s Rajoo Engineers Limited, which was a separate legal entity; that Rule 8 of the valuation rules would be applicable in cases where the excisable goods are used for consumption by assessee (manufacturer of the said goods) or on his behalf (manufacturer of the said goods); that the excisable goods under consideration have neither been consumed for manufacture of other articles by them nor have they been used for manufacture of other articles; that the goods under consideration have been handed over by them to another legal entity viz. M/s Rajoo Engineers Limited, thus, the provisions of Rule 8 of the valuation rules are not applicable to their case; that they rely on the citation passed by the Tribunal in the case of M/s Tara Industries Ltd. reported at 2003 (161) ELT 758 (T) and case of M/s Rolastar P Ltd. reported at 2012 (276) ELT 87 (T); that in their case, the goods have been sold to another legal entity viz. M/s Rajoo Engineers Ltd., and accordingly, there is no sale to related person in the instant case; that whatever central excise duty paid by them would be eligible as cenvat credit to M/s Rajoo Engineers Limited, who are also a registered manufacturer with central excise department; that such Cenvat credit would be taken by M/s Rajoo Engineers Limited, which would be utilized towards payment of their duty liability; that thus, the entire exercise of recovering central excise duty from them would be revenue neutral since the same would be eligible as cenvat credit to M/s Rajoo Engineers

Limited; that thus, the entire case is revenue neutral; that it is a well settled law that demand is not sustainable in the event that the situation comes to revenue neutrality; that they rely on the case laws viz. (1) M/s Special Steel Ltd. reported at 2015 (329) ELT 449 (T) (2) M/s Hindustan Zinc Ltd. reported at 2008 (232) ELT 687 (T) (3) Commissioner v. Coca-Cola India Pvt. Ltd. as reported at 2007 (213) E.L.T. 490 (S.C.) (4) Commissioner v. Patel Alloy Steel P. Ltd. reported at 2014 (305) ELT 476 (Guj) (5) India Pistons Ltd. v. Commissioner as reported at 2008 (221) E.L.T. (6) Commissioner v. Crystal Quinone Pvt. Ltd. as reported at 2009 (233) E.L.T. 499 (Tribunal) (7) Commissioner v. Indeos ABS Ltd. as reported at 2010 (254) E.L.T. 628 (Guj.) (8) Daman Ganga Board Mills Pvt. Ltd. v. Commissioner as reported at 2012 (276) E.L.T. 532 (Tribunal) (9) Mafatlal Industries Ltd. v. Commissioner as reported at 2009 (241) E.L.T. 153 (Tribunal) (10) P.T.C. Industries Ltd. v. Commissioner as reported at 2003 (159) E.L.T. 1046 (Tribunal); that audit objection raised as Revenue Para 1 under Final Audit Report No. Audit-III/RJT/II/E/462/2014-15 dated 24.4.2015 by the Department; that all the facts were clearly known to the department at the time of audit of the appellant, wherein objection was raised under the head of 'Other Revenue Para' under FAR No. D-378/2012-13 dated 9.11.2012, wherein it has been explicitly mentioned that the alleged three subsidiary units (of which one was M/s Shruti Engineering Pvt. Ltd.) were not including the cost of conversion charges in the assessable value and the assessable value was required to be calculated in terms of Rule 8 of the valuation rules; that the said FAR also contains the remarks in relation to the said revenue para to the effect that 'The jurisdiction AC/DC are requested to take necessary action for safeguard of revenue'; that the narration under the head 'Other revenue para' clearly indicates that the department was in the knowledge about the entire facts and nothing stood without the knowledge of the department; that the said FAR No. D378/2012-13 has been issued on 9.11.2012 and the audit had commenced on 1.4.2011 as apparent from the FAR; that everything was in the knowledge of the department as on 1.4.2011 and yet the show cause notice has been issued on 03.03.2016 by invoking the extended period of limitation; that the reasons for invoking the extended period of limitation has been spelt out at para 6 in the notice that 'the assessee had not disclosed to the department that they were not paying duty on the conversion charges; that they have deliberately suppressed the material facts from the department with an intention to evade payment of central excise duty' etc.; that it is now well settled law that whatever was not statutorily required to be declared and if not declared does not tantamount to suppression of facts; that in case of revenue neutrality, the extended period of limitation is not applicable; that they rely on various citations viz. (a) M/s

6

- 7 -

Reclamation Welding Ltd. reported at 2014 (308) ELT 542 (T) (b) M/s Premier Instruments & Controls Ltd. reported at 2005 (183) ELT 65 (T) (c) M/s Indian Oil Corporation reported at 2010 (262) ELT 751 (T) (d) M/s Lanco Industries Ltd. reported at 2010 (255) ELT 275 (T) (e) M/s Nabros Pharma P Ltd. reported at 2009 (247) ELT 439 (T) (f) M/s P R Rolling Mills P Ltd. reported at 2010 (249) ELT 232 (T); that thus, the show cause notice issued by the Department itself, is hit by bar of limitation.

