::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर 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 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी. द्वारा :- **DIN-20220464SX000000A494**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIONo.	दिनांक/ Date
	V2/91-92/RAJ/2021	**30/D/AC/2020-21**	**31-03-2021**

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

RAJ-EXCUS-000-APP-140 TO 141-2021-22

आदेश का दिनांक / Date of Order: **31.03.2022** जारी करने की तारीख / Date of issue: **01.04.2022**

श्रीअखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**,Commissioner (Appeals),Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, 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/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

M/s Rajesh Industries, 5 Umakant Pandit Udyog Nagar Rajkot Gujrat .

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 कें अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती हैं ।/

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- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 सार्वजिनक 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 dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 सार्वजिनक 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,1994की 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 Commissionerauthorizing 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 वितीय 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" मे 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 वितीय (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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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 outsideIndia 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 वित 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 variousnumbers 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

प्रधान आयुक्त अपील सेवा कर एवं केन्द्रीय उत्पाद शुल्क

:: ORDER-IN-APPEAL ::

These appeals have been filed by the Appellants (*hereinafter referred to as* 'Appellant No. 1 and Appellant No. 2', as detailed in Table below) against Order-in-Original No. 30/D/AC/ 2020-21 dated 31.03.2021 (*hereinafter referred to as* 'impugned order') passed by Assistant Commissioner, Central GST, Division -I, Rajkot (*hereinafter referred to as* 'adjudicating authority'):

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/92/RAJ/2021	Appellant No.1	M/s Rajesh Industries, 5, Umakant Pandit Udyog Nagar, Rajkot
2.	V2/91/RAJ/2021	Appellant No.2	Shri Rupeshbhai Jagdishchandra Mehta, Proprietor of M/s. Macpower Industries, 5, Umakant Udyog Nagar, Rajkot

2. Facts of the case, in brief, are that Appellant No. 1, a proprietary concern, is engaged in manufacture of Lathe Machines falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. Appellant No. 1 was not registered with the Central Excise Department and was availing the benefit of SSI Exemption Notification No. 08/2003 – CE, dated 01.03.2003, as amended. During the course of preventive inquiry initiated against the Appellant No. 1 by the officers of Preventive, Division – I, erstwhile Central Excise, Rajkot, Shri Rajesh Tawade, Proprietor of Appellant No. 1, had admitted that they were affixing brand name "TURNER" on the machines manufactured and cleared from their factory. It was stated that the brand "TURNER" was registered in the name of Shri Rupeshbhai Jagdishchandra Mehta, Appellant No. 2, and that the brand TURNER' was purportedly assigned by him to their firm by an Assignment Deed executed on 31.03.2006. The officers of the preventive were of the view that the Assignment Deed executed between Appellant No. 2 and Appellant No. 1 was not valid in view of the provisions of Trade Marks Act, 1999. The officers were of the view that the Assignment Deed was a well thought out document fabricated intentionally to create an impression that the brand name was owned by Appellant No. 1. The officers were also of the view that the benefit of Exemption Notification No. 08/2003-CE dated 01.03.03, as amended, was not available to Appellant No. 1, since they were clearing their finished goods after affixing the brand 'TURNER' belonging to another firm. It was observed that they had cleared excisable finished goods valued at Rs. 92,37,200/- in F.Y. 2006-07, Rs. 1,25,14,223/- in F.Y. 2007-08 and Rs. 58,34,657/- in F.Y. 2008-09 (up to February, 2009) involving Central Excise duty including Education Cess and Secondary and Higher Education Cess amounting to Rs.42,81,142/-.

2.1 On conclusion of investigation, a Show Cause Notice No.

V.AE/AR.III/Rjt/DI/ADC/135/09 dated 24.07.2009 was issued to Appellant No. 1 demanding Central Excise duty, including Education Cess and Higher Education Cess, amounting to Rs. 42,81,142/- under proviso to Section 11A of the erstwhile Central Excise Act, 1944 (*hereinafter referred to as* "Act") along with interest under Section 11AB of the Act and penalty under Section 11 AC of the Act. The said Show Cause Notice also proposed imposition of penalty upon Appellant No. 2 under Rule 26(2)(ii) of the Central Excise Rules, 2002 (*hereinafter referred to as* "Rules").

