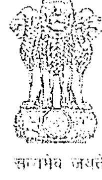


::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/340 /RAJ/2017	**01/ADC/RKC/2017-18**	**16.05.2017**

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

RAJ-EXCUS-000-APP-104-2018-19

आदेश का दिनांक / Date of Order:	**24.05.2018**	जारी करने की तारीख / Date of issue:	**25.05.2018**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

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. Sharmdeep products, 5, Umakant pandit Udyognagar Mavdi Plot Rajkot-360002 ,

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 अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असार्वा 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 माँग ,ब्याज की माँग 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 क्रमश: 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 माँग ,ब्याज की माँग 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 क्रमश: 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

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) 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 अर्ज़ी एवं अपील को लागू नहीं होगे।/

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 :

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो 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 on 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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशो 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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, not withstanding 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. Shramdeep Products, 5, Umakant Pandit Udyog Nagar, Mavdi Plot, Rajkot (*hereinafter referred to as* 'Appellant') have filed appeal against Order-in-Original No. 01/ADC/RKC/2017-18 dated 16.05.2017 (*hereinafter referred to as* 'the impugned order') passed by the Additional Commissioner, Central Excise & Customs, Rajkot *(hereinafter referred to as* 'the lower adjudicating authority').

2. Present proceedings have arisen due to Final Order No. A/2538/WZB/AHD/2007 & M/1025/WZB/AHD/2007 dated 27.09.2007 passed by the Hon'ble CESTAT, Ahmedabad in deciding application filed against OIA No.1098/ 2001/ COMMR(A)/RAJ dated 29.11.2001 passed by the then Commissioner (Appeals), Rajkot whereby the case was remanded back to the lower adjudicating authority.

2.1 The brief facts of the case are that the Appellant was availing SSI exemption in terms of Notification No. 1/93-CE as amended, Notification No. 16/97-CE and Notification No. 8/98-CE and was engaged in the manufacturing of the finished goods. Shri Manjibhai V. Chauhan, Proprietor of the Appellant, in his statement dated 03.01.2000 stated that he was one of the partners in M/s. Shramdeep Industries, Rajkot before 1996; that they had filed declaration under Notification No. 13/92-CE for F.Y. 1998-99; that they were using different brand names on their products such as 'Priya' for lathe machine, 'Pooja' for Air blower and burner, 'Leader' for polisher and grinder; that the brand name 'Priya' was being used by M/s. Shramdeep Industries, Rajkot when he was partner in the said firm; that they were not using the brand name 'Priya' on their products except for Lathe Machines manufactured by them. The Show Cause Notice alleged that the Appellant was using brand name 'Priya' of another unit i.e. M/s. Shramdeep Industries, Rajkot and therefore, they were not entitled for the benefit of SSI exemption in terms of Notification No. 1/93-CE, as amended. The demand made vide Show cause notice dated 07.06.2000 was confirmed by the Additional Commissioner, Central Excise, Rajkot vide Order-in-Original No. 127/Addl.Commr/2000 dated 30.11.2000 ordering confiscation of the goods under Rule 173Q(1) of the Central Excise Rules 1944 (hereinafter referred to as "the Rules") and confirmed demand of Rs.2,41,207/- under Section 11A(1) of the Central Excise Act, 1944 (*hereinafter referred to as* "the Act") along with interest under Section 11AB of the Act and also imposed penalty of Rs. 2,41,207/- under Section 11AC of the Act and also of Rs. 1,75,000/- under Rule 173Q(1) of the Rules. Aggrieved with the aforesaid OIO dated 30.11.2000, the Appellant had

preferred appeal before Commissioner (Appeals), Central Excise, Rajkot who decided the appeal vide Order-in-Appeal No. 1098/2001/Comm(A)/RAJ dated 29.11.2001 upholding Order-in-Original dated 30.11.2000.

2.2 Aggrieved with Order-in-Appeal dated 29.11.2001 the Appellant had preferred appeal before the Hon'ble CESTAT, which vide Order No. A/2538/WZB/AHD/2007 & M/1025/WZB/AHD/2007 dated 27.09.2007 decided the appeal and remanded the case back to the original adjudicating authority holding as under :-