3.3 The appellant further contended that the lower adjudicating authority has erred in imposing penalty under Section 11AC of the Central Excise Act, 1944; that the fact that the duty amounting to Rs. 81,63,545/- and interest amounting to Rs. 15,00,000/-, though not payable as discussed above, was paid well before the issuance of show cause notice has not been considered by them; that the payment of the interest of Rs. 10,26,208/- under Challan No. 000148 dated 12.3.2016 also made by them after issuance of show cause notice dated 3.3.2016, which has also not been considered by the adjudicating authority; that the provisions of Section 11AC of the Central Excise Act, 1944 can be invoked only if there is an element of intention to evade payment of duty; that they had nothing to gain since the duty paid by them was eligible as cenvat credit to M/s Rajoo Engineers Limited, and as such the exercise is revenue neutral; that in case of revenue neutrality, there is no intention to evade payment of duty and as such penalty is not imposable upon them; that they rely on case laws viz. (a) M/s Patel Alloy Steel P Ltd. reported at 2014 (305) ELT 476 (Guj) (b) M/s. Lanco Industries Ltd. reported at 2010 (255) ELT 275 (T) (c) M/s Premier Instruments & Controls Ltd. reported at 2005 (183) ELT 65 (T) (d) M/s BPL Sanyo Utilities & Appliances reported at 2002 (149) ELT 1416 (T).

4. Personal hearing in the matter was held on 06-03-2018, which was attended to by Shri Archit Kotwal, Consultant wherein he reiterated their submission mentioned in the Ground of Appeals. He further requested to allow their appeal on the ground mentioned in the Appeal Memorandum and further stated that he would submit further written submission within 15 days.

5. The appellant vide letter dated 28-03-2018, received on 03-04-2018, submitted written submission, wherein he, further continued to contend that it is incorrect that they were a subsidiary company of M/s Rajoo Engineers Ltd.; that they were holding PAN No. AAHCS1602A, Central Excise Registration No. AAHCS1602AXM002 and Registrar of Companies Number CIN — U 272090.12002PTC040949 whereas, M/s. Rajoo Engineers Ltd. is holding PAN No.



ℓ

- 8 -

AABCR3204M, Central Excise Registration No. AABCR3204MXM001 and Registrar of Companies Number CIN –L27100GJ1986PLC009212; that both the companies were having different and separate identity; that there was nothing in the show cause notice alleged that both the entities were related in the manner as specified under Section 4(3)(b) of the Central Excise Act, 1944; that the resolution of merger was passed by M/s Rajoo Engineers Ltd. on 15.4.2010, which has been reproduced at Page 18, para 19.7 of the impugned Order; that as per the resolution, the merger was approved subject to the approval of the Gujarat High Court which was accorded on 4.4.2013; that the effective date for merger would be 13.04.2013 in terms of para 1.3 of the High Court Order dated 4.4.2013; that the certified copy of the order of the High Court of Gujarat had been filed with the Registrar of Companies on 13.4.2013; that in terms of the approval of merger, the central excise registration and service tax registrations of M/s Shruti Engineering Pvt Ltd. were surrendered vide their application dated 11.7.2013; that the assets and liabilities of M/s Shruti Engineering P Ltd. was transferred to the books of accounts of M/s Rajoo Engineers Ltd. only after effective date for merger i.e. 13.04.2013; that Chartered Accountant's certificate to substantiate the same has been submitted; that on such transfer of the assets and liabilities, their company viz. M/s Shruti Engineering Pvt. Ltd. stood dissolved in terms of para 15 of the High Court's order dated 4.4.2013; that the scheme of merger involved 3 companies viz. M/s Hitesh Engineers Pvt. Ltd, M/s Vishvakarma Fabricators Pvt. Ltd. and Shruti Engineering Pvt. Ltd with Rajoo Engineers Ltd; that no similar action has been initiated against the remaining two entities viz. M/s Hitesh Engineers Pvt. Ltd and M/s Vishvakarma Fabricators Pvt. Ltd.; that the action initiated against them were with a prejudiced mind-set of the department; that they rely on the case of M/s Seth Brothers (Perfumers) P Ltd. reported at 2016 (344) ELT 647; that there was evidence of flow back or extra commercial consideration in the transaction between both the companies; that due to on-going process of amalgamation, they did not desire any hindrance to the scheme by way of liabilities arising out of the present issue and with an intent to avoid such disputes, they had paid up the duty during the course of investigation itself; that they had paid duty and interest more than the actual amount demanded in the show cause notice; that the Order-in-Original may be set aside and the amount of duty and interest are required to be refunded to them;