2.2 The above said Show Cause Notice was adjudicated vide the impugned order wherein the demand of Central Excise duty amounting to Rs. 42,81,142/- was confirmed under Section 11A(1) along with interest under Section 11AA of the Act. The impugned order imposed penalty of Rs. 42,81,142/- under Section 11AC of the Act upon Appellant No. 1 with option of reduced penalty as envisaged under provisions of Section 11AC of the Act. The impugned order also imposed penalty of Rs. 5,00,000/- upon Appellant No. 2 under Rule 26(2)(ii) of the Rules.

3. Being aggrieved with the impugned order, Appellant Nos.1 and 2 have preferred appeals on various grounds, *inter alia*, as below :-

- the benefit of notification issued under the provisions of Central Excise Act, cannot be denied on the basis of the procedural laps under the provisions of Trade Mark Act, 1999;
- The present demand of Central Excise Duty is hit by time barred as they have filed declaration under notification no. 8/2003 dated 01.03.2003 also the deed for purchasing brand name also seized under panchnama dated 05.02.2008;
- the department has not produced any evidence to prove as to how the appellant No. 2 has dealt with the goods in the manner as prescribed. They relied upon the decision of the Honorable CESTAT (LB) in the case of Steel Tube India Ltd. wherein it has been categorically held that *the penalty under the provisions of Rule 26 cannot be imposed if the noticee is not proved to have dealt with the goods in the manner as prescribed under the law*
- They have purchased brand name "Turner" from Shri Rupeshbhai Jagdishchandra Mehta, Proprietor of M/S Mac Power Industries.
- They had filed an application for registration of assignment deed under the provisions of Trademark Act on 28th July, 2008, in Form TM24 and also paid the requisite fees of Rs. 10,000/- as required under the provisions of Section 45 of Trademark Act read with Rule 11 and the First Schedule of Trademark Rules, 2002. The said application was accepted by the competent authority and issued certified copy on 24.09.2008.

- Against the allegation of manipulation made in the Show Cause Notice they stated that they had already made assignment deed on 31.03.2006 and the same was seized under Panchnama dated 05.02.2008 during search by the departmental officer. Therefore, such allegation made without any documentary evidences which is not sustainable under the law.
- That they have paid the amount of consideration against the assignment deed for 'Brand Name' and there is no need to entered in their books of account. For this plea they relied upon the decision of Honorable Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. v/s Commissioner of Income Tax reported in 82 ITR 363 wherein it was held that the absence of entry in the ledger account is not the decisive factor.
- The rejection of benefits of Notification No. 08/2003-CE, dated 01.03.2003 on the basis that the assignment deed is not a valid document as the same is not registered with the competent authority. They said that there is no time limit for registration of said deed under the Trade Mark Act, 1999. However, they had registered the said deed with competent authority hence their deed is legal and proper. They relied upon the following decisions of appellate authorities;
    1) *Sri Vidya Mineral Processors Pvt. Ltd. Versus C.C. & C.E., Hyderabad-Ill 2008 (222) ELT 226*
    2) *National Appliances Versus Commissioner of Central Excise, Mumbai 2006 (206) ELT 802 (T)*
    3) *Commissioner of Central Excise, Mumbai-V Versus Sampat P. Damodaran 2005 (192) ELT 635*
    4) *Toptek Hardwares P. Ltd. Versus Commissioner of C. Ex., Ghaziabad 2005 (179) ELT 123*
    5) *Commissioner of Central Excise, Belgaum Versus Abidel (l) 2004 (172) ELT 95*
    6) *Vardhman Industries Versus Commissioner of Central Excise, Delhi 2004 (164) ELT 31 1*
    7) *Gavs laboratory (P) Ltd Versus Commissioner of C. Ex., New Delhi 2000 (122) ELT 516*
    8) *Charkha Detergents & Soap Enterprises Versus Commr. of C. Ex., New Delhi 2001 (130) ELT 333*
- They have already filed declaration under Notification No. 08/2003-CE, dated 01.03.2003 therefore the department had full knowledge of their activities hence no extended period invoked by the department they relied upon various decisions of the appellate forum.
- There is no fraud, collusion or any willful suppression of facts or contravention of any provision of the Act or Rules with an intention to evade payment of duty in the present case hence imposition of penalty under Section 11AC of the Act under the impugned order is not correct and liable for set aside. They relied upon the decision of various legal institutions in this regard wherein it has held that penalty cannot be

