



: आयुक्त (अपील) 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: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :- *By speed per (19/1/21) HGR* DIN - 20210564SX000000100B

Eq 361 262838 In Party Coy

क अपील / फाइल संख्या / Appeal / File No. *व्या. & पत्र कोटिंग* मूल आदेश सं / दिनांक / Date
V2/74/RAJ/2020 OIO No. 17/D/AC/2020-21 31.7.2020

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

RAJ-EXCUS-000-APP-15-2021

आदेश का दिनांक / जारी करने की तारीख / 24.05.2021 27.05.2021
Date of Order: Date of issue:

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals),
Rajkot

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

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

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

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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) बर्गीकरण 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 असावा अहमदाबाद- 380016 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) नियमवली, 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 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती 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 Form 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 रुपये 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 गयी 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 स्थान अर्ज़ी एवं अपील को लागू नहीं होंगे। /
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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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 छूट (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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट 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 उत्पाद 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 साध्य 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। इन तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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 appealing to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed 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 स्वगन 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 संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर 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 Rototon Polypack Pvt. Ltd., Rajkot (*hereinafter referred to as 'Appellant'*) has filed Appeal No. V2/74/RAJ/2020 against Order-in-Original No. 17/D/AC/2020-21 dated 31.7.2020 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner (in situ), Central GST & Central Excise, Rajkot-I Division (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of 'Flexible Packaging Material' falling under Chapter 39 of the Central Excise Tariff Act, 1985 and was registered with Central Excise Department under Registration No. AABCR0096FXM001. During the course of audit of the records of the Appellant undertaken by the Departmental officers, it was observed that the Appellant was receiving Central Excise invoices of Cylinder (for designing of packaging materials) raised in the name of their Customers along with the work order for manufacture of packing material. It appeared that since the Appellant was not bearing the cost of such Cylinders, the cost of such Cylinders supplied free of cost by their customers was required to be apportioned in the assessable value of final products in terms of Rule 6 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 for the purpose of discharging Central Excise duty. However, the Appellant was not following the provisions contained in Rule 6 *ibid* and was not including cost of said Cylinders in assessable value.

2.1 The above observation culminated into issuance of Show Cause Notice No. V.84(4)12/MP/D/2019-20 dated 29.4.2019 to the Appellant, covering the period from April, 2017 to June, 2017, calling them to show cause as to why Central Excise duty amount of Rs. 60,017/- should not be demanded and recovered under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as 'Act'*), along with interest under Section 11AA of the Act and proposing imposition of penalty under Section 11AC of the Act.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority *vide* the impugned order who confirmed the demand of Rs. 60,017/- under Section 11A(4) of the Act, along with interest under Section 11AA and imposed penalty of Rs 60,017/- under Section 11AC *ibid*.

3. Being aggrieved, the Appellant preferred the present appeal on various



grounds contending, *inter alia*, as under:-

(i) That the value of the cylinder cannot be charged in the year it is procured inasmuch as the value of the cylinder has to be apportioned between the number of pieces/pouches manufactured by using such cylinder and is to be spread over a period of years for which such cylinders are used; it means the life of the cylinder has to be worked out and thereafter only the value can be apportioned and charged to duty in the respective years.

(ii) That the Department has arrived at hypothetical value of the product which is illegal and without base; that the appellant is neither manufacturer of cylinder nor has charged any value of cylinder from the supplier, therefore the duty demanded is bad in law; that they relied upon the CBEC Circular No. 170/4/96 whereby it is clarified that the value of die supplied free of cost is to be apportioned in the value of final product by ascertaining the life of the said die; that the said principle is clearly applicable to the present case; that unless the value of cylinder supplied by the customer is worked out or determined with the life of such cylinder no part of value can be included and no part of duty can be recovered; that the cost of die/cylinder has to be apportioned and then only duty can be demanded; that the cylinders supplied by the customers were being used for number of pieces or no. of pouches to be supplied and that can be used for number of years, hence the duty demanded is bad in law and relied upon following case laws:

- (a) Exotech Plastics Pvt. Ltd. -2018 (364) E.L.T 658 (Tri.- Mumbai)
- (b) Tetra Pak India Pvt. Ltd. - 2017 (354) E.L.T. 272 (Tri. -Mumbai)
- (c) Bhavna Industrial Corporation - 2009 (248) E.L.T. 660 (Tri.-Ahmd.)
- (d) Nash Industires (I) Pvt. Ltd. 2018 (19) G.S.T.L. 162 (A.A.R. - GST)
- (e) GESTAMP Automotive India P. Ltd.- 2017 (7) G.S.T.L 337 (Tri.- Mumbai).