> *"Ld. Advocate Shri P. V. Sheth appearing for the appellant is not disputing the use of brand name "Priya" on the goods manufactured by them which belongs to others and thus disentilement of he assessee to the benefit of Notification No. 1/93. However, he submits that the demand in question is barred by limitation inasmuch as show cause notice dt. 7/6/2000 was issued for the period from 8/4/1996 to 24/12/1999. He submits that they had filed declaration dt. 15/10/1996, though he fairly agrees that the use of brand name was not disclosed in the said declaration. He further agrees that the plea of limitation was never raised either before the original Adjudicating Authority or before Commissioner(Appeals).*
>
> *2........*
>
> *3. Countering the arguments, ld. SDR submits that the appellant have not disclosed the use of brand name 'Priya' in the declaration filed by them on 15.10.1996, has to be held guilty of suppression. In any case, he submits that the said plea was not raised before the authorities and as such does not stand considered by them, for which purpose matter may be remanded.*
>
> *4. In view of the fact plea of limitation was not considered, for the obvious of not having been raised, we set aside the impugned order and remand the matter to the original Adjudicating Authority for consideration of the demand being barred by limitation, after examining the declaration filed by the appellant....."*
>
> [Emphasis supplied]

2.3 The lower adjudicating authority in de-novo proceedings, after 10 years of the remand order, imposed redemption fine of Rs. 25,000/-, confirmed Central Excise duty of Rs. 2,41,207/- under section 11A of the Act, ordered to pay interest under Section 11AB of the Act, imposed penalty of Rs.2,41,207/- under Section 11AC of the Act and penalty of Rs.1,75,000/- under Rule 173Q(1) of the Rules.

3. Being aggrieved with the impugned order, the Appellant has now again preferred appeal, inter alia, contending that the lower adjudicating authority has erred in confirming demand of duty ignoring the direction given by the Hon'ble CESTAT vide Order dated 27.09.2007; that the lower adjudicating

authority has erred in holding that non-declaration of brand name in the declaration form is suppression of fact, inasmuch as the proforma of the declaration does not prescribe such condition and therefore, the findings of the lower adjudicating authority are erroneous; that the disputed brand name belonged to the family and therefore, the Appellant could also be treated as owner of the brand name and therefore, the exemption from duty claimed by the Appellant was allowable; that the Department has not produced any evidence to prove that the Appellant is now the owner of the disputed brand name and therefore, the proceedings are required to be dropped; that the disputed brand name "Priya" is not the brand name of M/s. Shramdeep Industries for the product Lathe machine; that M/s. Shramdeep Industries were not using brand name "Priya" on its product, lathe machine; that the lower adjudicating authority has erred in imposing penalty of Rs. 1,75,000/- under the provisions of Rule 173Q(1) of the Act, inasmuch as the Commissioner(Appeals) vide his order dated 29.11.2001 had already set aside penalty imposed under Rule 173Q(1) of the Rules and this issue was not a part of the proceedings remanded by the Hon'ble CESTAT.

4. Personal hearing in the matter was attended by Shri Paresh Sheth, Advocate who reiterated grounds of appeal and submitted that the the impugned order has been passed in *de novo* proceedings as per Hon'ble CESTAT's order dated 27.09.2007; that the demand notice is time barred as they has filed declaration and the declaration had no column to describe trade/brand name; that Department has failed to substantiate that brand name belonged to someone else; that they have not suppressed any thing which was required to be declared; that the form and schedule of declaration under Notification No. 13/93-CE(NT) dated 14.03.1992 had no column which they had violated; that Hon'ble Supreme Court in case of Pahwa Chemicals Pvt. Ltd. reported as 2005 (189) ELT 257(SC) had held no suppression if not requiring to declare; that Hon'ble CESTAT in Jamal Bakery reported as 2016(339) ELT 1604 (Tri-Mumbai) has also held so and Hon'ble Supreme Court in Bhalla Enterpreise reported as 2004 (173) ELT 225 (SC) Para 6 & 7 that in such cases no penalty is imposable under Section 11AC and (or Rule 173Q) and hence, both penalties need to be set aside; that their appeal needs to be allowed in view of above facts and legal position. No one appeared from the Department even though Personal Hearing notices were sent to the Commissionerate.

FINDINGS:-

5. I have carefully gone through the facts of the case, the impugned order, Appeal memorandum, as well as oral and written submissions made by the appellant. The issue to be decided in the present appeals is as to whether the Appellant affixing other's brand name "Priya" is eligible for the benefit of value based SSI exemption Notification or not and whether penalty imposed on Appellant is correct or not.

6. The Appellant has contended that the demand is time barred as they had filed declaration and the declaration had no column to describe brand name in the form and schedule of Declaration required to be filed under Notification No. 13/93-CE(NT) dated 14.03.1992. In support of their contention the Appellant relied upon the judgment of Hon'ble Supreme Court in case of Pahwa Chemicals Pvt. Ltd. supra wherein in had been held that no suppression if not requiring to declare. The Appellant also relied upon the cases of Hon'ble CESTAT in Jamal Bakery supra and Bhalla Enterprise *supra* to contend that in such cases no penalty is imposable under Section 11AC and under Rule 173Q and hence, both penalties need to be set aside.