imposed when there is no suppression of any facts or contravention of the provisions of the Central Excise Law with an intention to evade payment of duty.

- they have neither short paid nor short levied the excise duty on components dispatch from the factory. Therefore no interest is leviable or payable by us under Section 11AB of the Act as the conditions for invoking Section 11AB of the Act are not being satisfied.
- The penalty imposed upon the Appellant No. 02 viz. Shri Rupeshbhai Jagdishchandra Mehta, Proprietor of M/S Mac Power Industries, under the Rule 26 of Central Excise Rules, 2002 is not proper and legal. The department has not established in the Show Cause Notice that Appellant No. 02 is not dealt with the goods he only sold his 'Brand Name' to Appellant No. 01 under assignment deed. This action is not attracting penalty under Rule 26 *ibid.* They relied upon the decisions of various appellate authorities.
- They also stated that preventive officers had simultaneously started proceedings in the case of M/S V. M. Industries who had also purchased Trade Mark on assignment basis and had started manufacturing activity of similar machine and had issued show cause notice proposing rejection of benefit of notification no. 8/2003-CE but the adjudicating authority vide Order-in-Original No. 23/ADC/2010 dated 06-08-2010 had dropped the proceedings. Against this Order-in-Original, the department had filed an appeal with the Commissioner(Appeal), Rajkot which was also rejected vide Order-in-Appeal No. 50 to 508/2010/Commnr(A)CMC/RAJ dated 16-12-2010 issued on 20-12 2010. And the appeal filed by the department against the said order has been withdrawn on monetary ground.
- They also relied on the following decision whereby the law is settled that on assignment the ownership of the Brand name vests from the date considered effective under the deed and the subsequent owner is entitled for the exemption under notification no. 8/2003-CE.

  i. *in the case of Que Pharma Pvt. Ltd. 201-288-ELT-563 (Trib Ahd)*
  ii. *in the case of Venkatesh Yedidha 2016-332-ELT-*
  iii. *in the case of Jepika Prints 2010-018-STR-380 (MP)*
  iv. *in the case of Convertech Equipment Pvt. Ltd. 201 1-272 ELT-342 (SC)*
  v. *in the case of Bonne Care Pvt. Ltd. 2016-343-ELT-1097 (Trib. Del)*
  vi. *in the case of Kali Aerated Water Works. 2015-320-ELT-692*
  vii. *in the case of Uniworth Textiles Ltd. 2013-288-ELT-181(SC)*
  viii. *in the case of C.M.S. Computers P. Ltd. 2005-182-ELT-20 (SC)*
  ix. *in the case of Ideal Road Builders Pvt. Ltd. 2018-12-GSTL*

192 (Trib Mum)

x. *in the case of National Co-operative Bank Ltd. 2018-15 GSTL-202*

xi. *in the case of Pravin N. Shah 2014-305-ELT-480-Guj. HC)*

- The findings of the Adjudicating authority in para 4 to 4.10 are illegal and void *ab intio* in as much as the authority has ignored all the evidences produced as also the certificate issued by the Trade Mark Authority. The authority has also ignored the fact that the assignment deed was recovered by the preventive officer at the time of their visit on 05-02-2008 and the show cause notice does not doubt the genuineness of the deed and hence the observation made by the authority are bad in law and are liable to be withdrawn and accordingly the order passed is liable to be set aside.