6. I have carefully gone through the facts of the case, impugned order, appeal memorandum and the submissions made by the appellant.



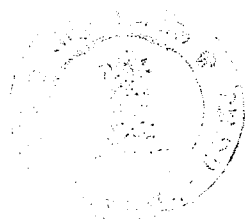
6.1 The limited issue to be decided in the present appeal is whether the Lower Adjudicating Authority's orders confirming the demand of Central Excise duty amounting to Rs. 65,11,253/- alongwith interest and penalties imposed under Section 11AC(i)(a) is correct, or otherwise.

7.1 I find that during the course of audit, it was observed that the appellant had raised invoices to M/s. Rajoo Engineers Pvt. Ltd., Shapar (Veraval) towards conversion charges as per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 instead of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 by taking 110% of Cost of Production, which has led into issuance of Show Cause Notice No. V.Ex/15-32/Audit-III/Commissioner-7/2015-16 dated 03-03-2016, which was adjudicated by the lower adjudicating authority vide the impugned order.

7.2 Thus, to examine as to whether the appellant is inter-connected with M/s. Rajoo Engineers Ltd., I have gone through the various documents provided by the appellant and it is noticed that the appellant was holding PAN No. AAHCS1602A, Central Excise Registration No. AAHCS1602AXM002 and Registrar of Companies Number CIN – U 272090.12002PTC040949 whereas, M/s. Rajoo Engineers Ltd. was holding PAN No. AABCR3204M, Central Excise Registration No. AABCR3204MXM001 and Registrar of Companies Number CIN – L27100GJ1986PLC009212. Thus, both the companies were possessing different PAN Cards, Central Excise Registrations and Different Company Registration Numbers and therefore, it is evident that the Appellant as well as M/s. Rajoo Engineers, both were possessing separate identity.

7.3 Now, to ascertain as to whether the appellant is subsidiary unit of M/s. Rajoo Engineers Ltd., I have gone through the resolution dated 15th April 2010 passed by the Managing Director of M/s. Rajoo Engineers Limited, wherein it was resolved for merger of the appellant viz. M/s. Shruti Engineering Pvt. Ltd. and other two firms with M/s. Rajoo Engineers Limited. The relevant portion of the resolution is reproduced below :-

“Resolved that subject to provisions of the Companies Act, 1956 and subject to provisions as contained in the Memorandum and Articles of Association of the company and subject to approval and sanctions to be obtained from the Stock Exchange, and the Hon'ble High Court of Gujarat and other authorities, the approval of the Board be and is hereby given for Merger of three private limited companies, Hitesh Engineers Pvt. Ltd., Vishwakarma



- 10 -

Fabricators Pvt. Ltd. and Shruti Engineering Pvt. Ltd. with M/s. Rajoo Engineers Ltd."

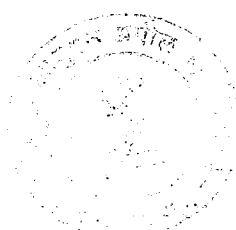
7.4 Thus, it is noticed that subject to approval of Companies Act, 1956, Memorandum and Articles of Association of the company, Stock Exchange, Hon'ble High Court of Gujarat, it was resolved to merge M/s. Shruti Engineering Pvt. Ltd. and other two firms with M/s. Rajoo Engineers Limited on 15-04-2010. Further, it is noticed that the Hon'ble High Court of Guajrat had sanctioned the scheme of amalgamation on 30-11-2012. Further, it is also noticed that the appellant had filed certified copies of the order of the Hon'ble High Court of Guajrat before the Registrar of Companies on 13-04-2013. Further, on going through the surrender application of Central Excise Registration, it is noticed that the appellant had surrendered their application after the issue of order of Hon'ble High Court of Gujarat and completion of all other formalities. Further, it is also noticed that M/s. M. N. Manvar & Co., Chartered Accountant has also certified that total assets and total liabilities of the appellant were transferred on 30-04-2013. Thus, it is evident that till 30-11-2012 i.e. the date of amalgamation sanctioned by the Hon'ble High Court of Gujarat, the Appellant as well as M/s. Rajoo Engineers Ltd., both were possessing separate identity and thus, it is evident that neither the appellant was a subsidiary company of M/s. Rajoo Engineers Ltd. nor the appellant and M/s. Rajoo Engineers Ltd. were inter-connected units as defined under Section 4(3)(b)(i) of the Central Excise Act, 1944.