(iii) That the duty demanded is on hypothetical value of the cylinders without considering the life of such cylinders or without considering the apportioned value of such cylinder, the demand of duty is bad in law; that no part of the demand can be confirmed as the value of the cylinders is worked out on presumption and assumption.

(iv) That the Department had full knowledge of the fact that the appellant is manufacturing various types of pouches with the help of cylinders being supplied and therefore the allegation of suppression of



fact cannot be sustained; that they have also followed all the procedure prescribed under the law and are also submitting their return from time to time; that the department has also audited their books of accounts and have never objected the procedure followed and therefore the allegation cannot be sustained; they further submitted that they have not suppressed any fact from the department and the opinion arrived is just change of opinion, therefore the duty demanded is clearly barred by limitation; that the duty demand is bad in law and is liable to be set aside; that the department had full knowledge of the fact, hence the allegation of suppression of fact cannot be sustained and consequently the proceedings are not sustainable.

(v) That they never had the intention to suppress any fact or evade payment of tax and therefore the allegation of suppression of fact cannot be sustained. The Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills had settled the law that if the intention of the assessee is not to evade duty then the penalty under the provisions of Section 11 AC is not imposable. The ratio laid down is clearly applicable in their case and therefore the penalty proceedings are liable to be set aside.

4. Personal hearing was conducted in virtual mode through video conferencing on 12.2.2021. Shri Paresh Sheth, Advocate, appeared on behalf of the appellant and reiterated the submissions made in appeal memorandum and stated that demand for earlier period has been remanded back by the then Commissioner (Appeals), Rajkot and requested to allow the appeal by way of remand.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made by the Appellant. I find that the issues to be decided in the present appeal is whether the cylinders received by the Appellant free of cost from their customers are required to be appropriated in the final cost of the finished goods or otherwise.

6. On going through the records, I find that the Appellant had received Cylinders free of cost from their Customers, which were used by them during the course of manufacture of the final products. The Appellant was not including cost of such Cylinders in assessable value of their final products. The adjudicating authority held that the cost of such Cylinders was required to be



apportioned in the assessable value of final products in terms of Rule 6 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 for the purpose of discharging Central Excise duty. The impugned order confirmed Central Excise duty of Rs. 60,017/- and imposed penalty of Rs. 60,017/- under Section 11AC of the Act.

6.1 I find that the Appellant has not disputed that cost of Cylinders supplied free of cost by their Customers was required to be apportioned in assessable value of final product. However, the Appellant has contended that the impugned order has erroneously considered entire value of Cylinders for demanding duty instead of determining life of the Cylinders and working out total number of pieces/pouches that can be manufactured using such Cylinders and then apportioning value of such Cylinders in respective years. I find force in the argument of the Appellant. The Cylinders are used for carrying out printing on pouches. The Cylinders received in a particular period or year can be used to print no. of pouches and this work may be spread over longer period spanning several years. Hence, it is not correct to include entire value of Cylinders in assessable value in the year of its supply but its value should be spread over a period of years for which such cylinders can be put to use and only proportionate value is to be apportioned in the assessable value considering the total number of pieces/pouches that can be manufactured during its life time and actual pieces/pouches manufactured during a particular year/period. My views are supported by the Order passed by the Hon'ble CESTAT, New Delhi in the case of M/s Flex Industries Ltd. reported as 1997 (91) E.L.T. 120 (Tribunal), New Delhi, wherein it has been held that,

“5. The main and common contention raised in the three appeals is that a part of the price collected for cylinders cannot be included in the assessable value of the finished product. Manufacture of printed pouches for each customer requires four to five cylinders. The material to be printed differs from customer to customer which means that cylinders are custom-made and cylinders made for one customer cannot be used for another customer. The Collector has noted that each set of cylinders can be used to print ten lakh pouches. This means that cylinders made in a particular period or year can be used to print 10 lakh pouches and this work may be spread over several periods or years. This would mean that price of cylinders received during a period covered by one show cause notice may be used even beyond the period covered by the notice but according to the impugned orders, the entire cost of cylinder realized during the period covered by one notice has to be added to the assessable value of finished



goods manufactured and cleared during the period which is not rational or reasonable. Learned Counsel for appellant has referred to an order passed by Appellate Collector in the case of another similar manufacturer holding that the value of cylinders must be spread over goods manufactured and to be manufactured in future using the cylinders. This principle is seen supported by M.F. (DR) Circular No. 17/4196-CX, dated 23-1-1996, in connection with value of patterns used in foundry industry to be added to the cost of castings for arriving at the assessable value of castings. There would be difficulty as the quantity of castings to be made out of a pattern cannot be anticipated and sometimes some rectifications or repairs may be made in the pattern after some period of use. The Board clarified as follows :