4. Personal Hearing in the matter was held on 28.01.2022 in virtual mode. Shri Paresh Sheth, Advocate, had appeared for hearing on behalf of the appellant. He re-iterated all the pleas made in appeal memorandum. He also submitted another written submission wherein he re-iterated submission already made and cited some decisions of the legal forums.

5. I have carefully gone through the case records, the impugned order and submissions made in the appeal memorandum filed by Appellant No. 01 and Appellant No. 02 as well as oral submissions made by the advocate on their behalf. I find that the issue to be decided in the matter is whether the Appellant No. 01 can be held as the owner of the brand name TURNER or otherwise and whether the impugned order confirming the demand against Appellant No. 1 by denying benefit of exemptions under Notification No. 8/2003-CE dated 01.03.2003, along with interest and imposition of penalty on Appellant Nos. 1 and 2 is legal and proper or otherwise. The demand pertains to period F.Y. 2006-07 to F.Y. 2008-09 (up to February, 2009).

6. It is observed that the adjudicating authority has confirmed the demand proposed by mainly taken into consideration that the ownership of 'Brand Name' was transferred from Appellant No. 2 to Appellant No. 01 as per Deed of Assignment dated 31.03.2006 whereby Appellant No. 01 had become legal owner of the brand "TURNER" from 31.03.2006. However, the Deed of Assignment dated 31.03.2006 was not registered with the competent authority during the period of demand, hence, Appellant No. 01 was not eligible for the benefit of SSI Exemption Notification No. 8/2003-CE, dated 01.03.2003. The adjudicating authority has held that as the appellant had obtained confirmation of Deed of Assignment from the competent authority after initiation of the proceedings of the present case, it proves that the 'Brand Name' was not in the name of Appellant No. 01. The adjudicating

authority has also held that Appellant No. 02 is liable for imposition of penalty under Rule 26 of the said rules for abating Appellant No. 01 by making Deed of Assignment showing the ownership of 'Brand Name' "TURNER" in the name of Appellant No. 01.

7. The relevant text of legal provisions contained under relevant Notification No. 8/2003-Central Excise, as amended, is as under:

SSI Exemption to manufacturers not availing Cenvat — Notification No. 8/2002-C.E. superseded

4. ***The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person,*** *except in the following cases :-*

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 :

Provided *that manufacturers, whose aggregate value of clearances of the specified goods for use as original equipment does not exceed rupees one hundred lakhs in the financial year 2002-2003 as calculated in the manner specified in paragraph 1, may submit a declaration regarding such use instead of following the procedure laid down in the said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;*

(b) where the specified goods bear a brand name or trade name of -

(i) the Khadi and Village Industries Commission; or

(ii) a State Khadi and Village Industry Board; or

(iii) the National Small Industries Corporation; or

(iv) a State Small Industries Development Corporation; or

(v) a State Small Industries Corporation;

(c) where the specified goods are manufactured in a factory located in a rural area.

5. This notification shall come into force on the 1st day of April, 2003.

Explanation. - For the purposes of this notification, -

(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person;

8. It is observed that the text of Notification No. 8/2003 ibid is self-explanatory wherein it is apparent that "the exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person".

9. I find that during investigation, statement of Shri Rupeshbhai Jagdishbhai Mehta, Proprietor of M/s Macpower Industries, Rajkot (Appellant No. 02), was recorded wherein he, inter alia, stated that he was Proprietor of the firm M/s Macpower Industries, Rajkot, and that TURNER brand was owned by his firm, which was sold/assigned to M/S Rajesh Industries, Rajkot vide assignment deed dated 31.03.2006.

10. It is also observed from the definition of "assignment" contained in

Section 2(i)(a) of the Trade Mark and Merchandise Mark Act, 1958 that assignment is to be made in writing by the parties concerned. The assignment has to be taken as effective from the date, stipulated in the deed between the parties. The registration only takes note of the assignment made under the deed. In respect of a registered trade mark (as in the present case), the assignment could be along with goodwill or otherwise in terms of Section 37 of the Trade Mark Act.