6.1 I find that Hon'ble Madras High Court in the case of Micro Chem Products (India) Pvt Ltd. reported as 2017(355)ELT45(Mad) has held as under :-

"3.1 The assessee, at the relevant point in time, manufactured chemicals for use in printing and photographic industry. <u>In respect of the sale of its goods, it used the brand name "Micro", which was, admittedly, also the brand name of another family/sister concern, by the name, Micro Plates Private Limited (in short, "MPPL")</u>. As would be evident from the cause title, the assessee's name is Micro Chem Products (India) Pvt. Ltd. (in short, "MCPPL").

3.2 Since, <u>the assessee had been claiming exemption from excise duty, as it was a Small Scale Industrial Unit (in short, "SSI Unit"), it did not, as it appears, get itself registered with the Central Excise Authorities</u>. The assessee's claim is that, since, its clearances were, always, below the sum of Rs. 30.00 lakhs, there is no need to register itself with the Central Excise Authorities.

3.3 <u>The record shows that the Central Excise Authorities got wind of the fact that the assessee had been clearing its goods under the brand name "Micro", which also the brand name that was being used by its family/sister concern, i.e., MPPL</u>. Accordingly, a Show Cause Notice dated 8-11-2000 (in short, the "SCN") was served on the assessee.

3.4 Via the said SCN, it was proposed to deny the assessee, the exemption from excise duty, it enjoyed being an SSI Unit, by virtue of the various Notifications, issued from time to time, i.e., Notification No. 7/97-C.E., dated 1-3-1997; Notification No. 16/97-C.E., dated 1-4-1997;

Notification No. 8/98-C.E., dated 2-6-1998; Notification No. 8/99-C.E., dated 28-2-1999 and Notification No. 8/2000-C.E., dated 1-3-2000 (hereafter collectively referred to as 'Notifications').

Accordingly, the SCN proposed the following :-

(i) to levy duty, in the sum of Rs. 4,19,575/-, for the period, spanning between June, 1997 and 25-10-2000;

(ii) to levy penalty under Section 11AC of the Central Excise Act, 1944 (in short, 'the 1944 Act').

3.5 In respect of the said SCN, a reply dated 5-1-2001 was filed by the assessee, pursuant to which, the Order-in-Original dated 31-10-2000 (sic 31-10-2001), was passed by the Adjudicating Authority.

3.6 As indicated at the outset, the Order-in-Original, was in favour of the assessee, and, hence, proceedings initiated via the aforementioned SCN were dropped.

3.7 The Revenue, being aggrieved, had preferred an appeal against the Order-in-Original dated 31-10-2001. The appeal met with the same fate. The First Appellate Authority, i.e., Commissioner of Central Excise (Appeals) vide order dated 7-11-2003, sustained the Order-in-Original and dismissed the Revenue's appeal.

13. Therefore, what emanates from the facts obtaining in the present case is that, there was a non-disclosure of information by the Assessee. The Assessee has taken a stand that, since, it was always below the monetary limit fixed for clearances qua SSI Units, it never had an occasion to make any disclosure via a classification list.

13.1 In our view, this cannot be construed as suppression of fact, within the meaning of Section 11A(1) of the 1944 Act. Mere non-disclosure of facts, in such like circumstances, cannot constitute suppression of facts. Given the way the Section is framed, the expression "suppression of fact", appears in the company of words and expressions, such as, fraud, collusion, wilful misstatement. Therefore, the expression "suppression of facts", has to take colour from the words whose company, it appears in. A mere non-disclosure of information, when there is no obligation in law to furnish the same, will not amount to, in our opinion, fraud or collusion or even, wilful misstatement and, hence, trigger the extended period of limitation [See Collector of Central Excise, Hyderabad v. M/s. Chemphar Drugs and Liniments, Hyderabad - 1989 (40) E.L.T. 276 (S.C.); Padmini Products v. Collector of C. Ex. - 1989 (43) E.L.T. 195 (S.C.) and Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay - 1995 (78) E.L.T. 401 (S.C.)].

13.2 In view of the aforesaid conclusion, we are inclined to agree with the counsel for the assessee that the Tribunal erred in not examining this aspect of the matter, which, clearly, emanated from the record.

13.3 The Tribunal, in our opinion, wrongly rejected the cross objections filed by the assessee on the issue of limitation.

14. Having regard to the foregoing decision, the impugned judgment and order of the Tribunal is set aside. The question of law, as framed, is

answered in favour of the assessee and against the Revenue.

14.1 Having been said so, as indicated by the learned counsel for the Assessee, the Revenue would be entitled to recover duty for the period six (6) months prior to the date of issuance of the SCN, i.e., dated 8-11-2000, albeit, in accordance with law.