"The matter has been clarified and it is hereby clarified that the proportionate cost of pattern has to be included in the assessable value of the casting even in cases where such patterns are being supplied by the buyers of the casting or are got prepared/manufactured by the job worker at the cost of the buyer. In cases where there is difficulty in apportioning the cost of pattern, apportionment can be made depending on the expected life and capability of the pattern and the quantity of castings that can be manufactured from it and thus working the cost to be apportioned per unit. For this purpose, a certificate from a Cost Accountant may be accepted."

6. The principle underlying the Board clarification would apply to apportionment of cost of cylinder used in the manufacture of printed pouches. It may be considered that cylinder is used and consumed in the manufacture of printed pouches; but it is not used in the sense in which raw material is used in manufacture of a product; in such case, the conversion or use of raw material is done quickly and it is easy to correlate a definite quantity of raw material and its value with a definite quantity of finished product and its value. In the present case, the use of cylinders is in such a manner that it is spread over a considerable period and over a very large quantity or number of finished products. To illustrate, we assume that a set of four cylinders of the value of Rs. X can be used in manufacture of ten lakh printed pouches. Hence it is reasonable to regard that Rs. X ÷ 10 lakhs is the proportionate value of cylinder which is used in the manufacture of a single printed pouches and this fractional value has to be added to the value of printed pouches. However, during a particular period, the use of the set of cylinder may not be exhausted as only 4



lakh printed pouches are manufactured during the period. If so, it has to be regarded that Rs. (x ÿ 10 Lakhs) x 4 Lakhs is the proportionate value of cylinder utilized in the manufacture of finished products during the period and only this value can be added to the value of printed pouches. This rational principle of proportional value addition has been approved by the Board and we are of the opinion that Board was right in doing so. This has to be arrived at after making a realistic estimate of the expected life and capability of the cylinders and determining the appropriate proportion of the value of cylinders to be added to the value of printed pouches. The conclusion arrived at by the lower authorities that entire value of the cylinders is to be added to the value of printed pouches manufactured during the relevant period without reference to the expected life and capability of the cylinders has to be set aside and the matter has to be considered afresh by the respective adjudicating authorities".


[Emphasis supplied]

7. In view of above, the impugned order confirming demand of duty by considering entire value of Cylinders is not sustainable. At this stage, correct determination of the demand is not possible in absence of required information available on record. I find that appeal of the Appellant involving similar issue for previous period was remanded to the adjudicating authority. I, therefore, set aside the impugned order and remand the matter to the adjudicating authority to re-determine the quantum of demand by ascertaining expected life of Cylinder, total No. of pouches that can be printed using Cylinder during its life and No. of pouches printed during the period of demand and thereafter determine quantum of duty of Cylinders. The Appellant is also directed to provide required information as and when called upon by the adjudicating authority. Needless to mention that Order in *de novo* proceeding shall be passed by adhering to the principles of natural justice.

8. I set aside the impugned order and dispose of the appeal by way of remand to the adjudicating authority as discussed above.

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

9. The appeal filed by the Appellant is disposed off as above.


(Akhilesh Kumar) 24th May, 2021
Commissioner (Appeals)



Attested



(V.T.SHAH)

Superintendent(Appeals)

By Regd. Post AD

To, M/s Rototon Polypack Pvt. Ltd., Sakhyanagar Industry, Opp. Dharmajivan Ind. Area, B/h S.T. Workshop, Swami Narayan Gurukul, Rajkot.	सेवा में, मै. रोटोटोन पोलिपैक प्राइवेट लिमिटेड, सखियानगर इंडस्ट्री , धर्मजीवन इंडस्ट्री के सामने, एस टी वर्कशॉप के पीछे, राजकोट
--	---

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-1 मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