10.1 From the above legal positions, it is undisputed fact that the ownership of the brand name "TURNER" was transferred by the Appellant 2 to the Appellant No. 1, as per Deed of Assignment dated 31.03.2006. In view of above, I find that Appellant No. 1 has become legal owner of the TURNER brand from 31.03.2006, i.e. from the date of Deed of Assignment. Therefore, even if the trade name was not registered, the benefit of exemption notification cannot be denied to them on this ground.

11. It is also clear that for the purposes of availing exemption under Notification No. 8/2003-C.E., it is not at all necessary that the trademark must be registered. This is so because the expression used in Paragraph 4 of the said notification itself states 'whether registered or not'. In the present case, the Deed of Assignment is dated 31.03.2006. It is a self-proclaimed position that the trademark TURNER was owned by Shri Rupeshbhai Jagdishbhai Mehta, Proprietor of M/s Macpower Industries, Rajkot. It is also clear from the record that an application for registration of the trademark was made on 28.07.2008, which was ultimately approved by the trademark authority on 01.09.2009 vide Order No. PR-405 dated 01.09.2009, as is evident from the copy of the Certificate issued by the Trade Mark Registry which is annexed as Annexure Page No.95 of the Appeal Memo. No evidence has been adduced or put on the record to prove that the certificate has manipulated in the facts of the case.

12. It is observed from the case records that the trade name was assigned to Appellant No. 01 on 31.03.2006, however, they had got it registered later-on, i.e., in the year 2009. I find that it makes no difference under the Central Excise law in as much as the benefit of SSI Exemption Notification No. 8/2003-C.E. *ibid* cannot be denied to the Appellant No. 01 on the sole ground that they had registered the said trade name with the competent authority later-on. I also find from the Fees Structure prescribed in the First Schedule of Rule 185 of the Trade Mark Rules, 2002 that the owner or subsequent owner can make an application for assignment or transfer of 'Brand Name' any time with higher amount as prescribed for a period of more

than six months. Therefore, there is no time limit fixed under the said act to transfer or assign the 'Brand Name' in stipulated time. Therefore, the conclusion of adjudicating authority that without registration with competent authority, the ownership cannot be transferred, is not correct or legal.

13. In view of the discussion made herein above, I find that Appellant No. 01 was the legal owner of the brand name TURNER which was purchased under the Deed of Assignment dated 31.03.2006 from Appellant No. 2. I also find that during the disputed period, Appellant No. 01 was the owner of the said brand name. It is also observed that there is no dispute that the goods were manufactured under the 'Brand Name TURNER' from the date of assignment deed i.e. 31.03.2006 by the Appellant no. 01. Therefore, the observations made by adjudicating authority that the Appellant No. 01 had cleared the excisable goods by using brand name of another person is not legally sustainable and the impugned order is liable to be set aside.

14. I rely upon the following decisions of the different appellate forums wherein the issue of brand name and admissibility of benefits of value based exemption Notifications was decided:

- *Sri Vidya Mineral Processors Pvt. Ltd. Versus C.C. & C.E., Hyderabad-III 2008 (222) ELT 226*
  "SSI exemption - Brand name/Trade name of another - Trade name acquired by appellant in their own right by deed of assignment - No evidence produced by Revenue to show that documents fabricated - MD of original owner of brand name not examined - Acquiring of trade name proved - Benefit of SSI exemption available. - The appellant had relied on the Assignment Deed in the reply to the show cause notice including the Minutes of the Board meeting resolving to acquire the trade mark in the year 1999. No evidence has been produced by the Revenue to show that they are fabricated. They have not examined the O Managing Director of M/S. ESL Industries Ltd. who was its original owner to show that he has not transferred the trade mark by the Assignment Deed dated 23-12-2000. Once Assignment Deed is in existence, they have to be taken as a bona fide document and benefit has to be extended."