14.2 Therefore, since, the extended period of limitation is not applicable, in our view, the Revenue would also not be entitled to levy penalty under Section 11AC of the 1944 Act, save and except, demand duty, for a period of six (6) months, prior to the date of Show Cause Notice."

[Emphasis supplied]

6.1.1 In the above case involving similar set of facts and circumstances, the Hon'ble Madras High court has held in favour of the assessee that being an SSI unit if the usage of brand name is not disclosed it cannot be held that the assessee had suppressed the facts so as to invoke the extended period of demand.

6.2 I find that the above judgment of Hon'ble Madras High Court is squarely applicable to the case on hand. Since, the Appellant was also SSI unit, it was not obligatory for them to have disclosed the usage of brand name. The Department cannot insist upon the Appellant to do something what is not required as per law. I, therefore, allow the appeal of the Appellant on the grounds of limitation. The Department is allowed to recover Central Excise duty falling within normal period of one year only, as it existed then after amendment of Section 11A w.e.f. 15.05.2000. Since Show Cause Notice was issued on 07.06.2000, the demand can be confirmed for the period from May, 1999 onwards and not prior to that. As a natural consequence interest on Central Excise duty payable for the period from May, 1999 to December, 1999 would also be payable.

7. The goods bearing brand name were seized under Panchnama proceedings dated 03.01.2000 and show cause notice had been issued on 07.06.2000 within 6 months of seizure of the goods and it is admitted and undisputed position that the Appellant was affixing others brand name on their products and hence, confiscation of the excisable goods valued at Rs. 1,30,000/- is correct, legal and proper, since the seized goods were released provisionally on payment of Rs. 25,000/-, imposition of redemption fine of Rs. 25,000/- in lieu of confiscation of goods is also correct and proper.

8. I find that penalty under Rule 173Q(1) of the then Central Excise Rules, 1944 had already been set aside by the then Commissioner(Appeals), Rajkot vide Order-in-Appeal No. No. 1098/2001/Commr(A)/Raj dated 29.11.2001 vide page 9 of the said Order-in-Appeal observing as under :-

> *"Apropos, the imposition of concurrent penalty, under Rule 173-Q and Section11AC, the appellants have pleaded that the same cannot be imposed in conjunction. I do find merit in the above argument of the appellants and ipso facto I set aside the penalty imposed on the appellants under Rule 173-Q(1) of the Central Excise Rules, 1944. Besides, it is also well settled legal position that both aforesaid punitive measures cannot be clamped concurrently.*
>
> *In view of the above deliberations and findings, I dismiss the appeal of the appellants lock, stock and barrel excepting the modification directed in the penalty portion in the preceeding para."*
>
> *[Emphasis supplied]*

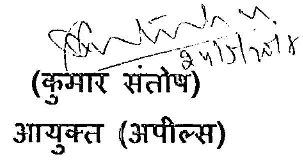
8.1 Thus, penalty under erstwhile Rule 173Q of the Central Excise Rules, 1944 had already been set aside by the then Commissioner(Appeals) way back in 2001 and the department did not file appeal against this part of the order and hence, setting aside penalty under Rule 173Q(1) had become final, and therefore, penalty in the impugned order consequent to remand is illegal, without justification and beyond the scope of remand proceedings. Hence, I have no option but to set aside the penalty imposed under Rule 173Q under the impugned order.

9. Regarding penalty imposed under Section 11AC of the Act, I find that the issue involved is interpretation of law and there are divergent views, even contradictory judgments on both sides. Looking to the facts and circumstance of the case, I hold that no penalty is required to be imposed against the Appellant under Section 11AC of the Act, especially when there is no evidence of suppression of facts. Thus, penalty of Rs. 2,42,207/- imposed under Section 11AC of the Act on the Appellant is set aside.

10. In view of above, I uphold the demand for normal period, along with interest and also uphold confiscation of the goods and imposition of redemption fine, but set aside demand for extended period and penalties imposed vide the impugned order.

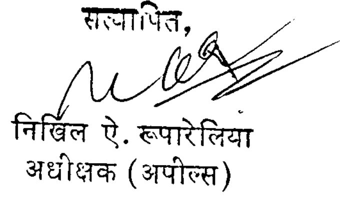
11. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है ।

11. The appeal filed by the appellant is disposed of in above terms.



(कुमार संतोष)
आयुक्त (अपील्स)

सत्यापित,



निखिल ऐ. रूपारेलिया
अधीक्षक (अपील्स)

BY R.P.A.D.
To,
M/s. Shramdeep Products,
5, Umakant Pandit Udyog Nagar,
Mavdi Plot,
Rajkot.

Copy for information and necessary action to :-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his information please.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
4. The Assistant Commissioner, GST & Central Excise, Div-I, Rajkot.
5. Guard File.