7.5 On the factual matrix of the case i.e. valuation procedure adopted by the appellant, I need to appreciate the provisions under Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which is reproduced herein under :-

"RULE 10A. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then, -

(i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be



l

- 11 -

the normal transaction value of such goods sold from such other place at or 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 said goods from the factory of job-worker;

(iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods :

Provided that the cost of transportation, if any, from the premises wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation. - For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him."

7.6 It can be seen from the above reproduced provisions that provisions of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 can be brought into play when there is a situation where excisable goods are produced or manufactured by a job worker on behalf of a person and cleared to the buyer of the principal and/or cleared to a depot or a consignment agent. The intention of the Legislature was to capture the tax on the goods, on the value of the said goods when cleared to the ultimate consumers. In the case in hand, I find that provisions of Rule 10A(i) and (ii) does not arise. Provisions of Rule 10A(iii) gets attracted, which talks about a situation where 10A(i) or (ii) does not apply. The said provision (iii) very clearly mandate that in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever shall apply mutatis and mutandis for determination of value of the excisable goods.

7.7 It is noticed that the lower adjudicating authority is of the view that provisions of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 will apply in the present case. In order to examine the provision of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, I reproduce the provisions of Rule 8 :-

"RULE 8. Where the whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be [one hundred and ten per cent] of the cost of production or manufacture of such goods."

7.8 It can be seen from the above reproduced Rule that this will come into play only when the goods are used for consumption by the assessee or on his behalf, in the production or manufacture of other articles, in such a case the value shall be 110% of the cost of production or manufacture of such goods. If this rule

- 12 -

needs to be applied in the case, then it is to be on record that all plastic machine structure is a product of the appellant herein and is consumed by them on appellant's behalf, in his factory for further manufacturing of goods. In the absence of any such situation, I am of the view that provisions of Rule 8 will not come into play and thus, the Rule 8 will not get attracted in this case and accordingly, I hold that valuation adopted by the appellant as per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is proper. Further, it is also noticed that the Department or lower adjudicating authority could not fetch any documentary evidences of any excess cash neither received by the appellant nor paid by M/s. Rajoo Engineers Ltd. Further, it is also not available on record that the appellant, had provided the similar items, on higher charges, to any other customer other than the Appellant. Thus, in absence of iota of evidence for receipt of excess cash by the appellant from M/s. Rajoo Engineers Ltd., therefore on this count also, I hold that the valuation adopted by the appellant as per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is proper. Accordingly, I hold that confirmation of demand is not sustainable and therefore, I set aside the demand of Central Excise duty confirmed under Section 11A(4) readwith Section 11A(5) of the Central Excise Act, 1944 vide the impugned order.

7.9 Once, demand of Central Excise is not tenable as held above, the question of recovery of interest under Section 11AA of the Act and penalty imposed under Section 11AC(1)(a) of the Act does not survive.

8.1 In view of above discussion, I set aside the impugned order passed by the lower adjudicating authority and allow the appeal filed by the appellant with consequential relief.

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

8.2 The appeal filed by the appellant stands disposed off in above terms.

(चंद्रकान्त वलकी)
आयुक्त

सत्यापित,
23/11
सिन्धु एम्प्लॉयर्स
अधीक्षक (अपील)



- 13 -

By Regd. Post AD

To

M/s. Shruti Engineering Pvt. Ltd., (now merged with M/s. Rajoo Engineers Limited), Survey No. 210, Plot No. 1, Industrial Area, Veraval (Shapar), Dist. Rajkot 360 024.	मेसर्स श्रुति इंजीन्यरिंग प्राइवेट लिमिटेड, (अभी मे. राजू इंजीनियरस लिमिटेड मे मर्ज) सर्वे नमबर 201, प्लॉट नंबर 1, इंडस्ट्रियल एरिया, वेरावल (शापर), डिस्ट्रिक्ट-राजकोट 360 024.
---	---

Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot
4. The Deputy Commissioner, GST & Central Excise Division-II, Rajkot.
5. Guard File.