- *Charkha Detergents & Soap Enterprises Versus Commr. of C. Ex., New Delhi 2001 (130) ELT 333*
  "SSI Exemption - Trade Mark/Brand Name - Assignment - Effective date Assignment is by consenting parties and registration only takes note of assignment made under the deed - Effective date is as stipulated in assignment deed between parties and not the date of order of registration or certificate of registration - Section 2(i)(a) of Trade Mark and Merchandise Mark Act, 1958 Notification No. 1/93-CE.

- *Gavs laboratory (P) Ltd Versus Commissioner of C. Ex., New Delhi 2000 (122) ELT 516*
  "SSI Exemption - Brand name - Benefit of Notification No. 1/93-C.E. available to assessee from date of assignment of brand/trade name and not from date of registration in his own name before Trade Mark Registry - Notification Nos. 175/86-C.E. and 1/93-C.E."

- *Spm Instrument India (P) Ltd. Versus Commissioner of C. Ex., Hyderabad o 2003 (152) ELT 115*
  "SSI Exemption - Brand name of foreign company - Collaboration agreement between appellants and foreign company granted a non-transferable right and licence to use the trade name of foreign company - Ownership of a brand name flows either from registration or by use - Only appellant-company entitled to use the brand name and no other company entitled in the country, they become the owners of the brand name by its continuous use - Demand not sustainable Notification No. 175/86-C.E."

- *Commissioner of Central Excise, Belgaum Versus Abidel (I) 2004 (172) ELT 95*

SSI Exemption - Brand name - 'Richfield (1)', the brand name assigned to assessee by its owners - By the deed of assignment, assessee became owner of brand name and Revenue not examined the aspect that Richfield (l) whether, still being used by its owners -As such, the deed of assignment was complete and owner was not using the brand name, assessee cannot be denied the benefit of SSI exemption, and the use of brand name is legal."

- *Vardhman Industries Versus Commissioner of Central Excise, Delhi 2004 (164) ELT 31 1*
- *National Appliances Versus Commissioner of Central Excise, Mumbai 2006 (206) ELT 802 (T)*
  "Brand name - Assignment of brand name, and consideration paid for getting assignment - Registration of brand name - Once assignment of brand name is there then we cannot go into consideration paid for getting assignment - Non registration of brand name with trade mark authorities not relevant."

14.1 I also find that the Adjudicating Authority has relied upon the various decisions which are not squarely applicable in the case. The details of the case is discussed below:

A. In the case of Commissioner Of Central Excise, Mumbai-V Versus Capital Controls (I) Pvt. Ltd. reported as 2008 (232) E.L.T. 357 (Tri. - Mumbai), brand name owner has assigned brand name to the respondent with certain conditions i.e. use of brand name and other conditions which are reproduced below:

This agreement further impose following conditions on the user :-

1) *Not to use, adopt or register it as a trade mark or trade name, whether during the terms of the agreement or after termination of the agreement, any word or symbol, which is confusingly similar to the marks.*
2) *When using the trade mark the user shall describe the trade marks so as to indicate clearly that Licensor is the owner of the trade marks and the user is using the same only by way of permitted use.*
3) *User agrees to comply with all laws pertaining to trade marks in force in the territory.*
4) *Further user shall not at any time do or suffer to be done any act or thing which would in any way impair or prejudice the rights of licensor, in or to the Trade mark.*
5) *It is further understood that user shall not by virtue of the use of the trademarks, acquire any ownership interest and user specifically acknowledge that every permitted use of the trade marks by user shall issue to the benefit of licensor."*

In the present case, no such conditions was found in the Assignment Deed dated 31.03.2006. The relevant portion of the Assignment Deed is abstracted as under:

"The Assignor hereby assigns the said Trade Marks to the Assignee:

(A) Together with the goodwill of the business in the goods for which the said Trade Marks and Copyrights are registered and/ or pending for registration.
(B) To hold the same ***unto the assignee, its successors and assigns absolutely.***
(C) ***To use the trademark and copyright exclusively from 1-4-2006 as subsequent proprietor."***

From the perusal of the aforesaid conditions as laid down in the Assignment Deed in the cited case as well as present case, it is observed that the facts of both the cases are distinguishable

B. Hon'ble Supreme Court's decision in the case of Prince Valves Industry vs. CCE, Chandigarh 2006 (196) ELT 0141 (SC) wherein it was held that

the appellant has only limited right to use brand name under registered trade mark but ownership of trade mark was not transferred to the appellant and in such circumstances the exemption under Notification No. 1/ 93-CE is not available. I find that facts of the case are distinguishable from the facts of present case. In the present case on perusal of the Assignment Deed, it is observed that the Appellant No. 2 has sold/assigned Brand Name to the Appellant No.1 on payment of certain amount with all rights not limited to Appellant No. 1 but also their successors. Thus, in this case the ownership of 'Brand Name' has been shifted to the Appellant No. 1 without any conditions laid down by the Appellant No. 2. Whereas, the in the case cited by the adjudicating authority, the brand name has been assigned on certain conditions i.e. use of brand name only and therefore, the ownership of the brand name has not been shifted.

15. It is also observed that in a case involving similar facts was decided by the Additional Commissioner, erstwhile Central Excise, Rajkot vide Order-in-Original No. 23/ADC/2010 dated 03.08.2010 in the case of M/s V M Industries, Rajkot, wherein the adjudicating authority had dropped the demand initiated under Show Cause Notice. The department had filed an appeal against the said Order-in-Original with the Commissioner (Appeals) which was also rejected by the Commissioner (Appeal), Central Excise, Rajkot vide Order-in-Appeal No. 506 to 508/2010/Commnr(A)CMC/RAJ dated 16-12-2010.

16. In view of the discussions made above, I find that the demand confirmed by the adjudicating authority vide the impugned order on the Appellant No.1 is not legally sustainable and, therefore, the same is liable for setting aside. Since the demand of duty is set aside, the question of recovery of interest and imposition of penalty does not arise.

17. In view of the above discussion, I also find that the Deed of Assignment dated 31.03.2006 entered in to between Appellant No. 1 and Appellant No. 2 is a valid document in as much as it was neither challenged by the Assignor and the Assignee nor it was challenged by the Office of the Trade Mark Registry. Therefore, the penalty imposed on Shri Rupeshbhai Jagdishbhai Mehta, Proprietor of M/s Macpower Industries, Rajkot (Appellant No. 02), is also not legally sustainable. Therefore, the order for imposition of penalty by the adjudicating authority on Appellant No. 2 is also liable to be set aside.

18. In view of above, I set aside the impugned order passed by the adjudicating authority and allow the appeals filed by the Appellant No. 01 and Appellant No. 02.

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

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

सत्यापित / Attested

एन. सी. गजरिया
N. C. Gajariya
अधीक्षक
Superintendent

..31st March, 2022..
(अखिलेश कुमार)
आयुक्त (अपील)

F.No. V2/91-92/RAJ/2021
Date : /03/2022

By RPAD

To M/s Rajesh Industries, 5, Umakant Pandit Udyog Nagar, Rajkot Dist. Rajkot Gujarat - 360 002.	सेवा में मेसेर्स राजेश इंडस्ट्रीज़, 5,उमाकांत पंडित उद्योग नगर , राजकोट जिल्ला राजकोट गुजरात - 360 002
Shri Rupeshbhai Jagdishchandra Mehta, Proprietor of M/S. Macpower Industries, 5, Umakant Udyog nagar, Rajkot	श्री रूपेश भाई जगदीशचन्द्र महेता , प्रो. मेक पावर इंडस्ट्रीज़ 5,उमाकांत पंडित उद्योग नगर , राजकोट जिल्ला राजकोट गुजरात - 360 002

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) प्रधान 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 -I को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल

प्रधान आयुक्त अपील, राजकोट, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क